

DESIGN-BUILD CONTRACT  
BOOK 1 - EXHIBITS

Illinois State Toll Highway Authority

*Illinois Tollway Route 390*

RR-23-4920R



## EXHIBIT 1: DEFINITIONS AND ACRONYMS

**“Acceleration Costs”** shall mean those fully documented increased costs reasonably incurred by Design-Builder (i.e., costs over and above what Design-Builder would otherwise have incurred) which are directly attributable to increasing the performance level of the Work in an attempt to complete necessary activities of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision, and any unexpected movement of materials, equipment, or crews necessary for resequencing in connection with acceleration efforts.

**“Accept or Acceptance”** shall mean formal conditional determination in writing by the Illinois Tollway that a particular matter or item appears to meet the requirements of the Contract Documents.

**“Access”** shall mean any roadway facility by means of which vehicles can enter or leave an arterial highway. Included are intersections at grade, private highways, and ramps or separate lanes connecting with cross streets or frontage roads.

**“Additional Key Personnel”** shall mean up to two additional, optional Key Personnel which the Submitter deems necessary for the Project based on the Submitter’s approach to delivering the Project and helping the Illinois Tollway achieve the goals defined in Section 1.3 (Project Goals).

**“Additional Project ROW”** shall mean ROW not identified in ROW Plans that is required as a result of an Illinois-Tollway Directed Change.

**“Addendum”** shall mean graphic or written revisions to the Request for Proposals (RFP) issued by the Illinois Tollway after the RFP is issued but before the opening of the proposals.

**“Affected Third Parties Plan”** shall mean the plan as identified in Section 2.1.7 (*Affected Third Party Plan*) of Book 2.

**“Affiliate”** shall mean (a) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Design-Builder or any Major Participant; and (b) any Person for which 10 percent or more of the equity interest in such Person is held directly or indirectly, beneficially, or of record by, (i) Design-Builder, (ii) any Major Participant, or (iii) any Affiliate of Design-Builder under clause (a) of this definition. 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, family relation, or otherwise.

**“Affidavit of Availability”** shall mean a sworn affidavit indicating all work under contract, pending awards, all subcontracts and value of subcontracts.

**“Aggregate”** shall mean natural materials such as sand, gravel, crushed rock, or taconite tailings, and crushed concrete or salvaged bituminous mixtures, usually with a specified particle size, for use in base course construction, paving mixtures, and other specified applications.

**“Alternative Technical Concepts”** shall mean a proposed deviation from the contract requirements set forth in the procurement documents for a Transportation Facility that offers a solution that is equal to or better than the requirements in the procurement documents. (Section 10 of the ITI Act).

**“Apparent Best Value Proposer”** shall mean the entity that submits a (I) responsive Proposal, (II) a Proposal that receives a “Pass” on all Pass/Fail criteria, and (III) the Proposal with the highest total proposal score.

**“Application for Final Payment”** shall mean the mechanism for final payment described in Book 1, Section 24.5.1 (*Application for Payment*).

**“Applicable Standards (Book 3)”** shall mean the project standards referenced throughout Book 2 and listed in Book 3.

**“Approve(d) or Approval”** shall mean formal conditional approval or acceptance determination in writing by Illinois Tollway or another Person that a particular matter or item is good or satisfactory for the Project. Such determination may be based on requirements beyond those set forth in the Contract Documents without payment of additional compensation or a time extension and may reflect preferences of Illinois Tollway or another Person.

**“As-Built Documents”** shall mean the as-built documents described in Book 2, Section 2.1.2.1.8.5 (*As Built Documents*).

**“ATC Submittal Due Date”** shall mean the submittal due date for Alternative Technical Concepts (ATCs) as outlined in Section 2 (Procurement Schedule).

**“At Risk Work”** shall mean certain elements or portions of the Project that the Design-Builder proceeds to construct before the RFC Documents for the entire Project has been accepted by the Illinois Tollway. Design-Builder-at-risk Work that the Design-Builder, subject to Illinois Tollway acceptance and the requirements of the Contract Documents, has decided to proceed with, prior to the RFC Documents for the related Work being accepted by Illinois Tollway.

**“Authorized Representatives”** shall mean individuals designated by the Illinois Tollway and the Design-Builder to represent their respective entities with the authority to make decisions and bind the Parties on matters relating to the Contract Documents, respectively.

**“Auxiliary Lane”** shall mean the portion of the Roadway adjoining the Traveled Way for parking, speed-change, or other purposes supplementary to through traffic movement.

**“Award”** shall mean the award of the Project to the successful Apparent Best Value Proposer, contingent upon approval of the Contract by the Board.

**“B2Gnow”** shall mean a grant, procurement and diversity management software provider.

**“Base Sheets”** shall mean a document provided to the Designer by the Illinois Tollway that contains pertinent information for facilities, materials and/or systems that the Designer may incorporate into the design. Base sheets shall be modified and completed by the DSE to be specific to the Contract.

**“Baseline Schedule”** shall mean a logic-based schedule for all Work from commencement of the Work leading up to each Completion Deadline(s). The Baseline Contract Schedule is prepared by Design-Builder in accordance with the Critical Path Method (CPM) and the Contract Documents, consistent with the Proposal Schedule and approved Revised Baseline Contract Schedule(s). The Baseline Contract Schedule is subject to approval of the Illinois Tollway. The Illinois Tollway-approved logic-based Critical Path Method schedule for all Work from commencement of the Work leading up to each Completion Deadline(s), to be prepared by the Design-Builder consistent with and reflecting the Proposal Schedule

and Illinois Tollway-approved Revised Baseline Contract Schedule(s), and in accordance with the Contract Documents.

**“Basis of Rejection”** shall mean rejection of a Type 2 Submittal where: (a) the Work that is the subject of the Type 2 Submittal fails to comply with any applicable covenant, condition, requirement, term, or provision of the Contract Documents, after taking into account the resolution of any point of interpretation of this Contract; (b) the Work that is the subject of the Type 2 Submittal is not to a standard at least equal to or better than the requirements of Good Industry Practice; or (c) the Design-Builder has not provided all content or information required with respect to the Type 2 Submittal.

**“Betterment”** shall mean any upgrading of a Utility or Railroad facility that is not attributable or incidental to the Work and is made solely for the benefit of and at the election of the Utility Owner or Railroad.

**“BidBuy”** shall mean the State of Illinois' eProcurement system.

**“Board”** shall mean the Illinois State Toll Highway Authority Board of Directors.

**“Bond Against Defective Work”** shall mean the Bond as defined in Book 1, Section 24.5.4 (*Bond Against Defective Work*).

**“Book 1”** shall mean the Contract Document designated as Book 1 (Contract) in the RFP.

**“Book 2”** shall mean the Contract Document designated as Book 2 (Project Requirements) in the RFP.

**“Book 3”** shall mean the Contract Document designated as Book 3 (Applicable Standards) in the RFP.

**“Bridge”** shall mean a structure, including supports erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

**“Business Day”** shall mean any day other than a Saturday, Sunday or non-working holiday.

**“Calendar Day(s)”** shall mean every day shown on the calendar, beginning and ending at midnight.

**“Certified SUE Plan”** shall mean the Utility map as described in Book 2, Section 6 (*Utilities*).

**“Certified Test Report”** shall mean a test report provided by a manufacturer, producer, or supplier of a product indicating actual results of tests or analyses, covering elements of the specification requirements for the product or workmanship, and including validated certification.

**“Change”** shall mean a designated change to the requirements of the Contract Documents, initiated by either ILT or the DB.

**“Change Order”** shall mean a written order to Design-Builder issued by the Illinois Tollway ordering a change in the Work resulting in an adjustment in the Contract Price or in Completion Deadline(s). Approved Work Orders and resolved Claims may result in a Change Order if such Work Orders and resolved Claims necessitate an adjustment to the Contract Price or to Completion Deadline(s).

**“Channel”** shall mean a natural or artificial water course.

**“Chief Engineering Officer”** shall mean the person, as provided by law, to serve as the principal executive officer of Illinois Tollway and responsible for executing the policy of the Illinois Tollway.

**“Chief Procurement Officer”** The person appointed under Section 1-15.15(2) of the Code.

**“Claim”** shall mean a separate demand by Design-Builder for (a) a time extension which is disputed by the Illinois Tollway, or (b) payment of money or damages arising from work done by or on behalf of Design-Builder in connection with the Contract which is disputed by the Illinois Tollway, or (c) any other type of relief from the Illinois Tollway under the Contract Documents, law or equity. Alternatively, may mean a separate demand by the Illinois Tollway, which is or could be disputed by Design-Builder, for payment of money or damages to the Illinois Tollway. A claim will cease to be a Claim upon resolution thereof, including resolution by delivery of a Change Order or Contract amendment signed by all parties.

**“Code”** shall mean the Illinois Procurement Code (30 ILCS 500).

**“Commercial General Liability”** shall mean insurance that protects Design-Builder from common lawsuits arising from everyday business activities.

**“Completion Deadline(s)”** shall mean a (or multiple) milestone deadline(s), including the Interim Completion Deadlines, Substantial Completion Deadline, and/or Final Acceptance Deadline, depending on the context, of when the Design-Builder shall meet the requirements of such respective milestone.

**“Comprehensive Environmental Protection Plan”** (CEPP) shall mean the plan as identified in Section 2.1.11 (*Comprehensive Environmental Protection Plan*) of Book 2.

**“Conceptual Design”** shall mean the conceptual designs provided by the Illinois Tollway to Proposers as part of the Project Information. The Conceptual Design will be categorized as either Reference Information or Supplemental Information.

**“Conceptual Design Documents”** shall mean the documents as identified in Section 2.1.2.1.7.1 (*Conceptual Design Documents*) of Book 2.

**“Conceptual Utility Relocation Plans”** shall mean the conceptual design plans for Relocation of a Utility impacted by the Project originally prepared by Illinois Tollway and to be confirmed or revised by the Design-Builder as described in Section 6 of Book 2.

**“Conditionally Approved”** shall mean an Illinois Tollway-issued notice that an approval is contingent upon the Design-Builder satisfying the conditions expressly stated within such conditional approval.

**“Construction Documents”** shall mean all working drawings, erection and installation work plans, fabrication plans, manufacturer’s literature, material and hardware descriptions, specifications, construction quality-related reports, and samples (materials, display, other) specified, necessary, or desirable for construction of the Project, including all such drawings, etc., pertaining to all Utility Adjustment Work, regardless as to whether included in the Construction Work or self-performed by or on behalf of Utility Owners (it being understood that the equivalent of **“Design Documents”** with respect to such Utility Adjustments are not **“Construction Documents”**). Construction Documents include MWCs, FDCs, As-Built Documents, and RFIs.

**“Construction Quality Management Plan”** shall mean the plan as identified in Section 5.3.5 (*Construction Quality Management Plan*) of Book 2.

**“Construction Work”** shall mean all Work to build or construct, make, form, manufacture, install, supply, deliver or equip the Project including landscaping and landscape establishment.

**“Contaminated Groundwater”** shall mean extracted groundwater including contaminants above legally-permitted discharge levels so as to require treatment prior to re-use or disposal. Contaminated groundwater which may legally be re-used without treatment, including use for dust control, or which merely requires dilution prior to re-use or disposal, shall specifically be excluded from the definition.

**“Contaminated Materials”** shall mean (a) any substance, product, waste or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to any Environmental Law; (b) any substance, product, waste or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds or inorganic compounds, as defined by any Governmental Rule;

(c) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under clause (b) or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court;

(d) petroleum hydrocarbons excluding petroleum hydrocarbon products contained within regularly operated motor vehicles;

(e) asbestos or asbestos-containing materials in Structures and/or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground); and

(f) lead or lead-containing materials in Structures and/or other improvements on or in the Site. The term

**“Contaminated Materials”** includes Hazardous Waste.

**“Contract”** shall mean the contract entered into between the Illinois Tollway and the Design-Builder/Design-Build Team for design and construction of the Project, and , including Change Orders, amendments and renewals, and setting forth the obligations of the parties for the performance of the Contract.

**“Contract Amendment”** shall mean a written instrument duly executed by the Illinois Tollway and Design-Builder amending Contract Document(s).

**“Contract Bonds”** shall mean the Design-Builder furnished Performance and Payment Bonds and executed by the Design-Builder's Surety or Sureties.

**“Contract Communication Plan”** shall mean the plan as identified in Section 2.1.5 (*Contract Communication Plan*) of Book 2.

**“Contract Documents”** shall mean the comprehensive set of documents that contain the commercial and technical requirements the project delivery partner must comply with as set forth in Book 1, Section 1.2 (*Contract Documents*).

**“Contract Price”** shall have the meaning set forth in Book 1, Section 14.1 (*Contract Price*).

**“Contract Time”** shall mean the period from the Effective Date to and including the final Completion Deadline.

**“Controlling Work Items”** shall mean a work activity in which any delay in its completion will result in a delay to a Completion Deadline.

**“County or Counties”** shall mean the county or counties in which the Work is to be done; a subdivision of the State, acting through its duly elected Board of County Commissioners.

**“Critical Activity Point”** shall mean a specific point in the design or construction process at which further activity associated with the deliverable is suspended until formal acceptance of the interim product is

obtained. Acceptance is formally obtained when all issues and design changes have been resolved, all materials testing and inspection procedures have been performed and provide passing results, and the work meets Contract requirements. The Critical Activity Point Manager, the foreman in charge of the activity, and the Tollway will sign off at the Critical Activity Point to provide formal acceptance.

**“Critical Nonconforming Work”** shall mean work that is identified by the Illinois Tollway in a notice issued to Design-Builder requiring immediate rectification and impacting public safety.

**“Critical Path”** shall mean the precedence of activities with total Float less than or equal to zero on each applicable Contract Schedule.

**“Critical Path Method”** shall mean a scheduling method that utilizes the Precedence Diagram Method to calculate each activity’s early dates, late dates, Float values and establishes the critical path through the activity network

**“Culvert”** shall mean a Structure, including supports erected over a depression or an obstruction, such as water or a roadway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured PERPENDICULAR to the flow of water (or equivalent measure) of 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of openings for multiple boxes. It may also include multiple pipes where the clear distance between openings is less than half of the smaller contiguous opening

**“Current Contract Schedule”** shall mean the most recent Revised Contract Schedule.

**“DBE Achievement Strategy”** shall mean a strategy outlining the specific categories of services and work anticipated for DBE participation on the Project for firms that have not been identified on the Initial DBE Utilization Plan;

**“Demobilization Costs”** shall mean the amount necessary to reimburse the reasonable out-of-pocket and documented costs and expenses incurred by Design-Builder to demobilize and terminate subcontracts, excluding Design-Builder's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to subcontractors or third parties

**“Design”** shall mean the overall design of the Project, as represented in the RFC Documents.

**“Design Deviation(s)”** shall mean any Tollway Approved deviation from the criteria established under the term Design.

**“Design Documents”** shall mean all drawings (including Plans, profiles, cross-sections, notes, elevations, typical sections, details, and diagrams), specifications, reports, studies, shop drawings, erection and shoring drawings, calculations, electronic files, records, and other submissions necessary for, or related to, the design of the Project and to the Utility Adjustments, regardless as to whether included in the Design Work or the Construction Work. The Design Documents include each of the Conceptual Design Documents, Preliminary Design Documents, Final Design Documents, Pre-RFC Documents, RFP documents, shop drawings and As-Built Drawings.

**“Design Manager”** shall mean Design-Builder’s principal engineer in charge of the Project Design. The Design Manager is considered a Key Personnel for the Project.

**“Design Package”** shall mean the Design-Builder identified and developed components of the Project that will be designed and constructed as an integral, but independent, component of the Project.

***“Design Quality Management Plan”*** shall mean the plan as identified in Section 5.3.4 (*Design Quality Management Plan*) of Book 2.

***“Design Section Engineer (DSE)”*** shall mean the Engineer or firm of Engineers and their duly authorized employees, agents and representatives retained under an Illinois Tollway contract to prepare the Contract plans.

***“Design Work”*** shall mean all Work involving design, redesign, engineering, architecture, field activities (such as survey and investigations), and work incidental to design.

***“Designer”*** shall mean the person (or consultant team) responsible for performing a design task for an Illinois Tollway project. This is typically the Design Section Engineer (DSE).

***“Designer of Record”*** shall mean the person (or consultant team) responsible for performing a design task for an Illinois Tollway project. This is typically the Design Section Engineer (DSE).

***“Design-Build”*** shall mean project delivery methodology by which Illinois Tollway contracts with a single firm that has responsibility for the design and construction of a project.

***“Design-Builder/Design-Build Team”*** shall mean the Proposer that has been awarded the Project and entered into a Design-Build Contract with the Illinois Tollway under the ITI Act. (Section 10 of the ITI Act).

***“Design-Build Project Manager”*** shall mean a Key Personnel designated by Design-Builder to supervise the Project, receive delivery of notices, have full responsibility for delivery of the Work and who will act as a single point of contact in all matters on behalf of the Design-Builder.

***“Design-Builder-Related Entities”*** shall mean Design-Builder, Major Participants, subcontractors, their employees, agents and officers and all other Persons for whom Design-Builder may be legally or contractually responsible.

***“Design-Builder Release of Hazardous Waste Material”*** shall mean see *Release of Hazardous Waste Material*.

***“Design-Builder Requested ROW”*** shall mean property not identified on the ROW Plans that is associated with a request for Change Order, that the Design-Builder determines is necessary to complete the Work or is required as part of an ATC that has been approved or conditionally approved by the Illinois Tollway.

***“Design-Builder-Triggered New Environmental Approval”*** shall mean all other New Environmental Approvals that are not Illinois-Tollway Triggered New Approvals.

***“Detour”*** shall mean a Road or system of Roads, usually existing, designated as a temporary route to divert through traffic from a section of Roadway being improved.

***“Differing Site Conditions”*** shall mean (a) subsurface or latent physical conditions within one foot from actual boring holes identified in the geotechnical reports in Project Information documents that materially differ from those identified through Reasonable Investigations and Scope Validation by Design-Builder. This clause (a) shall not apply to situations where accurately reported boring information does not reflect the prevailing conditions in the Site or;

(b) physical conditions of an unusual nature, differing materially from those ordinarily encountered at the Site and generally recognized as inherent in the Work provided for in the Contract, provided in all cases that Design-Builder had no actual or constructive knowledge of such conditions as of the last day of the

Scope Validation Period.

Differing Site Conditions shall exclude:

- (a) All such subsurface, latent or surface conditions that (i) were known to Design-Builder prior to the Setting Date, or (ii) would not have become known to Design-Builder by undertaking Reasonable Investigations and Scope Validation;
- (b) Changes in topography;
- (c) Variations in subsurface moisture content, groundwater depth and variations in the water table from the RFP documents;
- (d) Utility facilities;
- (e) Hazardous Materials, including contaminated groundwater;
- (f) Acquisition of real property for drainage purposes;
- (g) Any conditions that constitute or are caused by a Force Majeure event.

**“Directive Design”** shall mean the Preliminary Design that is prescriptive and clearly labeled as Directive Design.

**“Disadvantaged Business Enterprise (DBE)”** shall mean a business currently certified by the Illinois Unified Certification Program (“ILUCP”) pursuant to 49 C.F.R. Part 26, or a business currently certified by the City of Chicago, Illinois or the County of Cook, Illinois, as a Minority or Women-Owned Business (“M/WBE”) pursuant to its M/WBE program for construction contracts, Art. IV, § 2-92-650, et seq, as amended, or a business currently certified by the U.S. Small Business Administration (SBA) pursuant to the Small Business Act as an SBA 8(a) business, owned and operated by a socially and economically disadvantaged person. A DBE is considered to have current certification if the firm is listed in the directory database of the pertinent certifying agency.

**“Disadvantaged Business Enterprise Performance Plan”** shall mean the plan as identified in Section 2.1.3.1 (*Disadvantaged Business Enterprise Performance Plan*) of Book 2.

**“Dispute”** shall mean any dispute, or controversy between the Illinois Tollway and the Design-Builder concerning their respective rights and obligations under the Contract Documents, including concerning any alleged breach or failure to perform and remedies, that has satisfied all predicate notice and information requirements set forth in the Contract and that is eligible for resolution using the Dispute Resolution Procedures. Dispute includes Claims, and all disputes that the Contract expressly designates as Disputes or as eligible for resolution under the Dispute Resolution Procedures without any further prerequisites. The word **“dispute”** in its lower-case spelling shall have its plain language meaning.

**“Dispute Resolution Procedures”** shall mean the procedures for resolving Disputes set forth in Book 1, Section 23.2 (*Dispute Resolution Procedures*).

**“Document and Data Management Plan”** shall mean the plan as identified in Section 2.1.2 of Book 2.

**“Easement”** shall mean a right created by grant, reservation, agreement, prescription, or necessary implication, which one has in the land of another. It is either for the benefit of land (appurtenant such as right to cross A to get to B) or “in gross”, such as a public utility easement.

**“Effective Date”** shall mean the date of execution of the Contract by Illinois Tollway.

**“Emergency Management and Disaster Recovery Plan”** shall mean the plan as identified in Section 2.1.9 (*Emergency Management and Disaster Recovery Plan*) of Book 2.

**“Engineer of Record”** shall mean the Design-Builder’s Lead Engineering Firm for the Project responsible for signing and sealing the plans and specifications.

**“Environmental Approval”** shall mean the necessary environmental level of documentation and approvals necessary for the project based on the current Illinois Tollway Environmental Studies Manual. The necessary Environmental Approvals could be EIS, EA, EED, and ESIS depending on the potential level of documentation necessary.

**“Environmental Commitments”** shall mean the mitigation commitments of the Environmental Approvals.

**“Environmental Compliance Status Report”** shall mean the monthly report prepared by the Design-Builder for Illinois Tollway acceptance, in accordance with Section 4 (*Environmental Compliance*) of Book 2.

**“Environmental Evaluation Document”** shall mean the level of Environmental Approval documentation per the Illinois Tollway Environmental Studies Manual.

**“Environmental Laws”** shall mean all Governmental Rules now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or to emissions, discharges, releases, or threatened releases of hazardous, toxic or dangerous waste, substance or material into the environment, including into the air, surface water or groundwater, or onto land, or relating to the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport, or handling of Contaminated Materials or otherwise relating to the protection of public health, public welfare, or the environment (including protection of nonhuman forms of life, land, surface water, groundwater and air), including CERCLA; RCRA; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.; the Endangered Species Act, 16 U.S.C. §§ 1531 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 et seq.; and the Bald Eagle Protection Act, 16 U.S.C. § 668, each as amended.

**“Environmental Protection Training Plan”** shall mean the plan as identified in Section 2.1.12 (*Environmental Protection Training Plan*) of Book 2.

**“Environmental Requirements”** shall mean the applicable commitments, regulations, requirements, and provisions of the Project's Environmental Approvals, New Environmental Approvals, Environmental Commitments, Governmental Approvals, and applicable Environmental Laws.

**“Equal Employment Opportunity Plan”** shall mean the plan as identified in Section 2.1.3 (*Equal Employment Opportunity Plan*) of Book 2.

**“Equipment”** shall mean all machinery, tools, and apparatus, together with the necessary supplies for upkeep and maintenance, necessary for the proper construction and/or completion of the Work.

**“EquipmentWatch”** shall mean the company of the same name that provides equipment data and fleet insights, equipment values and comparisons, as well as dealership and rental plans.

**“Errors and Omissions”** shall mean an error, omission, inconsistency, inaccuracy, deficiency or other defect in the Contract Document, Preliminary Design(s), and Directive Design(s).

**“Escrowed Proposal Documents”** shall mean all documentary information used in preparation of the Proposal Price as defined in Book 1, Section 26.1 (*Escrowed Proposal Documents*) and Section 26.2 (*Subcontractor Pricing Documents*).

**“Environmental Studies Inventory Sheet”** shall mean the level of Environmental Approval documentation per the Illinois Tollway Environmental Studies Manual.

**“ESIS Part I”** shall mean the level of Environmental Approval documentation per the Illinois Tollway Environmental Studies Manual.

**“ESIS Part II”** shall mean the level of Environmental Approval documentation per the Illinois Tollway Environmental Studies Manual.

**“Event of Default”** shall mean a default as described in Book 1, Section 20.1 (*Event of Default*).

**“Extra Work Order”** shall mean a written order to Design-Builder issued by the Illinois Tollway as described in Section 17.17.

**“Falsework”** shall mean any temporary facility/device used to support the permanent structure until it becomes self-supporting. Falsework would include, but not be limited to, steel or timber beams, girders, columns, piles and foundations, and any propriety equipment including modular shoring frames, post shores, and adjustable horizontal shoring.

**“Federal Requirements”** shall mean all Governmental Rules applicable to work financed with federal funds and the provisions required to be included in contracts therefore, including the relevant provisions set forth in the Contract Documents.

**“Field Design Change”** shall mean necessary changes in construction material, approach, design or in response to unknown field condition that do not constitute minor changes.

**“Final Acceptance”** shall mean a Completion Deadline(s) that is achieved upon the occurrence of the conditions described in Book 1, Section 24.3.1 (*Conditions to Final Acceptance*) and confirmed by the issuance of a Certificate of Final Acceptance by the Illinois Tollway.

**“Final Acceptance and Transition Plan”** shall mean the plan as identified in Section 2.1.19 (*Final Acceptance and Transition Plan*) of Book 2.

**“Final Acceptance Deadline”** shall mean the meaning set forth in Book 1, Section 4.3.2 (*Final Acceptance Deadline*).

**“Final Design Documents”** shall mean the documents as identified in Section 2.1.2.1.7.5 (*Final Design Documents*) of Book 2.

**“Final Utilization Plan”** shall mean the plan related to DBE and SDVOSB/VOSB utilization as described in Book 1, Section 24.2.1 (*Substantial Completion*).

**“Float”** shall mean the total available time to complete a non-controlling operation or sequence of non-controlling operations, as designated by the Design-Builder in the progress schedule, minus the total planned duration associated with the non-controlling operation or sequence of non-controlling operations. Float is a shared commodity. Either Illinois Tollway or the Design-Builder has full use of the Float until it is depleted.

**“Force Majeure”** shall mean an event beyond the control of Design-Builder, not due to an act or omission of any Design-Builder-Related Entity, which materially and adversely affects Design-Builder’s

ability to meet its obligations under the Contract, to the extent that the event (or the effects of which event) could not have been avoided or prevented by due diligence and use of reasonable efforts by Design-Builder. Notwithstanding the foregoing, the term **“Force Majeure”** shall not include normal weather, normal wear and damage due to traffic and road maintenance, Differing Site Conditions, Illinois Tollway-Directed Changes, Utility Delays or any other matter for which the Contract Documents specify how liability or risk is to be allocated between Illinois Tollway and Design-Builder, regardless of whether such matter is beyond Design-Builder’s control.

**“Forms”** shall mean a facility device or mold used to retain plastic or fluid concrete in its designated shape until it hardens.

**“Frontage Road (or Street)”** shall mean a local Road or Street auxiliary to and located on the side of a Highway for service to abutting property and adjacent areas and for control of access.

**“Good Industry Practice”** shall mean the exercise of the degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced designer, engineer, constructor, maintenance contractor, or other contractor, at the sole discretion of Illinois Tollway.

**“Governmental Approval”** shall mean any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, agreement, concession, grant, franchise, registration or ruling required by or with any Governmental Person (other than a Governmental Person in its capacity as a Utility Owner) in order to perform the Work.

**“Governmental Person”** shall mean any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity. The term includes the State and agencies and subdivisions thereof, other than the Illinois Tollway and IDOT.

**“Governmental Rule”** shall mean all applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders and decrees of any Governmental Person having jurisdiction over the Project or Site, the practices involved in the Project or Site, any Work, or any Utility Work being performed by a Utility Owner as of the Setting Date. The term **“Governmental Rule”** does not include Governmental Approvals.

**“Guarantor”** shall mean each entity (if any) providing a Guaranty.

**“Guaranty”** shall mean a Guaranty of Design-Builder’s obligations under the Contract Documents, as provided in Section 11.4 and a Guaranty Agreement. A Guaranty may be provided in lieu of a Performance and Payment Bond.

**“Highway, Street, or Road”** shall mean a general term denoting a public way for purposes of vehicular travel, including the entire area within the Right of Way.

**“IDOT Supplemental Specifications”** shall mean revisions to the IDOT Standard Specifications for Road and Bridge Construction.

**“Illinois Tollway”** shall mean the Illinois State Toll Highway Authority, and any authorized representatives, agents, or contracted consultants thereof.

**“Illinois Tollway Construction Manager (CM)”** shall mean the Illinois Tollway and the Illinois Tollway duly authorized subordinates, agents and representatives acting within the scope of the particular duties delegated to them.

***“Illinois Tollway Purchasing Agent or Purchasing Agent”*** shall mean the person designated by the Illinois Tollway, on Illinois Tollway’s behalf, to oversee the procurement of the Project.

***“Illinois Tollway Supplemental Specifications”*** shall mean the most recent issue as of the Setting Date of the Illinois Tollway Design-Build Supplement Specifications to the to the Illinois Department of Transportation Standard Specifications for Road and Bridge Construction and the references therein.

***“Illinois Tollway-Caused Delays”*** shall mean unavoidable delays, to the extent that they affect the Critical Path, arising from the following matters :

- (a) Illinois Tollway-Directed Changes;
- (b) Uncovering, removing, and restoring Work, to the extent provided in Book 1, Section 5.7.2 (*Obligation to Uncover Finished Work*).
- (c) Failure or inability of the Illinois Tollway to provide Design-Builder with access to Project ROW or Additional ROW on or before the scheduled date for such access pursuant to Book 1, Sections 7.1.2 (*Access to Project ROW*) and 7.1.3 (*Access to Design-Builder Requested ROW*);
- (d) A suspension for convenience pursuant to Book 1, Section 18.1 (*Suspension for Convenience*), to the extent provided therein;
- (e) Other events designated as of Illinois Tollway Caused-Delay under the Contract Documents.
- (d) Material errors in the ROW Plans;
- (f) Following delivery of written notice from Design-Builder requesting such action in accordance with the terms and requirements of the Contract Documents, the failure of the Illinois Tollway to provide responses to proposed schedules, plans, Design Documents, and other submittals and matters submitted to the Illinois Tollway after the Effective Date for which a response is required under the Contract Documents as an express prerequisite to Design-Builder's right to proceed or act, within the time periods (if any) indicated in the Contract Documents, or if no time period is indicated, within a reasonable time, taking into consideration (i) the nature, importance, and complexity of the submittal or matter, (ii) the number of submittals or such other items which are then pending for the Illinois Tollway's response, (iii) the completeness and accuracy of the submittal or such other item, and (iv) Design-Builder's performance and history of Nonconforming Work under the Contract Documents;
- (g) Any improper action by the Illinois Tollway’s designated representative with binding authority or improper failure to act by the Illinois Tollway within a reasonable time after delivery of notice by Design-Builder to Illinois Tollway requesting such action; and
- (h) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Work, except if such risk is arising out of, related to, or caused by the negligent or improper act, failure to act or omission, willful misconduct, recklessness, or breach of contract or Governmental Rule by any Design-Builder-Related Entity; and

***“Illinois Tollway-Directed Changes”*** shall mean:

- (a) changes in the scope of Work, or terms and conditions of the Contract Documents (including changes in the standards applicable to the Work) that the Illinois Tollway has directed Design-Builder to perform;
- (b) an alternative procedure in the Work necessitated by a Governmental Approval pursuant to Book 1, Section 5.5.8 (*Alternative Procedure*);
- (c) a suspension for convenience pursuant to Book 1, Section 18.1 (*Suspension for Convenience*);
- (d) the Illinois Tollway's order to open portions of the Project to traffic to the extent provide in Book 1, Section 24.4.1 (*Plan for Opening to Traffic*);
- (e) the Illinois Tollway's acceptance of a Value Engineering Proposal under the Supplemental

Specifications;

(e) all other instances designated as an Illinois Tollway-Directed Change under the Contract Documents.

***“Illinois Tollway-Triggered New Environmental Approval”*** shall mean the meaning as set forth in Section 8.3.2.1 (*Illinois Tollway-Triggered New Environmental Approval*) of Book 1.

***“Impacted Delay Analysis”*** shall mean the analysis as set forth in Section 2.2.7 (*Impacted Delay Analysis*) of Book 2.

***“Incidental Utility Work”*** shall mean all of the following Work that is necessary or determined by Design-Builder to be convenient for the construction and/or accommodation of the Project:

- (a) Protection of Existing Utilities, and
- (b) In-Place/Out-of-Service of Public Utilities.

***“Indemnified Party”*** shall mean the Illinois Tollway, its directors, officers, employees, agents, and the State of Illinois.

***“Industry Standard”*** shall mean an acknowledged and acceptable measure of quantitative or qualitative value or an established procedure to be followed for a given operation within the given industry. This will generally be in the form of a written code, standard, or specification by a creditable association.

***“Initial DBE Utilization Plan”*** shall mean Design-Builder’s completed DBE Form 2026DB that is submitted with the Technical Proposal.

***“In-Place/Out-of-Service”*** shall mean the work necessary for each Utility (including appurtenances) to decommission a Utility which Utility is not removed. The Utility must be taken out of use using proper Utility Owner and/or industry procedures (e.g., flushing, capping, filling with grout or sand, etc.) or other procedures Approved by Illinois Tollway and the Utility.

***“Inspection”*** shall mean the act of viewing or looking carefully at the Contract Documents and Work to verify whether all work done and materials furnished comply with the Specifications and quality requirements contained in the Contract Documents.

***“Inspector”*** shall mean the Illinois Tollway or Design-Builder’s authorized representative assigned to make inspection of Contract performance, as applicable.

***“Instructions to Proposers”*** shall mean a procurement document issued with the RFP providing project specific instructions and requirements for Proposers to submit a compliant Proposal.

***“Interchange”*** shall mean a grade-separated Intersection with one or more turning Roadways for travel between Intersection legs.

***“Intersection”*** shall mean the general area where two or more Highways join or cross, within which are included the Roadway and roadside facilities for traffic movements in the area.

***“Issue Resolution Ladder”*** shall mean has the meaning set forth in Book 1, Section 23.2.2 (*Issue Resolution Ladder*).

***“ITI Act”*** shall mean the Innovations for Transportation Infrastructure Act (630 ILCS 10).

***“Joint Venture”*** shall mean an unincorporated association of entities.

***“Key Personnel”*** shall mean the persons listed on Book 2 Section 2.1.1.1 (*Key Personnel*), subject to revision in accordance with the Contract.

**“Known Railroads”** shall mean any Railroads included in Book 2 Section 21 Railroads or the Conceptual Design of the RFP.

**“Known Utilities”** shall mean any Utilities included in Book 2 Section 6 Utilities or the Conceptual Design of the RFP. Service lines for these Utilities are included as Known Utilities.

**“Known Pre-Existing Hazardous Materials”** shall mean Hazardous Materials included in Book 2 Section 4 Environmental for which the Design-Builder shall include in their Price Proposal.

**“Laboratory”** shall mean A laboratory operated by or engaged by the Illinois Tollway for testing the materials to be used in The Work.

**“Lead Contractor”** shall mean [Insert Name], a [Insert Entity Type].

**“Lead Design Firm”** shall mean [Insert Name], a [Insert Entity Type].

**“Legal Requirements”** shall mean requirements under: (a) any law, statute, code, regulation, ordinance, rule or common law; (b) any binding judgment (other than regarding a Claim or Dispute); (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute); (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by the Illinois Tollway within the scope of its administration of the Contract Documents); or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. **“Laws”**, however, excludes Governmental Approvals.

**“Licensed Land Surveyor”** shall mean a professional land survey licensed and registered to practice in the State of Illinois with the Illinois Department of Financial and Professional Regulation.

**“Liquidated Damages”** shall mean the damages described in Book 1, Section 21 (*Damages*).

**“Local Traffic”** shall mean traffic that has origin or destination within the CIA.

**“Loop”** shall mean a one-way turning Roadway that curves about 270 degrees to the right, primarily to accommodate a left-turning movement, but which may also include provisions for another turning movement.

**“MA Process”** shall mean the Milestone Acceptance process described in Article 24.

**“Maintenance During Construction Plan”** shall mean the plan as identified in Section 2.1.20 (*Maintenance During Construction*) of Book 2.

**“Major Item”** shall mean an item of Work whose total original contract cost plus any additions, exceeds ten (10) percent of the total original Contract Price for such item, as used within the context of Book 1, Section 17.13 (*Change Order Due to Significant Changes in the Character of the Work*).

**“Major Participant”** shall mean any of the following entities: all general partners or joint venture members of Proposer; all individuals, persons, proprietorships, partnerships, limited liability partnerships, corporations, professional corporations, limited liability companies, business associations, or other legal entity however organized, holding (directly or indirectly) a 20 percent or greater interest in Proposer; any subcontractor that will perform Work valued at 20 percent or more of the Contract Price; the lead design firm(s); and each design Subconsultant that will perform 20 percent or more of the Design Work.

**“Management and Staffing Plan”** shall mean the plan as identified in Section 2.1.1 (*Management and Staffing Plan*) of Book 2.

**“Management Team”** shall mean the organization described in Section 23.1.2 (*Management Team*) of Book 1.

**“Master Utility Agreements”** shall mean the agreements between the Illinois Tollway and a Utility Owner that specify requirements for interaction between such entities, as described and identified in Book 2, Section 6.2.4.1 (*Master Utility Agreements*).

**“Material(s)”** shall mean any substances required for use in the completion of the Work and its appurtenances.

**“Median”** shall mean the portion of a divided highway separating the traveled ways for traffic in opposite directions.

**“Milestone Acceptance Process”** shall mean the workflow on the Illinois Tollway’s WBPMS for monitoring, reviewing and approving project milestones.

**“Minor Work Change”** shall mean design changes that do not require specialized expertise, are not in nonconformance with the Contract Documents, and do not materially effect the design intent as determined by the Engineer of Record.

**“Municipal Utility”** shall mean a utility owned and operated by a governmental agency having corporate status and usually powers of self-government (city, township, village, etc.)

**“Municipalities”** shall mean a city, town, or other district possessing corporate existence within or near the Site.

**“New Environmental Approval”** shall mean any of the following:

- (a) a new Governmental Approval of the same type as an Environmental Approval; and
- (b) a revision, modification or amendment to one or more of the Environmental Approvals.

**“New Environmental Approvals”** shall mean all necessary new Environmental Approvals that are subsequent to and supersede the original Environmental Approval.

**“Nonconforming Work”** shall mean Work performed that does not meet requirements of the Contract Documents.

**“Notice”** shall mean a written notice between Persons and the Design-Builder, either through BidBuy, eBuilder, or the WPBM.

**“Notice of Design-Builder Default”** shall mean the written notice issued by the Illinois Tollway to Design-Builder under Book 1, Section 20.3 (*Declaration of Default*).

**“Notice of Dispute”** shall mean the written notice issued by either Party under Book 1, Section 23.1 (*Communications and Interactions*).

**“Notice of Final Acceptance”** shall mean the written notice issued by the Illinois Tollway to Design-Builder under Book 1, Section 24.3.2 (*Final Acceptance Process*).

**“Notice of Monument Disturbance”** shall mean the notice provided by DB to ILT per section 9.4.7.1.2.

**“Notice of Satisfactory Efforts”** shall mean a written notice defined pursuant to Book 1, Section 6.4.3 (*Notice of Satisfactory Efforts*).

**“Notice of Request for Change Order”** shall mean the written notice given by Design-Builder pursuant to Book 1, Section 17.6 (*Request for Change Order*).

**“Notice of Site Condition”** shall mean the written notice given by Design-Builder pursuant to Book 1, Section 5.4.1 (*Site and Workplace Safety*).

**“Notice of Scope Issue”** shall mean the written notice given by Design-Builder pursuant to Book 1, Section 2.3.4 (*Submission Requirements for Scope Issues*).

**“Notice of Substantial Completion”** shall mean the written notice given by Design-Builder pursuant to Book 1, Section 24.2.2 (*Substantial Completion Process*).

**“Notice of Termination for Cause”** shall mean the written notice issued by the Illinois Tollway to Design-Builder under Book 1, Section 19.5 (*Termination for Cause*).

**“Notice of Termination for Convenience”** shall mean the written notice issued by the Illinois Tollway to Design-Builder under Book 1, Section 19.4 (*Termination for Convenience*).

**“Notice of Uncooperative Utility Owner”** shall mean the written notice given by Design-Builder pursuant to Book 1, Section 6.4.1 (*Notice to the Illinois Tollway*).

**“Notice to Initiate Mediation Proceedings”** shall mean the written notice given by either the Illinois Tollway or Design-Builder pursuant to Book 1, Section 23.2.4 (*Mediation*).

**“Notice(s) to Proceed (NTP)”** shall mean written notice(s) issued by the Illinois Tollway authorizing Design-Builder to proceed with certain Work, as described in Book 1, Section 4 (*Time Within Which Project Shall Be Completed*).

**“Notice of Award”** shall mean when the Illinois Tollway notifies the public of its intent to Award the Contract to the selected Apparent Best Value Proposer.

**“Online Plan Room”** shall mean the document repository provided by the Illinois Tollway.

**“Partnering for Growth (P4G)”** shall mean the Illinois Tollway’s mentorship program that encourages prime consultants and contractors to assist disadvantaged, minority- and women-owned business enterprise (D/M/WBE) firms and veteran-owned small businesses (VOSBs).

**“Party (Parties)”** shall mean the Illinois Tollway and Design-Builder.

**“Pavement Structure”** shall mean the combination of subbase, base course, and surface course placed on a Subgrade to support the traffic load and distribute it to the Roadbed.

**“Payment Bond”** shall mean the security furnished by the Design-Builder/Design-Build Team and the Design-Builder’s/Design-Build Team’s Surety to guarantee to pay not less than prevailing wages for the Work and to guarantee to pay all sums of money due for any labor, materials, apparatus, fixtures or machinery and transportation in accordance with the Contract.

**“Performance Bond”** shall mean the security furnished by the Design-Builder /Design-Build Team and the Design-Builder’s /Design-Build Team’s Surety to guarantee performance of the Work in accordance with the Contract.

**“Person”** shall mean any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization or Governmental Person, including the Illinois Tollway.

**“Plan”** shall mean the plan, profiles, typical cross-sections, and supplemental drawings that show the locations, character, dimensions, and details of the Work to be done.

**“Pre-Accepted Element”** shall mean Design-Builder’s request in accordance with the procedures in the Instructions to Proposers to conduct Work that differs from the design, construction, and/or technical requirements in the Contract, which was included in the Proposal with the Illinois Tollway’s approval.

**“Precedence Diagram Method”** shall mean a method of constructing a schedule network diagram that uses boxes, referred to as nodes, to represent activities consisting of durations and connects them with arrows that show the dependencies for use in forward pass and backward pass schedule network calculations to establish each activity’s early dates and late dates, respectively.

**“Pre-Final Walk Through”** shall mean the walk through defined in Section 4.11.1.1 of the *Illinois Tollway Construction Manager’s Manual*.

**“Pre-Released for Construction Documents”** shall mean the documents as identified in Section 2.1.2.1.7.3 (*Pre-RFC Documents*) of Book 2.

**“Preliminary Design Documents”** shall mean the documents as identified in Section 2.1.2.1.7.2 of Book 2.

**“Preliminary Utility Coordination”** shall mean preliminary coordination activities between Illinois Tollway and a Utility Owner, as described in Section 6.1.2 (*Preliminary Utility Coordination*) of Book 2. As part of the Preliminary Utility Coordination, Illinois Tollway has prepared conceptual drawings for the Utility Adjustment Work and shared such drawings with the affected Utility Owners. The Illinois Tollway has requested review and comments from Utility Owners.

**“Preliminary Railroad Coordination”** shall mean preliminary coordination activities between Illinois Tollway and a Railroad Owner and Railroad Operator, as described in Section 21.1.2 (*Preliminary Railroad Coordination*). As part of the Preliminary Railroad Coordination, Illinois Tollway has prepared conceptual drawings for the Railroad Work and shared such drawings with the affected Railroad Owners and Railroad Operators. The Illinois Tollway has requested review and comments from Railroad Owners and Railroad Operators. In response, Railroad Owners and Railroad Operators have provided comments and a draft Railroad Agreement for such Work.

**“Price Proposal”** shall mean the total price offered by the Proposer to perform the Work, consisting of items described in Section 4.2 of the ITP.

**“Product Data (Warranties)”** shall mean all manufacturers’ warranties, guarantees, instruction sheets, parts lists, training manuals and other product data/information.

**“Professional Services”** shall mean the definition in Section 2 of the Special Provisions for Design-Build Projects for Disadvantaged Business Enterprise Participation.

**“Profile Grade”** shall mean the trace of a vertical plane intersecting the top surface of the Roadbed or Pavement Structure, usually along the longitudinal centerline of the Traveled Way. Profile Grade means either elevation or gradient of such trace according to the context.

**“Project Management Plan”** shall mean the plan identified in Book 2, Section 2.1 (*Project Management Plan*).

**“Project”** shall mean the Design-Build project, as more specifically described in Book 2, Section 1 (*General*), and all other Work product to be provided by Design-Builder as a condition to Final Acceptance in accordance with the Contract Documents.

**“Project Information”** shall mean plans, studies, documents and other information relating to the Project consisting of electronic files assembled by the Illinois Tollway and made available to Proposers to enable them to prepare their Proposals. Project Information may be categorized as Reference or Supplemental Information.

**“Project Limits”** shall mean the physical limits given in the Contract Documents showing the points of beginning and ending of the Work included in the Project.

**“Project Right of Way or Project ROW”** shall mean project identified on the ROW Plans included as an exhibit in Book 2, Section 7 (*Right of Way*).

**“Project Standards”** shall mean the manuals, publications, references, and our resources in Book 3, incorporated in and as part of the Contract Documents as references.

**“Proposal”** shall mean a response to a Request for Proposals.

**“Proposal Bond”** shall mean the bond, in a form acceptable to the Illinois Tollway, given by the Proposer as security for the Proposal Guaranty in lieu of a bank draft, certified check, or cashier’s check. All bonds provided to the Illinois Tollway must be from a Surety which is listed in the United States Department of Treasury’s current Federal Register and must be licensed to conduct surety guarantees in the State of Illinois.

**“Proposal Commitments”** shall mean the commitments of the Design-Builder's Proposal and attached to these Contract Documents as Exhibit 2.

**“Proposal Due Date”** shall mean the last date Illinois Tollway may accept Proposal submissions, as defined in the ITP.

**“Proposal Guaranty”** shall mean the security designated in the Proposal to be furnished by the Proposer as a guarantee of good faith to enter into the Contract if the Project is awarded to such Proposer.

**“Proposal Price”** shall mean the total dollar amount of Proposer’s Price Proposal.

**“Proposal Validity Period”** shall mean the time period following the Proposal Due Date and no later than the execution of the Contract.

**“Proposer”** shall mean any individual, sole proprietorship, firm, partnership, joint venture, corporation, professional corporation, or other entity legally established to conduct business in this State that proposes to be the Design-Builder for any Transportation Facility under the ITI Act. (Section 10 of the ITI Act).

**“Protection of Existing Utilities”** shall mean any activity undertaken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, avoidance of a Utility’s location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered Protection of Existing Utilities, whereas temporarily moving power lines to another location after cutting them would be considered a temporary Utility Relocation.

**“Protest”** shall mean in accordance with the Illinois Procurement Code, and 44 Ill. Admin. Code 6.390 through 6.440.

**“Public Information and Communications Plan”** shall mean the plan as identified in Section 2.1.10 (*Public Information and Communications Plan*) of Book 2.

**“Punch List”** shall mean the list of Work items described in Book 1, Section 24.1 (*Punch List*), and with respect to the Project which remain to be completed after achievement of each Interim Completion or Substantial Completion, as applicable, generally limited to minor incidental items of Work which have no adverse effect on the safety or operability of the Project and which can be performed without shutting down a traffic lane or shoulder.

**“Purchasing Agent”** shall mean the entity serving as the sole point of contact for the Illinois Tollway during the procurement and shall be responsible for the requests and questions further outlined in Section 3.3 of the ITP.

**“Qualified Products List”** shall mean a listing of specific materials which have been prequalified for use on projects.

**“Quality Assurance”** shall mean a system for ensuring a desired level of quality in the development, production, or delivery of the Project.

**“Quality Control”** shall mean the meaning set forth in ISO 8402.

**“Quality Management Plan”** shall mean the plan as identified in Section 5.3 (*Quality Management Plan*) of Book 2.

**“Railroad”** shall mean, depending on the context, either the right of way, tracks, and systems used for rail traffic in the vicinity of the Project, or the owners and/or operators of such rail systems who may be involved in or impacted by the Work.

**“Railroad Design Submittal”** shall mean the design submittals requested by the Railroads, as prescribed in Section 21.3.5 (*Railroad Design Submittal*) of Book 2 and the applicable Exhibits.

**“Railroad Engineer”** shall mean an Illinois Tollway representative who has jurisdiction over the safety measures and requirements on Railroads.

**“Railroad Owner”** shall mean an entity which is the owner of a given Railroad ROW, railroad facility and/or railroad asset.

**“Railroad Operator”** shall mean an entity which is contractually permitted to operate within the Railroad ROW.

**“Railroad ROW”** shall mean property owned by a Railroad Owner or operated on by a Railroad Operator.

**“Railroad Standards”** shall mean any standard, specification, special provision, manual, permit application, preliminary version of Railroad Agreements.

Subsequent to receiving a permit from a Railroad or executing a Railroad Agreement, Railroad Standards shall include such permits and Railroad Agreements.

**“Railroad Work”** shall mean the scope of Work which affects Railroad(s), which may include, but it is not limited to, the coordination, planning, design, permitting, and construction of Work within, within specific proximity of, below, above, or adjacent to Railroad ROW or affecting Railroad facilities.

**“Railroad Work Plan”** shall mean the plan as identified in Section 2.1.18 of Book 2.

**“Ramp”** shall mean a connecting Roadway for travel between Intersection legs at or leading to an Interchange.

**“Reasonable Investigations”** shall mean the activities described in Book 1, Section 2.2.11 (*Reasonable Investigations*) performed by appropriate, qualified professionals prior to the Setting Date.

**“Record Plans”** shall mean Contract plans which have been marked, to show changes or alterations to the work which were incorporated during the course of construction.

**“Reference Information and Supplemental Information”** shall mean the documents designated as Reference Information and Supplemental Information in the RFP Project Information, and as defined under Section 3.2 (*Reference Information*) and Section 3.3 (*Supplemental Information*) of Book 1.

**“Refinements to the Project Aesthetics”** shall mean the guidelines related to project aesthetics outlined in Section 4 of the *Illinois Tollway Structure Design Manual*.

**“Released for Construction (RFC) Documents”** shall mean the design documents developed by the Design-Builder and accepted by the Illinois Tollway, which comply with the requirements of the Contract Documents, and shall be detailed, complete, constructible, and shall allow for verification of the design criteria and compliance with Contract Documents. Design documents shall only be considered RFC Documents when signed and sealed by Design-Builder's Engineer of Record (EOR) and accepted by the Illinois Tollway.

**“Release of Hazardous Waste Materials”** shall mean any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Waste Material into the soil, air, water, groundwater or environment, including any exacerbation of an existing release or condition of Hazardous Waste Material contamination. A Release of Hazardous Waste Material can be caused by the Illinois Tollway (“Illinois Tollway Release of Hazardous Waste Material”), the Design-Builder (“Design Builder Release of Hazardous Waste Material”), or a third party (“Third Party Release of Hazardous Waste Material”).

**“Relocation or Relocate”** shall mean as related to Utilities, the design and construction of each removal, transfer of location, In-Place/Out-of-Service and/or Protection of Existing Utilities (including provision of temporary services as necessary) of any and all Utilities that is necessary or advisable in order to accommodate or permit construction of the Project.

**“Remediation Work”** shall mean investigating, monitoring, characterizing, testing, sampling, stockpiling, storage, backfilling in place, recycling, treatment, and/or off-Site disposal of Non-Special Waste and Hazardous Materials and materials containing on-Special Waste and Hazardous Materials, as Approved by Illinois Tollway and in accordance with the Environmental Management Plan and Book 2 Section 4.

**“Request for Change Order”** shall mean the request as defined Section 17.6 (*Request for Change Order*) of Book 1.

**“Request for Proposals (RFP)”** shall mean the document issued by the Illinois Tollway to solicit proposals and describe the procurement process for the Contract in accordance with the Design-Build project delivery method. (Section 10 of the ITI Act).

**“Request for Qualifications (RFQ)”** shall mean the document issued by the Illinois Tollway in the first phase of a two-phase procurement to solicit qualifications from Proposers in accordance with the Design Build project delivery method. (Section 10 of the ITI Act)

**“Revised Baseline Schedule”** shall mean a proposed change to the Baseline Contract Schedule, as permitted under the Contract Documents.

**“Right of Way or Right-of-Way (ROW)”** shall mean the real land and real property (which term is inclusive of all estates and interests in real property) that is necessary for ownership and operation of the Project (includes permits). The term specifically excludes any construction easements. The term **“Right of Way”** or **“Right-of-Way”** is sometimes used to indicate Right of Way and is sometimes used to indicate rights of way for other facilities.

**“ROW Plans”** shall mean the plans as identified in Section 7.6.1 (*ROW Plans*) of Book 2.

**“ROW Survey”** shall mean the survey as identified in Section 7.6.2 (*ROW Survey*) of Book 2.

**“Risk Management Plan”** shall mean the plan as identified in Section 2.1.4 (*Risk Management Plan*) of Book 2.

**“Road”** shall mean a general term denoting a public way for purposes of vehicular travel, including the entire area within the Right of Way.

**“Roadside”** shall mean the portion of the right of way outside the roadway. the term **“Roadside”** can also be a general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

**“Roadside Development”** shall mean Those items necessary to the complete highway which provide for the preservation of landscape materials and features; the rehabilitation and protection against erosion of all areas disturbed by construction though seeding, sodding, mulching, and the placing of other ground covers; and such suitable planting and other improvements as may increase the effectiveness and enhance the appearance of the highway.

**“Roadway”** shall mean the portion of the right of way required for construction, limited by the outside edges of slopes and including ditches, channels, and all structures pertaining to the Work.

**“Safety Management Plan”** shall mean the plan as identified in Section 2.1.8 (*Safety Management Plan*) of Book 2.

**“Scale”** shall mean a device used to measure the mass or the proportion of a liquid or solid. This definition includes metering devices.

**“Schedule of Values”** shall mean a cost- and resource-loaded schedule furnished by the Design-Builder for Approval by the Illinois Tollway outlining the buildup of the Contract Price. The Design-Builder allocates values for the Work activities and uses these values as the basis for submitting progress invoices for Illinois Tollway Approval and payment.

**“Scope Issue”** shall mean any defects, errors, or inconsistencies in the RFP documents and the then-existing Contract Documents that affect Design-Builder’s ability to complete its proposed design concept

within the Contract Price and/or Completion Deadline(s). The term **“Scope Issues”** shall not be deemed to include items that Design-Builder should have reasonably discovered prior to the Effective Date, under Reasonable Investigations. For the avoidance of doubt, Design-Builder’s errors or omissions in its Proposal shall not constitute a Scope Issue.

**“Scope Issue Notice”** shall mean a written notice submitted by Design-Builder no later than the expiration of the Scope Validation Period, notifying the Illinois Tollway of the existence of Scope Issues for which the Design-Builder seeks relief, and the basis thereof. Failure to include a Scope Issue in the Scope Issue Notice shall be deemed a waiver of the right to seek relief for such Scope Issue.

**“Scope Validation”** shall mean a permissible activity upon issuance of NTP 1 authorizing Design-Builder to (i) review and compare all of the then-existing Contract Documents, the RFP documents, and the Proposal and (ii) investigate the actual conditions at the Site and any other areas necessary for the completion of the Work. Design-Builder shall undertake the activities described in clauses (i) and (ii) to verify and validate Design-Builder’s proposed design concept and identify any defects, errors, or inconsistencies in the RFP documents and the then-existing Contract Documents that affect Design-Builder’s ability to complete its proposed design concept within the Contract Price and/or Completion Deadline(s).

**“Scope Validation Period”** shall mean the period of time that begins on Design-Builder’s receipt of the NTP 1 and extends for 180 days, or as may be extended by the Illinois Tollway to allow for additional investigations to non-accessible areas within the Site.

**“Separate Contractors”** shall mean other Illinois Tollway contractors working on other projects adjacent to the Site including 4876 Clean and Televised Drainage System IL 390, M.P. 5.8 (West of Lake Street) to M.P. 7.7 (Irving Park Road), and 9241-7 Bridge Repairs, IL 390, M.P. 9.45 (Roselle Road).

**“Service Line”** shall mean a Utility line, the function of which is to connect an individual service location (e.g., a single-family residence or an industrial warehouse) to another Utility line which other Utility line connects more than one such individual line to a larger system. The term **“Service Line”** also includes any Utility on public or private property that services structures located on such property.

**“Setting Date”** shall mean the date that is thirty (30) days prior to the Proposal Due Date.

**“Shared Risk Item”** shall mean the item described in Book 1, Section 16 (*Shared Risk Item Work and Allowances*).

**“Shortlist”** shall mean the Submitters that have submitted a response to the RFQ and that the Illinois Tollway has determined, through evaluation of their responses to the RFQ, are the best qualified firms to complete the Project and will be invited to submit Proposals.

**“Shoulder”** shall mean the portion of the Roadway contiguous with the Traveled Way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

**“Sidewalk”** shall mean that portion of the Roadway primarily constructed for the use of pedestrians.

**“Significant Change”** shall mean as described in Standard Specifications Section 103.02.

**“Site”** shall mean the parcels of Right of Way identified as Project ROW and Additional Project ROW or on which the Project is to be constructed and installed as well as all other areas in the vicinity used by Design-Builder for construction Work, including Design-Builder ROW and construction easements.

**“Specialty Category”** shall mean one of the prequalification categories identified by the Illinois Department of Transportation in accordance with the Description and Minimum Requirements for Prequalification for Engineering, Architectural & Professional Services.

**“Specialty Items”** shall mean items that are designated in the Contract Documents that are considered to require specialized construction techniques that are not ordinarily available in contracting organizations qualified to bid, in accordance with the Illinois Department of Transportation Rules for Prequalification of Contractors, Authorization to Bid and Subcontractor Registration.

**“Standard Drawings”** shall mean plans issued by Illinois Tollway for general application and repetitive use in connection with Illinois Tollway projects.

**“Standard Specifications”** shall mean the most recent issue of the Illinois Department of Transportation Standard Specifications for Road and Bridge Construction, including the applicable Supplemental Specifications thereof.

**“Statement of Qualifications (SOQ)”** shall mean a formal response to an RFQ submitted by interested parties seeking to compete for the right to receive an RFP and submission of a Proposal.

**“SOQ Submission Due Date”** shall mean the last date the Illinois Tollway may accept SOQ submissions, as defined in this RFQ.

**“Supplemental Specifications”** shall mean supplemental specifications and recurring special provisions to the Standard Specifications.

**“State”** shall mean the State of Illinois acting through its elected officials and their authorized representative, or the State of Illinois in the geographic sense, depending on the context.

**“Stipend”** shall mean the payment available to responsible Proposers that submit a fully responsive but unsuccessful Proposal.

**“Stipend Agreement”** shall mean the agreement prescribed by Form 2 of the ITP.

**“Stipend Agreement Submittal Deadline”** shall mean the deadline to submit Stipend Agreement outlined in Section 2 (Procurement Schedule) of the ITP.

**“Storm Water Pollution Prevention Plan (SWPPP)”** shall mean a document required by the Illinois Tollway to meet IEPA and other regulatory and environmental resource agency requirements to specify erosion and sediment control, spill prevention and spill control measures on the project site to prevent water pollution during construction activities.

**“Street”** shall mean a general term denoting a public way for purposes of vehicular travel, including the entire area within the Right of Way.

**“Structure(s)”** shall mean Bridges, Culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains and other man-made features.

**“Subbase”** shall mean the layer of specified material placed on the subgrade as a part of the pavement structure.

**“Subgrade”** shall mean the top surface of a Roadbed upon which the Pavement Structure and Shoulders are constructed. Also, a general term denoting the foundation upon which a base course, surface course,

or other construction is to be placed, in which case reference to Subgrade operations may imply depth as well as top surface.

**“Submitter”** shall mean a Design-Build team, entity, or entities submitting a Statement of Qualifications (SOQ) in response to this Request for Qualifications (RFQ).

**“Substantial Completion”** shall mean completion of the Project as described in Book 1, Section 24.2.1.

**“Substantial Completion Deadline”** shall mean the meaning set forth in Book 1, Section 4.3.1.

**“Substructure”** shall mean the part of a structure below the bearings of simple and continuous spans, skewbacks, or arches and tops of footings of rigid frames, together with the backwalls, wingwalls, and wing protection railings.

**“Superstructure”** shall mean the entire Structure except the Substructure.

**“Supplier”** shall mean any Person other than employees of Design-Builder not performing Work at the Site that supplies machinery, equipment, Materials or systems to Design-Builder or any subcontractor in connection with the performance of the Work; Persons who merely transport, pick up, deliver, or carry Materials, personnel, parts, or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.

**“Surety”** shall mean each properly licensed surety company, either the individual or entity, qualified to act as a surety in the State of Illinois and acceptable to the Illinois Tollway which has issued the Payment and Performance Bonds required by the Contract.

**“Tangible Net Worth”** shall mean the difference between the (i) the sum of paid-in capital stock plus preferred stock plus retained earnings, less (ii) the sum of treasury stock plus minority interest plus intangible assets, including goodwill, patents, and licenses, all determined in accordance with Generally Accepted Accounting Principles and as interpreted by the Securities and Exchange Commission in connection with financial statements filed pursuant to the Securities Exchange Act of 1934."

**“Technical Proposal”** shall mean the technical portion of the Proposal submitted by the Proposer(s) in response to the Request for Proposals issued by Illinois Tollway.

**“Technical Provisions”** shall mean the Project’s technical requirements.

**“Temporary Easement”** shall mean any temporary easement identified in the ROW Plans.

**“Temporary Road”** shall mean a section of Roadway, usually within existing Right of Way, provided to temporarily carry all traffic around a specific work site.

**“Temporary Structure”** shall mean Bridges, Culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains and other man-made features used in a temporary condition.

**“Time and Materials Change Order”** shall mean a Change Order issued under Book 1, Section 17.14 (*Time and Materials Change Order*).

**“Time Impact Analysis”** shall mean an analysis of the impact of schedule delay to the Float under Section 4.5.2.

**“Toll Highway”** shall mean the limited access highway built or proposed to be built by the Illinois Tollway, including all facilities and appurtenances thereto.

**“Traffic Control Devices”** shall mean signs, signals, lighting devices, barricades, delineators, pavement markings, traffic regulators and all other equipment for protecting and regulating traffic in accordance with the MMUTCD, unless otherwise specified in the Contract.

**“Traffic Lane”** shall mean the portion of a Traveled Way for the movement of a single line of vehicles.

**“Transportation Management Plan”** shall mean the plan as identified in Section 2.1.18 (*Transportation Management Plan*) of Book 2.

**“Traveled Way”** shall mean the portion of the Roadway for the movement of vehicles, exclusive of Shoulders and Auxiliary Lanes.

**“Turn Lane”** shall mean an Auxiliary Lane for left or right turning vehicles.

**“Type 1 Submittal”** shall mean a submittal either:

- a. expressed to be subject to the review or comment of the Illinois Tollway; or
- b. otherwise determined by the Illinois Tollway (in its sole discretion) to be a Type 1 Submittal.

**“Type 2 Submittal”** shall mean a submittal either:

- a. expressed to be subject to acceptance by the Illinois Tollway but is not a Type 3 Submittal; or
- b. otherwise determined by the Illinois Tollway (in its sole discretion) to be a Type 2 Submittal.

**“Type 3 Submittal”** shall mean a submittal expressed to be subject to acceptance by the Illinois Tollway in its sole discretion.

**“Unknown Pre-Existing Hazardous Materials”** shall mean Hazardous Material that does not meet the definition of Known Pre-Existing Hazardous Material.

**“Unknown Railroad”** shall mean any Railroad within the Project Limits that were not included in Book 2 Section 21 Railroads or the Conceptual Design of the RFP.

**“Unknown Utilities”** shall mean any Utility identified within the Project Limits that were not included in Book 2 Section 6 Utilities or the Conceptual Design of the RFP..

**“Utility”** shall mean the privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage and other similar commodities, including fire and police signal systems and street lighting systems which directly or indirectly serve the public. The term **“Utility”** shall also mean the utility owner or company inclusive of any wholly owned or controlled subsidiary. The necessary appurtenances to each utility facility shall be considered part of such utility. Without limitation, any Service Line connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such Service Line. The term **“Utility”** is sometimes also used to refer to a **“Utility Owner.”** Utility as defined herein, includes street lighting systems, traffic signal systems, railroad warning device systems, or fire/police pre-emptors, or their collateral cables and conduit.

**“Utility Adjustment”** shall mean (a) relocation of Utilities, including the design, construction, installation, manufacture, supply, testing and inspection, adjustments (including manholes and valves), and otherwise required by the Contract Documents, including all labor, Materials, equipment, supplies, utilities and subcontracted services provided or to be provided by Design-Builder and/or the Utility Owners, and (b) any Betterments added to the Work pursuant to Book 2, Section 6.1.1 (*Utility Requirements*).

**“Utility Adjustment Work”** shall mean investigation, coordination, and developing schematic utility location outlines for Known Utilities and Unknown Utilities as required to complete the Work.

**“Utility Agreement”** shall mean agreements, if any, that the Illinois Tollway has entered into or will enter into with any Utility that concerns Utility facility, service, or system located in, on, along, over or under the Work. Utility Agreements can be Master Utility Agreements and Project Utility Agreements.

**“Utility Easements”** shall mean all permanent easements and/or other permanent interests in real property owned by Utility Owners in connection with existing Utilities.

**“Utility Owner”** shall mean the owner or operator of any Utility, including representatives and appointees thereof.

**“Utility Permit”** shall mean a legal document used to grant permission to private governmental and public entities for occupying, constructing, operating, using or maintaining specified operations or facilities with the state highway ROW.

**“Utility Work Plan”** shall mean the plan as identified in Section 2.1.15 (*Utility Work Plan*) of Book 2.

**“Veteran-Owned Small Business (VOSB)”** shall mean a business currently certified by the State of Illinois Commission on Equity and Inclusion (CEI) and in compliance with Illinois Public Act 097-0260, Public Act 098-0307. A VOSB is a business that is 51 percent owned and controlled by a qualified veteran living in Illinois, has a valid DD214 and has annual gross sales under \$75 million with a home office in Illinois. A VOSB is considered to have current certification if the firm is listed in the CEI directory database of the pertinent certifying agency.

**“Waste Management Plan”** shall mean the plan as identified in Section 2.1.15 of Book 2.

**“Web-Based Project Management”** shall mean the construction management software prescribed by the Illinois Tollway for use of the Design-Builder on the Project.

**“Winter”** shall mean the period starting on December 1<sup>st</sup> and ending on April 30<sup>th</sup>.

**“Work”** shall mean all duties and services to be furnished and provided by Design-Builder as required by the Contract Documents, including the administrative, design, engineering, Quality Control, quality assurance, relocation, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, tools, equipment, documentation and all other incidentals and efforts necessary or appropriate to successful completion of the Project and of carrying out all duties and obligations imposed by the Contract, including Final Acceptance, except for those efforts which the Contract Documents specify will be performed by Illinois Tollway or other Persons. Work may also be used in context to describe, in whole or in part, the completed facilities to be constructed, altered or removed, as detailed in the Contract.

**“Work Order”** shall mean a written order to Design-Builder issued by the Illinois Tollway directing performance of certain Work. A Work Order may either be an Illinois-Tollway-Initiated Work Order or a Design-Builder-Initiated Work Order and may or may not be accompanied by a Change Order for adjustment in the Contract Price and Completion Deadline(s).

**“Working Day” or “Business Day”** shall mean any Calendar Day other than Saturday, Sunday, a Holiday, all days between and including December 24 to January 1, and Illinois Tollway furlough days as directed by the Illinois Tollway.

***“Working Drawings”*** shall mean stress sheets, shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data which illustrate the construction of the Work.

## LIST OF ACRONYMS

AASHTO	American Association of State Highway and Transportation Officials
AASHTO DGHS	AASHTO Geometric Design of Highways and Streets (Green Book)
AASHTO RDG	AASHTO Roadway Design Guide
ADT	Average Daily Traffic
AET	All Electronic Tolling
ANSI	American National Standards Institute
AREMA	American Railway Engineering and Maintenance-of-Way Association
ATC	Alternative Technical Concept
ATPP	Affected Third Party Plan
BSOV	Baseline Schedule of Values
BWA	Barrier Warrant Analysis
CCTV	Closed Circuit Television
C-D	Collector-Distributor (Roadway)
CDG	Coordination and Discipline Group
CECO	Contract Environmental Compliance Officer
CEPP	Comprehensive Environmental Protection Plan
COC	Certificates of Compliance
CP	Communications Plan
CPM	Critical Path Method
CQM	Construction Quality Manager
CRM	Comment Resolution Meeting
CTR	Certified Test Reports
D&C	Design and Construction
DBE	Disadvantaged Business Enterprise
DBEPP	Disadvantaged Business Enterprise Performance Plan
DDMP	Document and Data management Plan
DMS	Dynamic Message Sign
DQM	Design Quality Manager
DRCP	Design Review and Collaboration Platform
DSE	Design Section Engineer
EA	Environmental Assessment
ECSR	Environmental Compliance Status Report
ECWP	Environmental Compliance Work Plans
EED	Environmental Evaluation Document
EEO	Equal Employment Opportunity
EEOP	Equal Employment Opportunity Plan
EIS	Environmental Impact Statement
EMDRP	Emergency Management and Disaster Recovery Plan
EO	Errors and Omissions
EOP	Edge of Pavement
EOR	Engineer of Record
EPTP	Environmental Protection Training Plan
ESIS	Environmental Studies Inventory Sheet

FAA	Federal Aviation Administration
FATP	Final Acceptance and Transition Plan.
FDC	Field Design Change
FHWA	Federal Highway Administration
GEC	General Engineering Consultant
ICC	Illinois Commerce Commission
IDNR	Illinois Department of Natural Resources
IDNR-OWR	Illinois Department of Natural Resources – Office of Water Resources
IDOT	Illinois Department of Transportation
IDOT BDE	IDOT Bureau of Design and Environmental Manual
IEPA	Illinois Environmental Protection Agency
I-MIRS	Illinois Materials Inspection and Reporting System
ISEA	International Safety Equipment Association
ISHTA	Illinois State Toll Highway Authority, also Tollway, Also Illinois Tollway
ITP	Instructions to Proposers
ITS	Intelligent Transportation Systems
JCAR	Joint Committee on Administrative Rules
JULIE	Joint Utility Locating Information for Excavators
LRFD	Load and Resistance Factor Design (AASHTO Document)
MA	Milestone Acceptance Process
MASH	Manual of Assessing Safety Hardware (AASHTO Document)
MDCP	Maintenance During Construction Plan
MIPR	Monthly Invoice Progress Report
MOT	Maintenance of Traffic
MP	Milepost
MPH or mph	Miles per Hour
MPM	Monthly Progress Meetings
MPR	Monthly Progress Reports
MSP	Management and Staffing Plan
MSU	Monthly Schedule Update
MTIP	Materials Testing and Inspections plan
MUA	Master Utility Agreement
MUTCD	Manual of Uniform Traffic Control Devices
MWC	Minor Work Change
NAW	Noise and Abatement Wall
NCR	Nonconformance Reports
NEPA	National Environmental Policy Act
NPDES	National Pollutant Discharge Elimination System
NSWP	Noise Study Work Plan
NTP	Notice to Proceed
OJTP	On-the-Job Training Plan
OSHA	Occupational Safety and Health Administration
PAE	Pre-Accepted Element
PCMS	Portable Changeable Message Signs
PCO	Potential Change Order
PCP	Product Control Plan

PE	Licensed Professional Engineer or Illinois
PICP	Public Information and Communications Plan
PIP	Potentially impacted properties
PLS	Professional Land Surveyor
PLSS	Public Land Survey System
PM	Project Manager
PMP	Project Management Plan
PQM	Project Quality Manual
PT	Point of Tangency
QA	Quality Assurance
QAM	Quality Assurance Manager
QC	Quality Control
QMP	Quality Management Plan
RFC	Released for Construction
RFI	Request for Information
RID	Reference Information Documents
RMP	Risk Management Plan
ROW	Right of Way
ROWAR	Right of Way Acquisition Report
RQDS	Ramp Queue Detection System
RWIS	Road Weather Information System
RWP	Railroad Work Plan
SDVOSB	Service-Disabled Veteran-Owned Small Businesses
SE	Licensed Structural Engineer
SE	Superelevation
SESC	Soil Erosion and Sediment Control
SOVU	Schedule of Values Update
SPRD	Submittal Packaging Requirements Database
SUE	Subsurface Utility Engineering
SWPPP	Storm Water Pollution Prevention Plan
TCB	Temporary Concrete Barrier
TH	Toll Highway
TMP	Transportation Management Plan
TOC	Traffic Operations Center
USACE	United States Army Corps of Engineers
USFWS	United States Fish & Wildlife Service
UWP	Utility Work Plan
VOSB	Veteran Owned Small Businesses
VWIM	Virtual Weight-in-Motion
WBPM	Web-Based Project Management system
WIM	Weight-in-Motion
WMA	Warm Mix Asphalt
WMP	Waste Management Plan
WOUS	Waters of the United States
WZSL	Work Zone Speed Limit

**EXHIBIT 2: LIST OF PROPOSAL COMMITMENTS**

[PM: This will be completed prior to the execution of the Contract and will be based on the Proposal submitted.]

Except and only to the extent that a provision in this Exhibit 3 expressly states that it replaces or overrides specifically referenced provisions of the Contract Documents, nothing in this Exhibit 3 shall be construed to replace or override any specification in the Contract Documents. As further clarification, where the Proposal presents Work or products of a higher quality than that shown elsewhere in the Contract Documents, and the Illinois Tollway has accepted the proposed change to the Work and products to that of a higher quality, then the Proposal will take precedence for that specific higher quality Work and products, as applicable.

Commitment Number	PROPOSAL LOCATION	DESCRIPTION
<i>Relating to Project Management</i> [PM: Indicate subject matter/technical area/evaluation factor to which the commitment relates to]		
1	[PM: Reference specific section, page in Proposal]	[State verbatim or summarize statement in Proposal that is considered a commitment.]
2		
[PM: Add rows as needed]		

**EXHIBIT 3-A: ALTERNATIVE TECHNICAL CONCEPTS**

[PM: Insert here approved Alternative Technical Concepts that were included in the Proposal.]

**EXHIBIT 3-B PRE-ACCEPTED ELEMENTS**

[PM: Insert here approved Pre-Accepted Elements that were included in the Proposal, if any.]

**EXHIBIT 3-C: DESIGN-BUILDER'S PROPOSAL**

[PM: Insert here the entire Proposal.]

**EXHIBIT 3-D: STATEMENT OF QUALIFICATIONS**

[PM: Insert here the entire Statement of Qualifications.]

**EXHIBIT 4: INITIAL AUTHORIZED REPRESENTATIVES**

[PM: These will be completed prior to execution of the Contract. These designations are in place until both the Illinois Tollway and the Design-Builder have agreed upon a permanent governance/management structure for the project. Both Parties have discretion on designating its authorized representatives and specific area(s) of responsibility.]

AREA OF RESPONSIBILITY	AUTHORIZED REPRESENTATIVE	POSITION
<i>Illinois Tollway</i>		
Design		
Construction		
All other matters		
<i>Design-Builder</i>		
[PM: TBD by Design-Builder]		

## **EXHIBIT 5: SPECIAL PROVISIONS FOR EQUAL EMPLOYMENT OPPORTUNITY**

### **1. OBJECTIVE OF THE EQUAL EMPLOYMENT OPPORTUNITY PROGRAM (EEO):**

To promote equality of employment opportunity for all individuals including veteran, minority, and female tradespersons on Illinois State Toll Highway Authority (“Illinois Tollway”) capital construction projects. In its efforts to achieve this equality, it is the desire of Illinois Tollway to follow the guidelines as instituted by the United States Department of Labor, Office of Federal Contract Compliance Programs (“OFCCP”) as established through Executive Order 11246 and by Title VII of the Civil Rights Act of 1964, the Illinois Department of Human Rights (IDHR) as established through the Illinois Human Rights Act, 775 ILCS 5/1-101, et seq., and State of Illinois Executive Order 15-2, Executive Order To Ensure Equal Opportunity Is Provided To All Illinois Persons And Businesses.

### **2. CONTRACTOR ASSURANCE:**

The Design-Builder will assure that each of its employees and its subcontractors’ employees associated with the contract shall not discriminate on the basis of any protected category identified by law in the performance of this contract in compliance with Title VII of the Civil Rights Act of 1964 found in 42 U.S.C § 2000e, et seq and Illinois state laws. Discrimination is the unfair treatment or denial of normal privileges to persons because of any characteristic protected by law. The Illinois Tollway encourages the prompt reporting of incidents of suspected discrimination, harassment or retaliation, regardless of the offender’s identity or position. In the event of the Design-Builder's non-compliance with this Equal Employment Opportunity Special Provision, the Design-Builder may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be cancelled or voided in whole or in part, and other remedies invoked as provided by statute or regulation.

### **3. EEO GOAL TO BE ACHIEVED BY THE DESIGN-BUILDER:**

The EEO goals set by the U.S. Dept. of Labor - Office of Federal Contract Compliance Programs (“OFCCP”) for construction trade workers in the Chicago area, which is provided through Executive Order 11246, apply to this Contract. The EEO goals are measured through the following percentages of construction aggregated work hours in each of the categories.

Women: at least 6.9 percent for all contracts.

Minorities: set on a contract basis, dependent upon the county where the work will be performed. The Minority Goal for this contract is 19.6%.

ILLINOIS COUNTY CURRENT FEDERAL GOAL % FOR MINORITIES ILLINOIS COUNTY  
 CURRENT FEDERAL GOAL % FOR MINORITIES

BOONE	6.3	LAKE	19.6
BUREAU	18.4	LASALLE	18.4
COOK	19.6	LEE	4.6
DEKALB	18.4	MCHENRY	19.6
DUPAGE	19.6	OGLE	4.6
GRUNDY	18.4	ROCK ISLAND	4.6
HENRY	4.6	STEPHENSON	4.6
IROQUOIS	18.4	WHITESIDE	3.4
KANE	19.6	WILL	19.6
KENDALL	18.4	WINNEBAGO	6.3

4. DEFINITIONS OF ETHNIC CLASSIFICATIONS:

AMERICAN INDIAN OR ALASKA NATIVE:

Persons having origins in any of the original peoples of North and South American (including Central America), and who maintain tribal affiliation or community attachment.

ASIAN:

Persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including for example Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

**BLACK OR AFRICAN AMERICAN:**

Persons having origins in any of the Black racial groups of Africa.

**HISPANIC:**

Persons of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish culture or origin, regardless of race.

**NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER**

Persons having origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

**5. CONTRACT PERFORMANCE**

During the performance of this Contract, the Design-Builder agrees as follows, as required by the Illinois Department of Human Rights (IDHR) at 44 Ill. Admin. Code 750 (Appendix A):

5.1 That, EEO Form 1256DB, Workforce Projection is required no later than the 30th calendar day before construction is scheduled to begin on the Project. The completed form should be emailed to: [contractcompliance@getipass.com](mailto:contractcompliance@getipass.com).

5.2 That it will not discriminate against any protected category identified by law; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

5.3 That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with IDHR's rules) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.

5.4 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination of any protected category identified by law.

5.5 That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Design-Builder's obligations under the Illinois Human Rights Act and the IDHR's Rules. If any such labor organization or representative fails or refuses to cooperate with the Design-Builder in its efforts to comply with such Act and Rules, the Design-Builder will promptly so notify the IDHR and the contracting agency and will recruit employees from other sources such as the construction works program when necessary to fulfill its obligations thereunder.

5.6 That it will submit reports as required by the IDHR's Rules, furnish all relevant information as may from time to time be requested by the IDHR or The Illinois Tollway, and in all respects comply with the Illinois Human Rights Act and the IDHR's Rules.

5.7 That it will abide by the audit clause of the contract.

5.8 That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations 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, the Design-Builder will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the IDHR in the event any subcontractor fails or refuses to comply therewith. In addition, the Design-Builder will 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.

5.9 That it will participate in the qualifying ConstructionWorks (CW) program for the construction Work on the Project. This incentive will provide wage reimbursement to Design-Builder and its contractors who employ CW participants within the following skilled trades: i.e., Operating Engineers, Electricians, Iron workers, Carpenters, Cement Masons, etc. Performing on the Project. The CW wage reimbursement incentive promotes the employment and retention of CW Eligible Apprentices in their acquisition of the prerequisite skills needed to achieve journey worker status in the top skilled trades predominately utilized within Tollway heavy highway and related transportation construction industries. CW encourages retention and utilization of historically underrepresented individuals such as minorities, women, veterans, ex-offenders and economically disadvantaged individuals on Illinois Tollway projects.

5.10 ConstructionWorks offers incentives for hires working on Illinois Tollway projects. First Level Incentive—Contractors earn bid credits to be used on future Tollway construction bids to lower their bid amount and increasing the chances of winning the contract, for each dollar paid to ConstructionWorks hires on any public works project in the state of Illinois. Second Level Incentive – Contractors earn an additional \$15 per work hour cash wage reimbursement for ConstructionWorks apprentice hires, for all trades up to \$100,000 in wage reimbursements when employed on Illinois Tollway projects. Even though bid credit can be earned for the work performed on Design-Build projects, they cannot be used for the procurement and award of design build projects. Those earned credits can be used for future Illinois Tollway construction work.

5.11 That it will participate in the Illinois Works Apprenticeship Initiative (“10% apprenticeship goal”) Program which is applicable for projects estimated to cost \$500,000 or more pursuant to the Illinois Works Jobs Program Act, 30 ILCS 559/20-1, et seq. The goal of the program is that apprentices will perform either 10% of the total labor hours actually worked in each prevailing wage classification or 10% of the estimated labor hours in each prevailing wage classification, whichever is less. The 10% apprenticeship goal program applies to projects being paid for in whole or in part by appropriated capital funds to construct a public work either through a contract or grant issued by a State agency.

5.12 The Design-Builder will designate and make known an EEO Officer to the Illinois Tollway.

## 6. CALCULATING EEO PERFORMANCE, CREDIT TOWARDS THE USDOL OFCCP GOALS AND VETERAN PARTICIPATION FOR ILLINOIS EXECUTIVE ORDER 15-12:

Actual amounts of minority, female, and veteran work will be measured for the total hours of construction workers employed on the contract within each of the categories of journeyworker, apprentice and laborer by the Design-Builder and all of the worksite subcontractors. Minority female trade worker hours are counted in applicable ethnic category, in the veteran category if applicable and also in the female category.

In the certified payroll reports, the following ethnic categories should be used to indicate minority personnel for purposes of reporting compliance with the weekly certified payroll report: American Indian/Alaska Native, Asian, Black/African American, Hispanic and Native Hawaiian/Other Pacific Islander.

Included in the certified payrolls, as "Apprentices" are only bona fide apprentices currently in the Illinois Works Apprenticeship Initiative and hours credited towards the EEO Program are only those hours the apprentice was employed at the construction site on the project. "Journeyworkers" are the construction site journeyworkers from the major trades. Other "Helpers", watchmen, custodial workers, clerical workers, and salaried superintendents are not creditable in the formula. Hourly wage "Forepersons" and "Forepersons" otherwise known as working forepersons, will be counted as journeyworkers for purposes of the EEO Program reporting.

In addition to the timely submission of certified payroll required by the Prevailing Wage Act, 820 ILCS 130/1, et seq., as required by the Contract, the Design-Builder must have submitted all certified payrolls for the Design-Builder and all subcontractors before the Design-Builder submits its request for the final release of retention and the final waiver of lien. No adjustments to certified payrolls will be accepted after the transmission of the final waiver of lien.

The Design-Builder and each subcontractor shall permit its employees to be interviewed on the job, during working hours, by compliance personnel of Illinois Tollway, IDHR or the Department of Labor regarding compliance with the terms of this Special Provision.

## 7. REQUIRED EEO REPORTING INTO CAPTURE SYSTEM

The Design-Builder is responsible for submitting certified payroll to the Illinois Department of labor (IDOL) and uploading a copy of the transcript of the certified payroll to the Illinois Tollway's B2Gnow System along with the EEO hours worked in Capture. Design-Builder is responsible for uploading subcontractor certified payroll transcripts to the Illinois Tollway's system, including all properly executed certifications, organized by contract for every construction worksite. Information must be submitted in B2GNow and Capture no later than the 25th of the month for the prior months payroll data (i.e. Payroll provided to IDOL for the month of December is due in B2GNow and Capture by the 25th of January). Note: Questions concerning the certified payroll submission should be directed to IDOL. Failure to report fully all required workforce information will cause a delay in processing the Design-Builder's pay estimates. Disclosure of this information is required. Patterns of delinquent reporting may be cause to terminate this contract or such other remedy as the Illinois Tollway deems appropriate.

#### 8. SUBCONTRACTOR OBLIGATIONS:

The Design-Builder is required to clearly identify the specific performance obligations that each subcontractor has toward assisting the Design-Builder in meeting the EEO goals in their subcontract agreements.

In the same manner as with other provisions of this contract, the Design-Builder will be responsible for compliance with applicable provisions of this clause by such subcontractors; and furthermore it will promptly notify the Illinois Tollway and the IDHR in the event any subcontractor fails or refuses to comply therewith. In addition, the Design-Builder will 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.

#### 9. GOOD FAITH EFFORT PROCEDURES:

If the Illinois Tollway determines that the Design-Builder and/or its subcontractors are not in compliance with the EEO goals, the Illinois Tollway will notify the Design-Builder of said non-compliance. The Design-Builder must submit a Corrective Action Plan within fifteen (15) business days of the date of its receipt of the notice of non-compliance. The Corrective Action Plan must contain evidence of good faith efforts the Design-Builder has made in an effort to meet the EEO goals and outline the additional good faith efforts the Design-Builder will be making, including but not limited to timelines, through the remaining life of the contract.

#### 10. CORRECTIVE ACTION PLAN:

The Corrective Action Plan must show that the Design-Builder made good faith efforts, taking all necessary and reasonable steps to achieve the stated EEO goals. Necessary and reasonable steps are those that could

reasonably be expected to employ and retain a sufficient number of minority and female trade workers to meet or exceed the federally set EEO goals for the Illinois county in which work is performed.

Examples of Good Faith Efforts include, but are not limited to, the following:

- Establish and maintain a current list of minority, veteran and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Design-Builder or its labor organizations have employment opportunities available, and maintain a record of the organizations' responses;
- 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 labor organization, a recruitment source or community organization;
- 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 Design-Builder's employment needs, especially those programs funded or approved by the Department of Labor;
- Disseminate the Design-Builder's EEO policy by providing notice of the policy to labor organizations and training programs and requesting their cooperation in assisting the Design-Builder 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;
- Disseminate the Design-Builder'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 Design-Builder's EEO policy with other contractors and subcontractors with whom the Design-Builder does or anticipates doing business;
- 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 Design-Builder's recruitment area and employment needs; and
- 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 a Design-Builder's work force.

The Illinois Tollway will consider the quality, quantity and intensity of the kinds of efforts that the Design-Builder and its subcontractors have made throughout the life of the contract. Mere pro forma efforts are not good faith efforts; rather, the Design-Builder and its subcontractors are expected to have taken those efforts that would be reasonably expected of a Design-Builder and its subcontractors who are actively trying to employ and retain minority and female trade workers sufficient to meet the contract EEO goals.

11. AMENDED CORRECTIVE ACTION PLAN:

If the Illinois Tollway determines that the Design-Builder has not made a good faith effort to meet the EEO goals, the Illinois Tollway will notify the Design-Builder of that preliminary determination by contacting the responsible company official designated in the Corrective Action Plan. The preliminary determination will include a statement of reasons why a finding of insufficient good faith efforts has been made and may include additional good faith efforts that the Design-Builder could take to remedy the deficiency. The notification will designate a fifteen (15) business day period during which the Design-Builder may make additional efforts to demonstrate a good faith effort to meet the EEO goals. The Design-Builder is not limited by the Illinois Tollway's suggestions per Sections 9 and 10 of additional good faith efforts, but may take other actions in order to demonstrate good faith efforts to employ and retain additional minority and female trade workers on the project. The Design-Builder shall submit an amended Corrective Action Plan if additional employment commitments to meet the EEO contract goal are secured and/or to document its additional good faith efforts. If additional hiring commitments sufficient to meet the EEO contract goal are not secured, the Design-Builder shall report the final good faith efforts made in the time allotted. All additional efforts taken by the Design-Builder will be considered as part of the Design-Builder's good faith efforts. If the Design-Builder is not able to meet the EEO goal after making additional efforts, the Illinois Tollway will make a pre-final determination as to the good faith efforts of the Design-Builder and will notify the designated responsible Design-Builder official of the reasons for an adverse determination, if applicable.

12. DETERMINATION OF NON-COMPLIANCE:

If the Illinois Tollway determines that the Design-Builder has failed to make a good faith effort to meet the EEO goals on the Contract, the Illinois Tollway will document its findings in a "Letter of Non-Compliance" that will become part of the procurement file maintained on the Design-Builder by the Illinois Tollway. The Letter may include a proposed sanction under Section 14 if the Design-Builder fails to take corrective action in a timely fashion. Upon a finding that a Design-Builder has failed to make good faith efforts to achieve the applicable EEO goals, the Illinois Tollway may exercise any appropriate sanction available to it under Section 14, including the revocation of the Contract award to the Design-Builder and any other remedy available to the Illinois Tollway under its Contract with the Design-Builder or by law.

13. ADMINISTRATIVE RECONSIDERATION:

The Design-Builder may request administrative reconsideration of a Letter of Non-Compliance within the fifteen (15) business days after its receipt of the Letter by actual delivery of a reconsideration request to the Illinois State Toll Highway Authority, Contract Compliance Team, 2700 Ogden Avenue, Downers Grove,

Illinois 60515-1703 or via email to E-mail address: contractcompliance@getipass.com. Deposit of the request in the United States mail on or before the fifth business day shall not be deemed delivery. The Letter of Non-Compliance shall become final if the Design-Builder fails to submit a timely request for administrative reconsideration. A request may provide additional written documentation and/or argument concerning the issue of whether an adequate good faith effort was made to meet the contract goal.

The Illinois Tollway Chief of Contract Compliance or his/her designee will send the Design-Builder a written decision within fifteen (15) business days after receipt of the request for reconsideration, unless extended by the Illinois Tollway if a hearing is requested, explaining the basis for finding that the Design-Builder did or did not meet the EEO goals or demonstrate good faith efforts towards meeting those goals. A decision by the Chief of Contract Compliance that a good faith effort was made shall be deemed approval of the Corrective Action Plan submitted by the Design-Builder. A final decision that a good faith effort was not made shall render the Design-Builder in breach as non-compliant with its contract with the Illinois Tollway and may subject the Design-Builder to sanctions under Section 14.

#### 14. SANCTIONS:

The Design-Builder's failure to achieve the EEO goals or to demonstrate good faith efforts towards meeting those goals may subject the Design-Builder to administrative sanctions. These sanctions include, but are not limited to, monetary sanctions, including non-release of retainage, liquidated damages, deeming the Design-Builder as non-responsible with respect to future business with the Illinois Tollway, and other reasonable sanctions as are permitted by law or equity. A Design-Builder's repeated failure to meet its EEO obligations on Illinois Tollway contracts can be grounds for the Illinois Tollway to not award future contracts to the Design-Builder.

In imposing sanctions, the Illinois Tollway will consider the bona fide efforts of the Design-Builder to meet the EEO goals, its history of good faith efforts on other Illinois Tollway contracts, the size of the contract, the degree to which the Design-Builder fell below the EEO goals, and other factors deemed relevant by the Illinois Tollway.

#### 15. RECORDS RETENTION AND AUDIT

Refer to the audit clause of the Contract.

#### 16. INACCURATE OR FRAUDULENT REPORTING:

Design-Builders and subcontractors have a duty to accurately report information pursuant to this Special Provision. A Design-Builder or subcontractor who fails to supply accurate information may be subject to sanctions imposed by the Illinois Tollway under Section 14. A Design-Builder or subcontractor who intentionally supplies inaccurate information may be subject to civil and/or criminal sanctions.

17. OTHER REGULATIONS:

The achievement of the EEO goals does not abrogate other responsibilities of the Design-Builder to comply with equal employment opportunity requirements under federal or state law, municipal ordinance, prevailing government regulations or terms contained elsewhere in the Contract.

## **EXHIBIT 6: SPECIAL PROVISION FOR DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION**

### **1. POLICY STATEMENT**

It is the policy of the Illinois State Toll Highway Authority (“Illinois Tollway”) that qualified and bona fide Disadvantaged Business Enterprises (DBEs), as that term is defined herein, have maximum feasible opportunities to participate fully in the performance of all contracts funded and administered by the Illinois Tollway. The Illinois Tollway seeks to ensure non-discrimination in the award and administration of its contracts and associated subcontracts, and that it is not a passive participant in a discriminatory marketplace; to create a level playing field on which DBEs can compete fairly for Illinois Tollway Design-Build contracts; to ensure that this Special Provision is narrowly tailored in accordance with applicable law; to ensure that only firms that meet the eligibility standards are permitted to participate as DBEs; and to help to remove barriers to participation of DBEs in the Illinois Tollway contracts and associated subcontracts.

Consistent with this policy, it is the responsibility of all Design-Builders who directly or indirectly work on Illinois Tollway Design-Build contracts to ensure full and fair opportunities for DBEs to compete in those contracts as well as fully comply with this Special Provision.

### **2. DEFINITIONS**

For the purposes of this Special Provision, the following terms shall have the following meanings:

Affiliate of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity. In determining Affiliation, the Illinois Tollway shall consider all appropriate factors, including common ownership, common management, and contractual relationships.

Award shall mean the notice of award of the Project to the successful Apparent Best Value Proposer, contingent upon approval of the Contract by the Illinois State Toll Highway Authority Board of Directors.

Baseline Schedule shall mean a logic-based schedule for all work from commencement of the work leading up to each Completion Deadline(s). The Baseline Contract Schedule is prepared by Design-Builder in accordance with the Critical Path Method (CPM) and the Contract Documents, consistent with the Proposal Schedule and approved Revised Baseline Contract Schedule(s). The Baseline Contract Schedule is subject to approval of the Illinois Tollway. The Illinois Tollway-approved logic-based Critical Path Method schedule for all work from commencement of the work leading up to each Completion Deadline(s), to be prepared by the Design-Builder consistent with and reflecting the Proposal Schedule and Illinois Tollway-approved Revised Baseline Contract Schedule(s), and in accordance with the Contract Documents.

Broker means a person or entity that fills orders by purchasing or receiving supplies from a third-party supplier rather than out of its own existing inventory and provides no substantial service other than acting as a conduit between his or her supplier and his or her customer.

Change Order shall mean a written order to Design-Builder issued by the Illinois Tollway ordering a change in the work resulting in an adjustment in the Contract price or in Completion Deadline(s). Approved work orders and resolved claims may result in a change order if such work orders and resolved claims necessitate an adjustment to the Contract price or to Completion Deadline(s).

Commercially Useful Function means responsibility for the execution of a distinct element of the work of the Contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a DBE firm or the DBE Joint Venture partner, if applicable.

Contingency Work is the anticipated work within the scope of the Project which is included in the project to cover the work of such an uncertain nature that the location or quantity could not be identified prior to awarding the Contract.

Contract shall mean the contract entered into between the Illinois Tollway and the Design-Builder for design and construction of the Project.

Disadvantaged Business Enterprise ("DBE") means a business currently certified by the Illinois Unified Certification Program ("ILUCP") pursuant to 49 C.F.R. Part 26, or a business currently certified by the City of Chicago, Illinois or the County of Cook, Illinois, as a Minority or Women-Owned Business ("M/WBE") pursuant to its M/WBE program for construction contracts, Art. IV, § 2-92-650, et seq, as amended, or a business currently certified by the U.S. Small Business Administration (SBA) pursuant to the Small Business Act as an SBA 8(a) business, owned and operated by a socially and economically disadvantaged person. A DBE is considered to have current certification if the firm is listed in the directory database of the pertinent certifying agency.

DBE Joint Venture means an association of two or more persons, or any combination of types of business enterprises and persons numbering two or more, proposing to perform as a single for profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the project and whose share in the capital contribution, control, management, risks, and profits of the joint venture are equal to its ownership interest which should be 51% or more of the entity. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship, risks and responsibility under the Contract.

DBE Performance Plan means a plan demonstrating the Proposer's commitment to meet the Contract's respective Professional Services and construction DBE participation goals. The DBE Performance Plan shall address the methods to be employed for achieving both DBE participation goals, including Design-Builder's exercise of Good Faith Efforts, its DBE Achievement Strategy for meeting both DBE

Participation goals, and other requirements provided in Section 6.3. The DBE Performance Plan shall be subject to the approval of the Illinois Tollway, in its sole discretion.

DBE Utilization Plan means Design-Builder's updated Initial DBE Utilization Plan. The DBE Utilization Plan includes the list of currently certified DBEs that the Design-Builder commits will be utilized, including its own participation as a DBE, if applicable, in the scopes of the work and the dollar values or the percentages of the work to be performed pursuant to this solicitation and in conformance with this Special Provision. The DBE Utilization Plan is subject to the approval of the Illinois Tollway, in its sole discretion.

Good Faith Efforts means actions undertaken by a Design-Builder to achieve the Contract's respective Professional Services and construction DBE participation goals. Upon the Illinois Tollway's sole determination, the scope, intensity and appropriateness of these actions can reasonably be expected to fulfill both DBE participation goals.

Initial DBE Utilization Plan means Design-Builder's completed DBE Form 2026DB that is submitted with the Technical Proposal.

Mobilization means preparatory work and operations necessary for the movement of personnel, equipment and incidentals to the project site for the establishment of offices, buildings and other facilities necessary for work on the project and for all other work operations which must be performed, or costs incurred when beginning work on the project.

Notice of Award shall mean when Illinois Tollway notifies the public of its intent to Award the Contract to the selected best value Proposer.

Professional Services includes the following scopes of work: design services, engineering services, geotechnical services, legal services, environmental services, right of way/acquisition services, and other services not characterized as part of constructions services.

Project shall mean the Design-Build project.

Proposal Guaranty shall mean the security designated in the Proposal to be furnished by the Proposer as a guarantee of good faith to enter into the Contract if the Project is awarded to such Proposer.

Proposer shall mean an individual, firm, partnership, corporation, joint venture or combination thereof that submits a proposal in response to the RFP.

Proposal shall mean those documents, including but not limited to forms, attachments, narratives, and drawings, constituting Design-Builder's response to the RFP documents, including any supplements to proposals as may have been requested by the Illinois Tollway and approved alternative technical concepts. The Proposal consists of a Technical Proposal and price proposal.

Regular Dealer means 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. To be a Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packers, manufacturer representatives, or other persons who arrange or expedite transactions are not Regular Dealers.

Revised Baseline Schedule shall mean a proposed change to the Baseline Contract Schedule, as permitted under the Contract documents for the Project.

Subcontractor or Subcontractors shall mean any person with whom Design-Builder has entered into any subcontract and any other Person with whom any Subcontractor has further subcontracted any part of the work, at any tier, with the written consent of the Illinois Tollway.

Technical Proposal shall mean the technical portion of the Proposal submitted by the Proposer(s) in response to the Request for Proposals issued by Illinois Tollway.

### 3. DESIGN-BUILDER ASSURANCE

The Design-Builder will assure that each of its employees and its Subcontractors' employees associated with the Contract shall not discriminate on the basis of any protected category identified by law in the performance of the Contract. Failure by the Design-Builder to carry out these requirements is a material breach of this Contract, which may entitle the Illinois Tollway to such remedies as described in Section 8.

### 4. DBE CONTRACT GOAL TO BE ACHIEVED BY THE CONTRACTOR

This Contract includes a DBE participation goals of **twenty-six (26) %** of the Professional Services work and **twenty-nine (29) %** of the construction work. These DBE participation goals reflect the estimated availability of DBEs to perform the scopes of work of this Contract, including as a Design-Builder. Consequently, in addition to the other Award criteria established for this Contract, the Illinois Tollway will Award this Contract to a Proposer who commits to meet these DBE participation goals through the submission of the Initial DBE Utilization Plan and the DBE Performance Plan which includes the DBE Achievement Strategy defined in Section 6.3. The DBE participation goals will be calculated based on the amount of Professional Services and construction work identified in the RFP documents. The DBE participation goals will be re-assessed by Illinois Tollway in the event the Contract is modified, or a Change Order has been issued.

## 5. DBE, M/WBE and SBA 8(a) LOCATOR REFERENCES

Proposers, including the selected Design-Builder should review: (a) the Illinois Unified Certification Program (“ILUCP”) DBE Directory as a reference source for DBEs and, (b) the City of Chicago, and the County of Cook M/WBE directories as reference sources for M/WBEs in construction certified by the City of Chicago or the County of Cook, or the Small Business Administration SBA 8(a) directory for SBA 8(a)s certified by the Small Business Administration. Only firms certified by the ILUCP, the City of Chicago, the County of Cook, or the Small Business Administration at the time the DBE Participation Letter of Intent (LOI) Statement as described in Section 6.2 is submitted to the Illinois Tollway after Notice of Award are eligible to be considered for DBE credit under the Contract to either meet the DBE participation goals or establish the Design-Builder’s Good Faith Efforts.

These directories are to be used as an informational source only. Certification does not mean that a firm is in any way prequalified to provide the products and/or services in its certification specialty. “Certification” means that the ILUCP, the City of Chicago, the County of Cook, or the Small Business Administration has determined, on the basis of information provided and the representations therein, that a business is a bona fide DBE. The ILUCP, the City of Chicago, the County of Cook or the Small Business Administration does not, as a result of listing, make any representation concerning the ability of any listed firm to perform work in the specialty listed. The Illinois Tollway does not, through its use of and referral to ILUCP DBE, the City of Chicago, the County of Cook MBE/WBE, and the Small Business Administration SBA 8(a) lists, make any representation concerning the ability of any listed firm to perform work in its certification specialty. Proposers, including the selected Design-Builder must conduct its own due diligence regarding the capabilities of certified firms to perform the work of the Contract.

## 6. PROPOSAL PROCEDURES

Proposers shall submit the documents described below and comply with other requirements described in this Section.

### 6.1 Initial DBE Utilization Plan (DBE Form 2026DB)

A Proposer shall submit an Initial DBE Utilization Plan (completed DBE Form 2026DB), at the same time and as part of its Proposal.

This section is applicable when a Proposer is a DBE firm that is certified to perform a portion of the work and intends to meet all or a part of the DBE participation goals by self-performing work that meets or exceeds the Contract DBE participation goals. Additionally, if the Proposer is a DBE Joint Venture, each DBE Joint Venture partner must execute the attestation to DBE Form 2026DB.

A Proposal shall be deemed non-responsive if the Initial DBE Utilization Plan is not submitted. If the Proposal is deemed non-responsive due to a failure to submit an Initial DBE Utilization Plan in accordance

with this Section 6.1, Illinois Tollway may elect to cause the forfeiture of the penal sum of the Proposer's Proposal Guaranty and may disqualify the Proposer from participating in a re-procurement of the Project.

The Initial DBE Utilization Plan shall:

- a. Indicate that the Proposer has obtained, at the time of Proposal submission, certain DBE participation commitments (especially for Professional Services work) towards meeting the Contract DBE participation goals;
- b. Identify each DBE firm known at the time of Award and proposed for use on the Contract, and describe the corresponding scope of work and dollar amount of such identified DBE firm;
- c. Provide the name, telephone number, and email address of a responsible official of the Proposer authorized to receive notice of the approval or disapproval of the DBE Utilization Plan.

6.1.1 Any agreement between a Proposer and a DBE firm which prevents or restricts the DBE firm from providing subcontracting quotations to other Proposers is prohibited.

## 6.2 DBE Participation Letter of Intent Commitment Statement (DBE Form 2025DB)

The Initial DBE Utilization Plan must be supported with a detailed DBE Participation Letter of Intent Commitment Statement (DBE Form 2025DB), for each DBE firm identified in the Initial DBE Utilization Plan. Each completed DBE Form 2025DB shall be submitted by the Apparent Best Value Proposer following Notice of Award and shall be a precedent for execution of the Contract. DBE Form 2025DB shall be submitted to [contractcompliance@getipass.com](mailto:contractcompliance@getipass.com).

Due to the nature of Design-Build projects, the Illinois Tollway shall accept DBE Letters of Intent (LOIs) throughout the term of the Contract, as additional DBE firms are identified and contracted in accordance with the DBE Performance Plan. At least once a quarter, Design-Builder shall submit to the Illinois Tollway an updated DBE Utilization Plan conform to the submitted DBE LOIs.

Prior to the performance of any work by a DBE firm, Design-Builder shall have submitted a DBE LOI to the Illinois Tollway, and the Illinois Tollway must have approved the utilization of such DBE firm towards the Contract DBE participation goals.

The Illinois Tollway shall monitor Design-Builder's compliance with the DBE LOIs, as reflected in the Initial DBE Utilization Plan and the DBE Performance Plan.

In no case should a Design-Builder remove, replace, or reduce the commitment to a DBE listed in the Initial Utilization Plan, or DBE LOIs submitted and approved subsequent to Award without prior written consent

of Illinois Tollway. Under no circumstances is the Design-Builder allowed to change amounts, or other documentation included in the Proposal relating to this Special Provision.

The signatures on DBE LOIs must be original signatures. All elements of information included on Form 2025DB must be provided, including but not limited to:

6.2.1 The name and address of each DBE firm to be utilized to meet the Contract DBE participation goals;

6.2.2 A full description of the Commercially Useful Function to be performed by each DBE firm. This includes: (i) pay item numbers for DBE firms or, (ii) associated pay items for trucking services. Descriptions such as “miscellaneous” and prices such as “lump sum” are not acceptable. Contingency Work must not be included under pay items and will not be approved toward the Contract DBE participation goal until such time that those pay items have been confirmed as required work of the Contract;

6.2.3 Direct allowance items will not be approved towards DBE participation goals in the DBE Utilization Plan;

6.2.4 Mobilization costs should be included in the total Contract cost rather than as a separate pay item on the DBE Utilization Plan;

6.2.5 If Design-Builder is a DBE, mobilization may be approved towards the Contract DBE participation goals in the Initial DBE Utilization Plan;

6.2.6 The price to be paid to each DBE firm for the identified work shall specifically state the quantity (if applicable), unit price (if applicable) and total subcontract price for the work to be completed. If partial pay items are to be performed by the DBE firm, the DBE LOI must indicate the portion of each item, a unit price (where appropriate) and the subcontract price amount;

6.2.7 A statement of commitment for each DBE Subcontractor, regardless of tier, signed by the Proposer, DBE Subcontractor as well as any Subcontractor that may have a direct contract with the DBE Subcontractor. These forms demonstrate the commitment to the availability and utilization of DBE firms that will perform a Commercially Useful Function on the project; and

6.2.8 If the Proposer is a DBE Joint Venture comprised of DBE and non-DBE firms, the DBE LOI must also include a clear identification of the portion of the work to be performed by the DBE Joint Venture partner(s).

The Contract will not be awarded until the Initial DBE Utilization Plan, the accompanying DBE LOIs for the DBE firms identified on the Initial DBE Utilization Plan and the DBE Performance Plan are approved

by the Illinois Tollway. The documentation will be approved if these demonstrate that DBEs will be used to perform a Commercially Useful Function sufficient to meet the Contract DBE participation goals.

### 6.3 DBE Performance Plan

At the time of Proposal submission, all Proposers shall submit a DBE Performance Plan describing the methods to be employed for achieving the Contract DBE participation goals. The DBE Performance Plan must, at a minimum, ensure compliance with the Illinois Tollway's DBE program and shall include but not limited to, the following:

- a. DBE Achievement Strategy outlining the specific categories of services and work anticipated for DBE participation on the project for firms that have not identified on the Initial DBE Utilization Plan;
- b. Anticipated schedule for submission of agreements with committed DBE firms based on the Design-Builder's Baseline Schedule and any subsequent Revised Baseline Schedule;
- c. An outline of clearly articulated methods and strategies that the Proposer intends to employ to meet the Contract DBE participation goals including extensive DBE outreach by the Design-Builder as well as Illinois Tollway's Building for Success webinar series. The Design-Builder must also outline business and mentoring initiatives for Subcontractors especially DBE Subcontractors done by the Design-Builder as well as Illinois Tollway initiatives including the Partnering for Growth (P4G) program, Technical Assistance and the ConstructionWorks programs;
  - i. Illinois Tollway requires the Design-Builder to participate in the P4G program by executing at least one construction mentoring agreement and at least one Professional Services mentoring agreement with DBE firms performing work on the Design-Build project. The submission of at least one signed Memorandum of Understanding (MOU) with a Professional Services firm shall be included with the Technical Proposal. Additionally, the Proposer will include a statement of commitment to participate in the P4G Program with both Professional Services and construction firms and will submit a Construction MOU for approval and an associated agreement at least 30 days before start of construction work. The Design-Builder shall also provide information on the mentoring relationship and how the efforts for improving the firm's management and operating skills and leading to an increase in capacity and the ability to remain self-sufficient competitive and profitable business enterprise.
- d. A narrative describing how ongoing good faith efforts to meet the DBE goals will be conducted and detail efforts that will be undertaken by the Design-Builder following execution of the Design-Build Contract to achieve the DBE goals for the project;
- e. The name, qualifications, responsibilities and contact information for the experienced dedicated Diversity and Inclusion personnel or consultant that the Proposer will use on the project to promote and monitor the utilization of DBE firms in compliance with the Contract;

- f. A detailed narrative of how the Illinois Tollway's Diversity Department supportive services center will be utilized;
- g. A description of programs that will be implemented to ensure DBE firms successfully compete for work;
- h. Procedures and processes to ensure DBE firms successfully complete the work;
- i. A description of how the work will be monitored to ensure DBE participation credit and compliance will be tracked and accounted for;
- j. Details of how the work will be managed to ensure DBE firms receive timely and prompt payments and that they will be informed about prompt payment requirements;
- k. A description of how emerging risks associated with the DBE program will be identified and addressed, including ensuring that DBE firms will be performing a Commercially Useful Function;
- l. A narrative to identify how monthly updates to the DBE community regarding progress and upcoming Contract opportunities will be provided;
- m. Details of how DBE participation and labor participation reports will be submitted and how records of compliance will be maintained, ensuring adherence to applicable civil rights requirements and the requirements of the Contract Documents; and
- n. Processes and procedures for a DBE recovery plan should the Illinois Tollway determine the DBE goals are not being achieved.

The Design-Builder shall update the DBE Performance Plan annually, or more frequently to reflect major changes to the DBE Achievement Strategy or as requested by the Illinois Tollway.

The DBE Achievement Strategy, together with a corresponding updated DBE Utilization Plan, should be updated on a regular basis, at least quarterly, as the Design-Builder identifies and commits to utilize additional DBE firms to meet Contract DBE participation goals.

#### 6.4 Counting DBE Participation

DBE commitments at the time of the Proposal submission (as reflected in the Initial DBE Utilization Plan and supporting DBE LOIs), and additional DBE commitments identified after Award (as reflected in the DBE Performance Plan, and updated DBE Utilization Plan and supporting DBE LOIs) represent work expected to be performed and paid for upon satisfactory completion. The Illinois Tollway is only able to

count the value of (i) actual payments, or (ii) attainments for work performed by DBE firms towards the achievement of the Contract DBE participation goals. The Illinois Tollway will count DBE participation, and Design-Builder will receive credit towards meeting the DBE Contract goals, as follows:

6.4.1 The entire amount of that portion of work that the DBE is certified to perform, as indicated on the DBEs LOIs shall be counted. The work must be performed by the DBE firm's own forces, either as the Design-Builder or a Subcontractor. This will include the cost of supplies and materials purchased by the DBE firm for its work on the Contract, and equipment leased by the DBE firm for the work, but excludes supplies, materials and equipment the DBE firm purchases or leases from the Design-Builder or the Design-Builder's affiliate. Work that the DBE firm subcontracts to a non-DBE firm does not count towards the Contract DBE participation goals.

6.4.2 The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of the Contract shall be counted; provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.

6.4.3 One hundred percent of the cost of trucking services utilized on the Contract shall be counted, provided the DBE firm is responsible for the management and supervision of the entire trucking operation for which it is responsible. At least one truck owned, operated, licensed and insured by the DBE must be used on the Contract. Credit will only be applied for trucking activity to and from the Illinois Tollway job site. Credit will be given if: (1) the DBE firm leases trucks from another DBE firm, including an owner-operator who is certified as a DBE. The lessee DBE firm that leases trucks from the lessor DBE firm receives credit for the total value of the transportation services the lessee DBE firm provides on the Contract. (2) the DBE firm leases trucks from an owner-operator that is a non-DBE firm. The lessee DBE firm receives credit limited to the value of the reasonable fee or commission received by the DBE for trucks that are leased from a non-DBE.

6.4.4 When a DBE firm performs work as a participant in a DBE Joint Venture, only the portion of the total dollar value of the DBE Joint Venture's Contract or subcontract equal to the distinct, clearly defined portion of the that is performed by the DBE firm with its own forces and for which it is separately at risk, shall be counted. A DBE Joint Venture may also count the dollar value of work subcontracted to DBE firms other than the DBE Joint Venture partner(s). Work performed by the forces of the non-DBE Joint Venture partner shall not be counted toward the Contract DBE participation goals. The Illinois Tollway will evaluate the DBE Joint Venture agreement, which must be submitted with the Initial DBE Utilization Plan, for conformance with this Special Provision and eligibility for credit towards meeting the Contract DBE participation goals. The agreement must describe in detail the financial contribution of each partner; the list of personnel and equipment contributed and used by each partner; the responsibilities of each partner for each aspect of the DBE Joint Venture; if applicable, the bonding capacity of each partner; if applicable, the prequalification status of each partner; the basis and distribution of all profits and losses; and any other elements deemed relevant by the Illinois Tollway.

6.4.5 One hundred percent of the cost of the materials obtained from a DBE Manufacturer, as that term is defined in 49 C.F.R. § 26.55(e) shall be counted towards the Contract DBE participation goals. Sixty percent of the cost of the materials or supplies obtained from a DBE Regular Dealer or Supplier, as those terms are defined in 49 C.F.R. § 26.55(e), shall be counted towards the DBE Contract goals. One hundred percent of the fees or transportation charges for the delivery of materials or supplies required on a job site shall be counted towards the Contract DBE participation goals only if the payment of such fees is a customary industry practice and are commensurate with fees customarily charged for similar services.

6.4.6 One hundred percent credit will be counted towards the Contract DBE participation goals for the value of fees and commissions for the procurement of materials and supplies if the DBE is not a regular dealer or manufacturer; provided such fees or commissions are determined by the Illinois Tollway, in its sole discretion, to be reasonable and not excessive as compared with fees customarily allowed for similar services. No portion of the cost of the materials or supplies themselves shall be counted towards the Contract DBE participation goals.

6.4.7 If a firm's certification is revoked by its certifying agency during its performance on a contract, the dollar value of work performed under this contract with that firm after it has ceased to be certified shall not be counted.

If a DBE graduates from its respective certification program, based upon exceeding the firm size or personal net worth limitations after this contract is awarded, the firm's entire participation in compliance with the DBE Program will be counted towards meeting the Contract DBE participation goals.

If a DBE firm is acquired by a non-DBE firm, the dollar value of work performed under this contract with that firm after the acquisition shall not be counted.

In determining achievement of the Contract DBE participation goals, the participation of a DBE firm shall not be counted until that amount has been paid to the DBE firm.

## 6.5 Demonstrating Commercially Useful Function

Only expenditures to a DBE firm that is performing a Commercially Useful Function shall be counted. To determine whether a DBE firm is performing a Commercially Useful Function, the Illinois Tollway will evaluate the amount of work subcontracted, industry practices, whether the amount the DBE firm is to be paid under the Contract is commensurate with the work it is actually performing and other relevant factors. A DBE firm performs a Commercially Useful Function when it is responsible for the execution of the work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

6.5.1 To perform a Commercially Useful Function, the DBE firm must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

6.5.2 A DBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract, or Project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE firm is such an extra participant, the Illinois Tollway will examine similar transactions, particularly those in which DBE firms do not participate.

6.5.3 If a DBE firm does not perform or exercise responsibility for at least 30 percent of the total cost of its Contract or subcontract with its own work force, or the DBE firm subcontracts a greater portion of the work of its Contract or subcontract than would be expected on the basis of normal industry practice for the type of work involved, the Illinois Tollway will presume that the DBE is not performing a Commercially Useful Function. When a DBE firm is presumed not to be performing a Commercially Useful function as provided in this Special Provision, the DBE firm and the Design-Builder may present evidence to rebut this presumption.

## 6.6 Good Faith Efforts Procedures

At the time of Proposal submission, a Proposer shall submit the Initial DBE Utilization Plan with accompanying DBE LOIs for each DBE firm identified and the DBE Performance Plan committing to achieve the DBE goals. For additional DBE participation not identified at the time of Proposal submission, the Design-Builder shall demonstrate Good Faith Efforts post-Award to meet or exceed the Contract DBE participation goals. These Good Faith Efforts should be the necessary and reasonable steps that could reasonably be expected to obtain sufficient DBE participation. The Illinois Tollway will consider the quality, quantity and intensity of the kinds of efforts that the Design-Builder has made. Mere pro forma efforts are not Good Faith Efforts; rather, the Design-Builder is expected to make sufficient efforts that would be reasonably expected of a Design-Builder actively and aggressively trying to obtain DBE participation to meet the Contract DBE participation goals.

Throughout the course of the project, the Illinois Tollway must monitor the participation and activities of the Design-Builder to determine if it has made a good faith effort to secure the work commitment of DBEs to meet the Contract DBE participation goals.

The following is a list of types of action that the Illinois Tollway will consider as part of the evaluation of the Design-Builder's Good Faith Efforts to obtain DBE participation. These listed factors are not intended to be a mandatory checklist and are not intended to be exhaustive. Other factors or efforts brought to the attention of the Illinois Tollway may be relevant in appropriate cases and will be considered by the Illinois Tollway.

6.6.1 Soliciting through all reasonable and available means (e.g., attendance at DBE networking sessions sponsored by the Illinois Tollway, one-on-one meetings, advertising and/or written notices) the interest of all DBE firms that have the capability to perform the work of the Contract. A list of certified DBEs in the trades considered to determine the Contract DBE participation goals may be provided by the Illinois Tollway, but should not be considered exhaustive, and other firms may be available for solicitation by the Design-Builder. The Design-Builder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation, but in any event, no later than five (5) calendar days prior to the submission date

of the solicitation. At least two methods of solicitation of DBEs must be used (e.g., email and website). The Design-Builder must determine with certainty if the DBEs are interested by taking appropriate steps to follow-up initial solicitations.

6.6.2 Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the Contract DBE participation goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units to facilitate DBE participation, even when the Design-Builder might otherwise prefer to perform these work items with its own forces.

6.6.3 Providing interested DBEs with adequate information about the plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation.

6.6.4 Negotiating in good faith with interested DBE firms.

6.6.4.1 Making a portion of the work available to DBE Subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE Subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, e-mail address and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

6.6.4.2 A Design-Builder using good business judgment would consider a number of factors in negotiating with Subcontractors, including DBE Subcontractors, and would take a DBE firm's price and capabilities as well as Contract DBE participation goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Design-Builder's failure to meet the Contract DBE participation goals, as long as such costs are reasonable. Also, the ability or desire of a Design-Builder to perform the work of a Contract with its own organization does not relieve the Design-Builder of the responsibility to make Good Faith Efforts. Design-Builder or its Subcontractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

6.6.5 DBEs may not be rejected as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Design-Builder's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of bids in the Design-Builder's efforts to meet the Contract goals.

6.6.6 Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the Illinois Tollway or Design-Builder.

6.6.7 Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

6.6.8 Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

6.6.9 A Design-Builder that rejected a DBE firm based on price must provide to the Illinois Tollway all quotes received for the scope of work proposed by the DBE from all firms, including non-DBEs.

6.6.10 If the Illinois Tollway determines through its monitoring that the Design-Builder is in jeopardy of not achieving the Contract DBE participation goals by the completion of the project, a request may provide additional written documentation and/or argument concerning the issue of whether an adequate good faith effort was made to meet the Contract DBE goals. The request will be forwarded to the "Illinois State Toll Highway Authority, Procurement Department, Chief of Contract Compliance". The Chief of Contract Compliance may extend an opportunity to the Design-Builder to meet in person in order to consider all issues of whether the Design-Builder made a good faith effort to meet the Contract DBE participation goals. Such meeting shall extend the time for a decision. After the review by the Chief of Contract Compliance, the Design-Builder will be sent a written decision within ten (10) working days after receipt of the request for reconsideration or the date of the meeting, explaining the basis for finding that the Design-Builder did or did not meet the goals or make adequate Good Faith Efforts to do so. A final decision by the Chief of Contract Compliance that a good faith effort was made and sufficient may lead to an approval of the DBE participation towards the goals by the Design-Builder despite the possible shortfall and shall clear the Contract for Contract closeout. If a final decision that a good faith effort was not made could result in penalties and sanctions as outlined in the Contract and this Special Provision.

## 7. CONTRACT COMPLIANCE

### 7.1 Forms to be Submitted

All work indicated for performance by an approved DBE shall be performed, managed and supervised by the DBE in accordance with the DBE Utilization Plan, the DBE Letter of Intent Participation Statement (DBE Form 2025DB), and the DBE Performance Plan with the DBE Achievement Strategy.

To receive the first notice to proceed, the Proposer must submit for the Illinois Tollway's review signed subcontracts with all DBEs proposed on the Initial Utilization Plan to meet the goals within twenty (20) calendar days of Award of the Project. For additional DBE participation after Award to meet the Contract DBE participation goals, the Design-Builder shall submit a DBE Letter of Intent (LOI) for each proposed DBE firm to Illinois Tollway for approval and the signed DBE subcontract prior to the performance of work by such DBE firm.

### 7.2 Changes to the DBE Utilization Plan

The Design-Builder may not make changes to its contractual DBE commitments pre-Award and post-Award, substitute a DBE Subcontractor or make any other changes to the approved Initial DBE Utilization Plan and any updated DBE Utilization Plan without the prior written approval of the Illinois Tollway's Contract Compliance team. Unauthorized changes or substitutions, including performing the work designated for a Subcontractor with the Design-Builder's own forces, shall be a violation of this Special Provision and a breach of the Contract.

If a Change Order is issued by the Illinois Tollway or Contingency Work is authorized, the Design-Builder, in Illinois Tollway's discretion, will be required to amend its DBE Utilization Plan to reflect the recalculated DBE dollars and any percentage change in the goals. The Contract DBE participation goals may change in the Illinois Tollway's discretion to reflect a Change Order or the authorization of Contingency Work.

The facts supporting the request for changes to the Initial DBE Utilization Plan and any updated DBE Utilization Plan must not have been known or reasonably could not have been known by the parties prior to entering into the subcontract with the DBE firm. The Design-Builder must negotiate in good faith with the DBE Subcontractor to resolve the problem. If requested by either party, the Illinois Tollway shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the DBE Subcontractor can be substituted only where agreement cannot be reached for a reasonable price or reasonable schedule for the correct scope of work. Requests should be sent to [contractcompliance@getipass.com](mailto:contractcompliance@getipass.com).

Substitutions of a DBE Subcontractor shall be permitted only under the following circumstances:

- 7.2.1 Unavailability after receipt of reasonable notice to proceed;
- 7.2.2 Failure of performance;
- 7.2.3 Financial incapacity;
- 7.2.4 Refusal by the DBE Subcontractor to honor the bid or bid price or scope or schedule;
- 7.2.5 Material mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
- 7.2.6 Failure of the DBE Subcontractor to meet insurance, licensing or bonding requirements;
- 7.2.7 The DBE Subcontractor's withdrawal of its bid or bid; or
- 7.2.8 Decertification of the Subcontractor as a DBE, other than on the basis of its exceeding firm size or personal net worth limits.

If it becomes necessary to substitute a DBE firm or otherwise revise the DBE Utilization Plan, the Design-Builder must notify the “Illinois State Toll Highway Authority, Contract Compliance team” in writing of the request to substitute a DBE or otherwise revise the DBE Utilization Plan to [contractcompliance@getipass.com](mailto:contractcompliance@getipass.com). The request must state specific reasons for the substitution or change. A letter from the DBE to be substituted or affected by the change stating that it cannot perform on the subcontract or that it agrees with the change in its scope of work must be submitted with the request. Any refusal by the DBE firm to provide such a letter must be documented by the Design-Builder. The Illinois State Toll Highway Authority, Contract Compliance team will approve or deny a request for substitution or other change in the DBE Utilization Plan in writing within five (5) working days of receipt of the request.

Where the Design-Builder has established the basis for the substitution to the Illinois Tollway’s satisfaction, it must make Good Faith Efforts to meet the Contract DBE participation goals by substituting a DBE Subcontractor. Documentation of a replacement DBE, or of Good Faith Efforts, must meet the requirements in Section 6.6. If the Contract DBE participation goals cannot be reached and Good Faith Efforts have been made, the Design-Builder may substitute with a non-DBE.

If the Design-Builder plans to hire a Subcontractor for any scope of work that was not previously disclosed in the DBE Utilization Plan, the Design-Builder must obtain the approval of the Illinois Tollway Contract Compliance team to modify the DBE Utilization Plan and must make Good Faith Efforts to ensure that DBEs have a fair opportunity to bid on the new scope of work.

A new subcontract, DBE Letter of Intent Participation Statement (DBE Form 2025DB), for the substituted DBE (if applicable) and an amended DBE Utilization Plan must be executed and submitted to the Illinois State Toll Highway Authority, Contract Compliance team at [contractcompliance@getipass.com](mailto:contractcompliance@getipass.com) within five (5) working days of the Design-Builder’s receipt of the Illinois Tollway’s approval for the substitution or other change.

### 7.3 The Submission of the DBE Payment Report

DBE payment reporting, in such form or format as specified by the Illinois Tollway, must be submitted as specified in the “Contract Compliance Payment Reporting Instructions” posted on the Illinois Tollway’s website.

The Design-Builder shall maintain a record of payments to DBEs and all other Subcontractors and suppliers for work performed. The records shall be made available to the Illinois Tollway for inspection and copying upon request. After the performance of the final item of work or delivery of material by a DBE and final payment to the DBE by the Design-Builder, but not later than thirty (30) calendar days after payment has been made by the Illinois Tollway to the Design-Builder for such work or material, the Design-Builder shall submit partial and final waivers of lien via B2GNow. Not complying with this requirement may delay processing of pay estimates and/or retainage.

All active Illinois Tollway vendors, contractors, and consultants will be required to use B2GNow. Both diverse and non-diverse Subcontractor payments must be reported and confirmed monthly in the system at <https://iltollway.diversitysoftware.com/>.

The Illinois Tollway reserves the right to withhold payment to Design-Builder to enforce these provisions and Design-Builder's contractual commitments. Final payment shall not be made pursuant to the Contract until Design-Builder submits sufficient documentation demonstrating compliance with its Initial and revised DBE Utilization Plans and DBE Performance Plan.

#### 7.4 Partnering for Growth (P4G) Program

The Design-Builder is strongly encouraged to participate in the Illinois Tollway Partnering for Growth (P4G) program. The Design-Builder is encouraged to execute at least one construction mentoring agreement and at least one Professional Services mentoring agreement for work related to the Project. The submission of at least one signed Memorandum of Understanding (MOU) with a Professional Services firm may be included with the Technical Proposal in addition to an affirmative commitment to submit a MOU with a construction firm no later than 30 days before the start of construction. The Design-Builder may submit the Construction MOU at least 30 days before the start of construction work. Following Award of the Contract, if the Design-Builder elects to participate in the P4G program, the Design-Builder will submit a P4G agreement to Illinois Tollway for each DBE mentee with an approved MOU. The agreement will be more detailed than the MOU submitted describing the Protégé's participation by tasks, hours, and deliverables. It will also provide a schedule for monitoring progress, submitting interim reports, and preparing a final assessment of the Mentor and Protégé relationship on the project.

Additionally, Illinois Tollway staff will conduct periodic compliance reviews to monitor and report the Protégé's progress. Following Illinois Tollway's approval of the agreement, a quarterly report must be submitted to Illinois Tollway to verify payments toward meeting the stated level of Protégé's participation in the P4G Program. This report shall summarize the services and/or skills provided to Protégé, including hours and areas of involvement, managerial, technical, or financial-related assistance.

#### 8. SANCTIONS

The Illinois Tollway will periodically review the Design-Builder's compliance with this Special Provision, DBE LOIs, DBE Utilization Plan and DBE Performance Plan. Without limitation, the Design-Builder's failure to comply with this Special Provision, DBE LOIs, DBE Utilization Plan and DBE Performance Plan; failure to cooperate in providing information regarding its compliance with this Special Provision, DBE LOIs, DBE Utilization Plan and DBE Performance Plan; or provision of false or misleading information or statements concerning compliance, certification status of DBEs, Good Faith Efforts or any other material fact or representation shall constitute a material breach of this Contract and may result in damages to the Illinois Tollway.

Such breach or damages entitle the Illinois Tollway to suspend for cause (under Section 18.2(j) of the Contract), declare a default (under Section 20.1 (m) of the Contract), terminate the Contract for cause (under Section 19.5 of the Contract), impose liquidated damages (under Section 21.5 of the Contract) or exercise those remedies provided for in the Contract or at law or in equity. Liquidated damages shall be based on the damage to the Illinois Tollway from the Design-Builder's lack of good faith supporting documentation and/or failure to meet other requirements of this Special Provision in an amount up to the monetary difference between the amount committed to by the Design-Builder in its final DBE Utilization Plan and the amount actually paid to DBE firms.

Sanctions may include, but are not limited to, monetary sanctions (including non-release of retainage); imposition of the monetary cost of audits resulting in findings of noncompliance; deeming the Design-Builder non-responsible with respect to future business with the Illinois Tollway; and any other sanctions as are permitted by law.

In imposing sanctions, the Illinois Tollway will consider the bona fide efforts of the Design-Builder to meet the DBE goals, its history of Good Faith Efforts on other Illinois Tollway contracts, the size of the Contract, the degree to which the Design-Builder fell below the DBE goals, and other factors deemed relevant by the Illinois Tollway.

The Design-Builder may appeal the decision to impose sanctions within five (5) working days of its receipt of the written decision by filing an appeal in hard copy or electronic format with the Illinois State Toll Highway Authority's Sanctions Committee. Actual delivery of the hard copy and electronic formats within the five (5) business days is required and mere posting by mail within that period is not sufficient. An appeal may provide additional documentation and/or arguments and request an oral presentation to Illinois Tollway's Sanctions Committee. The Illinois Tollway's Sanctions Committee shall notify the Design-Builder in writing of the final determination and the basis for the determination within ten (10) working days after receipt of the appeal or after the date of the oral presentation by the Design-Builder, whichever is later. The Design-Builder may appeal an adverse decision within five (5) working days of receipt of the final determination to the Executive Director by filing an appeal in hard copy and electronic format to the Illinois State Toll Highway Authority, Executive Director, 2700 Ogden Avenue, Downers Grove, Illinois 60515-1703, [contractcompliance@getipass.com](mailto:contractcompliance@getipass.com). The Executive Director or his/her designee, which designee shall not be employed within Illinois Tollway's Contract Compliance team, may solicit information from the Design-Builder, the Diversity and Strategic Development Department, the Chief of Contract Compliance, the Law Department, Internal Audit, the Procurement Department, and anyone else in his/her discretion, and shall render a final decision on the Design-Builder's appeal within thirty (30) calendar days.

## 9. INACCURATE OR FRAUDULENT REPORTING

The Design-Builder has a duty to accurately report information pursuant to this Special Provision. A Design-Builder who fails to supply accurate information is subject to sanctions imposed by Illinois Tollway. A Design-Builder who intentionally supplies inaccurate information may be subject to civil and/or criminal sanctions.

## 10. OTHER REGULATIONS

The adherence to the Contract DBE participation goals does not abrogate other responsibilities of the Design-Builder to comply with affirmative action requirements under state law, municipal ordinance, prevailing government regulations or terms contained elsewhere in the Contract.

## **EXHIBIT 7: SPECIAL PROVISION FOR SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS (SDVOSB) AND VETERAN-OWNED AND SMALL BUSINESS (VOSB) PARTICIPATION**

### **1. POLICY STATEMENT**

It is the goal of the Illinois State Highway Authority (“Illinois Tollway”) to promote and encourage: (i) the continued economic development of small businesses owned and controlled by qualified veterans, and (ii) the participation of qualified service-disabled veteran-owned small businesses SDVOSBs and VOSBs in the State's procurement process as both Design-Builders and Subcontractors, 30 ILCS 500/45-57.

Consistent with this policy, it is the responsibility of all Design-Builders who directly or indirectly work on Illinois Tollway Design-Build contracts to ensure full and fair opportunities for SDVOSBs and VOSBs to compete in those contracts as well as fully comply with this Special Provision.

### **2. CONTRACT SDVOSB/VOSB PARTICIPATION GOALS**

This Contract includes Contract-specific SDVOSB/VOSB participation goals of **three (3) %** for Professional Services work and **one and a half (1.5) %** for construction work. These goals were based on the availability of the State of Illinois Commission on Equity and Inclusion (CEI) certified SDVOSB/VOSB firms to perform or provide the anticipated services and/or supplies required by the Contract.

The SDVOSB/VOSB participation goals are applicable to all Proposals. In addition to the other evaluation criteria established for this Project, the Illinois Tollway will Award this Contract to a Proposer that makes a commitment to meet the Contract SDVOSB/VOSB goals through an initial Utilization Plan with Letters of Intent and SDVOSB/VOSB Performance Plan. The Contract SDVOSB/VOSB goals are also applicable to Change Orders within the scope of work to be performed by the certified SDVOSB/VOSB firm which includes the SDVOSB/VOSB Achievement Strategy. If the Design-Builder is a CMS certified SDVOSB/VOSB firm, and their participation can meet the Contract SDVOSB/VOSB Professional Services and Construction goals, then no subcontracting with CMS certified SDVOSB/VOSB firms will be required. However, the Design-Builder must submit a SDVOSB/VOSB Utilization Plan indicating that the Contract SDVOSB/VOSB Professional Services and Construction participation goals will be met by self-performance. The SDVOSB/VOSB participation goals will be calculated based on the amount of Professional Services and construction work identified in the RFP documents. The SDVOSB/VOSB participation goals will be re-assessed by Illinois Tollway in the event the Contract is modified, or a Change Order has been issued.

The SDVOSB/VOSB goals are separate and distinct from the DBE goals. A single firm may not be utilized to achieve credit toward both DBE and SDVOSB/VOSB goals on the Project, except when such firm is the Design-Builder that is certified as both a DBE and SDVOSB/VOSB and they will commit to meeting the

two goals by self-performing the same or greater percentage of work under the Contract as the DBE and SDVOSB/VOSB goals added together.

### 3. Definitions

For the purposes of this Special Provision, the following terms shall have the following meanings:

Affiliate of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity. In determining Affiliation, the Illinois Tollway shall consider all appropriate factors, including common ownership, common management, and contractual relationships.

Award shall mean the notice of award of the Project to the successful best value Proposer, contingent upon approval of the Contract by the Illinois State Toll Highway Authority Board of Directors.

Baseline Schedule shall mean a logic-based schedule for all work from commencement of the work leading up to each Completion Deadline(s). The Baseline Contract Schedule is prepared by Design-Builder in accordance with the Critical Path Method (CPM) and the Contract Documents, consistent with the Proposal Schedule and approved Revised Baseline Contract Schedule(s). The Baseline Contract Schedule is subject to approval of the Illinois Tollway. The Illinois Tollway-approved logic-based Critical Path Method schedule for all work from commencement of the work leading up to each Completion Deadline(s), to be prepared by the Design-Builder consistent with and reflecting the Proposal Schedule and Illinois Tollway-approved Revised Baseline Contract Schedule(s), and in accordance with the Contract Documents.

Broker means a person or entity that fills orders by purchasing or receiving supplies from a third-party supplier rather than out of its own existing inventory and provides no substantial service other than acting as a conduit between his or her supplier and his or her customer.

Change Order shall mean a written order to Design-Builder issued by the Illinois Tollway ordering a change in the work resulting in an adjustment in the Contract price or in Completion Deadline(s). Approved work orders and resolved claims may result in a change order if such work orders and resolved claims necessitate an adjustment to the Contract price or to Completion Deadline(s).

Commercially Useful Function means responsibility for the execution of a distinct element of the work of the Contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a SDVOSB/VOSB Joint Venture partner.

Contingency Work is the anticipated work within the scope of the project which is included in the project to cover the work of such an uncertain nature that the location or quantity could not be identified prior to awarding the Contract.

Contract shall mean the contract entered into between the Illinois Tollway and the Design-Builder for design and construction of the Project.

Good Faith Efforts means actions undertaken by a Design-Builder to achieve the Contract's respective Professional Services and construction SDVOSB/VOSB participation goals. Upon the Illinois Tollway's sole determination, the scope, intensity and appropriateness of these actions can reasonably be expected to fulfill both SDVOSB/VOSB participation goals.

Initial SDVOSB/VOSB Utilization Plan means Design-Builder's completed SDVOSB/VOSB Form 2026DB that is submitted with the Technical Proposal.

Mobilization means preparatory work and operations necessary for the movement of personnel, equipment and incidentals to the project site for the establishment of offices, buildings and other facilities necessary for work on the project and for all other work operations which must be performed, or costs incurred when beginning work on the Project.

Notice of Award shall mean when Illinois Tollway notifies the public of its intent to Award the Contract to the selected Apparent Best Value Proposer.

Professional Services includes the following scopes of work for this project: design services, engineering services, geotechnical services, legal services, environmental services, right of way/acquisition services, and other services not characterized as part of constructions services.

Project shall mean the Design-Build project.

Proposal Guaranty shall mean the security designated in the Proposal to be furnished by the Proposer as a guarantee of good faith to enter into the Contract if the Project is awarded to such Proposer.

Proposer shall mean an individual, firm, partnership, corporation, joint venture or combination thereof that submits a proposal in response to the RFP.

Proposal shall mean those documents, including but not limited to forms, attachments, narratives, and drawings, constituting Design-Builder's response to the RFP documents, including any supplements to proposals as may have been requested by the Illinois Tollway and approved alternative technical concepts. The Proposal consists of a Technical Proposal and price proposal.

Regular Dealer means 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. To be a Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of

the products in question. A firm may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, manufacturer representatives, or other persons who arrange or expedite transactions are not Regular Dealers.

Revised Baseline Schedule shall mean a proposed change to the Baseline Contract Schedule, as permitted under the Contract documents for the Project.

Service-Disabled Veteran-Owned Small Business (“SDVOSB”) means a business currently certified by the State of Illinois Commission on Equity and Inclusion (CEI) and in compliance with Illinois Public Act 097-0260, Public Act 098-0307. A SDVOSB is a small business that is 51 percent owned and controlled by one or more qualified service-disabled veterans that have a service-connected disability who living in Illinois, have a valid DD214 and have annual gross sales under \$75 million with a home office in Illinois. A SDVOSB is considered to have current certification if the firm is listed in the CMS directory database of the pertinent certifying agency.

Service-connected disability means a disability incurred in the line of duty in the active military, naval, or air service as described in 38 U.S.C. 101(16).

Small Business means a business that has annual gross sales of less than \$75,000,000 as evidenced by the federal income tax return of the business. A firm with gross sales in excess of this cap may apply to the State of Illinois Commission on Equity and Inclusion (CEI) for certification for a particular contract if the firm can demonstrate that the contract would have significant impact on SDVOSB or VOSB as suppliers or Subcontractors or in employment of veterans or service-disabled veterans.

SDVOSB/VOSB Joint Venture means an association of two or more persons, or any combination of types of business enterprises and persons numbering two or more, proposing to perform as a single for profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the VOSB is responsible for a distinct, clearly defined portion of the work of the project and whose share in the capital contribution, control, management, risks, and profits of the joint venture are equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship, risks and responsibility under the Contract.

SDVOSB/VOSB Performance Plan means a plan demonstrating the Proposer’s commitment to meet the Contract’s respective Professional Services and construction SDVOSB/VOSB participation goals. The SDVOSB/VOSB Performance Plan shall address the methods to be employed for achieving both SDVOSB/VOSB participation goals, including Design-Builder’s exercise of Good Faith Efforts, its SDVOSB/VOSB Achievement Strategy for meeting both SDVOSB/VOSB Participation goals, and other requirements provided in Section 4.1.3. The SDVOSB/VOSB Performance Plan shall be subject to the approval of the Illinois Tollway, in its sole discretion.

SDVOSB/VOSB Utilization Plan means Design-Builder's updated Initial SDVOSB/VOSB Utilization Plan which includes the list of currently certified SDVOSB/VOSBs that the Design-Builder commits will be utilized, including its own participation as a SDVOSB/VOSB, if applicable, in the scopes of the work and the dollar values or the percentages of the work to be performed pursuant to this solicitation and in conformance with this Special Provision. The SDVOSB/VOSB Utilization Plan is subject to the approval of the Illinois Tollway, in its sole discretion. Good Faith Efforts means actions undertaken by a Design-Builder to achieve the Contract's respective Professional Services and construction SDVOSB/VOSB participation goals. Upon the Illinois Tollway's sole determination, the scope, intensity and appropriateness of these actions can reasonably be expected to fulfill both SDVOSB/VOSB participation goals.

Subcontractor or Subcontractors shall mean any person with whom Design-Builder has entered into any subcontract and any other Person with whom any Subcontractor has further subcontracted any part of the work, at any tier, with the written consent of the Illinois Tollway.

Technical Proposal shall mean the technical portion of the Proposal submitted by the Proposer(s) in response to the Request for Proposals issued by Illinois Tollway.

Veteran means a person who (i) has been a member of the armed forces of the United States or, while a citizen of the United States, was a member of the armed forces of allies of the United States in time of hostilities with a foreign country and (ii) has served under one or more of the following conditions: (a) the veteran served a total of at least 6 months; (b) the veteran served for the duration of hostilities regardless of the length of the engagement; (c) the veteran was discharged on the basis of hardship; or (d) the veteran was released from active duty because of a service connected disability and was discharged under honorable conditions.

Veteran-Owned Small Business ("VOSB") means a business currently certified by the State of Illinois Commission on Equity and Inclusion (CEI) and in compliance with Illinois Public Act 097-0260, Public Act 098-0307. A VOSB is a business that is 51 percent owned and controlled by a qualified veteran living in Illinois, has a valid DD214 and has annual gross sales under \$75 million with a home office in Illinois. A VOSB is considered to have current certification if the firm is listed in the CMS directory database of the pertinent certifying agency.

#### 4. PROPOSAL PROCEDURES

##### 4.1 Technical Proposal Requirements

Proposers must submit the following requirements at the same time and as part of the Technical Proposal. Failure to submit these requirements will render a Proposal non-responsive.

##### 4.1.1 SDVOSB/VOSB Initial Utilization Plan (VOSB Form 2026DB)

At the time of Award, SDVOSB/VOSB firms identified in the Initial SDVOSB/VOSB Utilization Plan must be certified with CMS as a VOSB or SDVOSB.

The SDVOSB/VOSB Initial Utilization Plan must demonstrate that Design-Builder has (i) obtained, at the time of Technical Proposal submission, certain SDVOSB/VOSB participation commitments (especially for Professional Services work) towards meeting the Contract SDVOSB/VOSB participation goals (ii) identified the SDVOSB/VOSB firms that will be used towards meeting a portion of the Contract SDVOSB/VOSB participation goals, especially the Professional Services work, (iii) will update the SDVOSB/VOSB Utilization Plan and the SDVOSB/VOSB Performance Plan (with the SDVOSB/VOSB Achievement strategy) to identify additional SDVOSB/VOSB firms to meet both the Contract SDVOSB/VOSB Professional Services and Construction participation goals, and (iv) provide the name, telephone number, and email address of a responsible official of the Proposer authorized to receive notice of the approval or disapproval of the SDVOSB/VOSB Utilization Plan.

The Project will not be awarded to the selected Proposer, unless the Initial SDVOSB/VOSB Utilization Plan is approved.

#### 4.1.2 SDVOSB/VOSB Letter of Intent (LOI)/Participation Statement (VOSB Form 2025DB)

A SDVOSB/VOSB LOI/Participation Statement must be submitted for each SDVOSB/VOSB firm listed on the SDVOSB/VOSB Initial Utilization Plan (VOSB Form 2026DB).

Each completed SDVOSB/VOSB Form 2025DB shall be submitted by the best value Proposer following Notice of Award and shall be a precedent for execution of the Contract. SDVOSB/VOSB Form 2025DB shall be submitted to [contractcompliance@getipass.com](mailto:contractcompliance@getipass.com).

Due to the nature of Design-Build projects, the Illinois Tollway shall accept SDVOSB/VOSB Letters of Intent (LOIs) throughout the term of the Contract, as additional SDVOSB/VOSB firms are identified and contracted in accordance with the SDVOSB/VOSB Performance Plan. At least once a quarter, Design-Builder shall submit to the Illinois Tollway an updated SDVOSB/VOSB Utilization Plan conform to the submitted SDVOSB/VOSB LOIs.

Prior to the performance of any work by a SDVOSB/VOSB firm, Design-Builder shall have submitted a VOSB LOI to the Illinois Tollway, and the Illinois Tollway must have approved the utilization of such VOSB firm towards the Contract SDVOSB/VOSB participation goals.

The Illinois Tollway shall monitor Design-Builder's compliance with the VOSB LOIs, as reflected in the Initial VOSB Utilization Plan and the SDVOSB/VOSB Performance Plan.

In no case should a Design-Builder remove, replace, or reduce the commitment to a SDVOSB/VOSB firm listed in the Initial Utilization Plan and supporting SDVOSB/VOSB LOI/Participation Statements without

prior written consent of Illinois Tollway. Under no circumstances is the Proposer allowed to change the amount of the proposal submitted or any other documentation unrelated to this special provision.

The signatures on VOSB LOIs must be original signatures. All elements of information included on VOSB Form 2025DB must be provided.

The Contract will not be awarded until the Initial VOSB Utilization Plan, the accompanying VOSB LOIs for the VOSB firms identified on the Initial VOSB Utilization Plan and the VOSB Performance Plan are approved by the Illinois Tollway. The documentation will be approved if these demonstrate that VOSBs will be used to perform a Commercially Useful Function sufficient to meet the Contract VOSB participation goals.

#### 4.1.3 SDVOSB/VOSB Performance Plan

Proposers shall submit a SDVOSB/VOSB Performance Plan committing to meet the SDVOSB/VOSB goals. The SDVOSB/VOSB Performance Plan must, at a minimum, ensure compliance with the Illinois Tollway's Service-Disabled Veteran-owned Small Businesses (VOSB) and Veteran-owned Small Businesses (VOSB) program and shall include but not limited to, the following:

- a. SDVOSB/VOSB Achievement Strategy outlining the specific categories of services and work anticipated for SDVOSB/VOSB participation on the Project for firms that have not identified on the Initial SDVOSB/VOSB Utilization Plan;
- b. Anticipated schedule for submission of agreements with committed SDVOSB/VOSB firms based on the Design-Builder's Baseline Schedule and any subsequent Revised Baseline Schedule;
- c. An outline of clearly articulated methods and strategies that the Proposer intends to employ to meet the Contract SDVOSB/VOSB participation goals including extensive SDVOSB/VOSB outreach by the Design-Builder as well as Illinois Tollway's Building for Success webinar series. The Design-Builder must also outline business and mentoring initiatives for Subcontractors especially SDVOSB/VOSB Subcontractors done by the Design-Builder as well as the Tollway initiatives including the Partnering for Growth (P4G) program, Technical Assistance and the ConstructionWorks programs;
- i. Illinois Tollway requires the Design-Builder to participate in the P4G program by executing at least one construction mentoring agreement and at least one Professional Services mentoring agreement with SDVOSB/VOSB firms performing work on the Design-Build Project. The submission of at least one signed Memorandum of Understanding (MOU) with a Professional Services firm shall be included with the Technical Proposal. Additionally, the Proposer will include a statement of commitment to participate in the P4G Program with both Professional Services and construction firms and will submit a Construction MOU for approval and an associated Agreement at least 30 days before start of construction work. The Design-Builder shall also provide information on the mentoring relationship and how the efforts for improving the

firm's management and operating skills and leading to an increase in capacity and the ability to remain self-sufficient competitive and profitable business enterprise.

d. A narrative describing how ongoing good faith efforts to meet the SDVOSB/VOSB goals will be conducted and detail efforts that will be undertaken by the Design-Builder following execution of the Design-Build Contract to achieve the SDVOSB/VOSB goals for the Project;

e. The name, qualifications, responsibilities and contact information for the experienced dedicated Diversity and Inclusion personnel or consultant that the Proposer will use on the project to promote and monitor the utilization of SDVOSB/VOSB firms in compliance with the Contract;

f. A detailed narrative of how the Illinois Tollway's SDVOSB/VOSB supportive services center will be utilized;

g. A description of programs that will be implemented to ensure SDVOSB/VOSB firms successfully compete for work;

h. Procedures and processes to ensure SDVOSB/VOSB firms successfully complete the work;

i. A description of how the work will be monitored to ensure SDVOSB/VOSB participation credit and compliance will be tracked and accounted for;

j. Details of how the work will be managed to ensure SDVOSB/VOSB firms receive timely and prompt payments and that they will be informed about prompt payment requirements;

k. A description of how emerging risks associated with the SDVOSB/VOSB program will be identified and addressed, including ensuring that SDVOSB/VOSB firms will be performing a Commercially Useful Function;

l. A narrative to identify how monthly updates to the SDVOSB/VOSB community regarding progress and upcoming Contract opportunities will be provided;

m. Details of how SDVOSB/VOSB participation and labor participation reports will be submitted and how records of compliance will be maintained, ensuring adherence to applicable civil rights requirements and the requirements of the Contract Documents; and

n. Processes and procedures for a SDVOSB/VOSB recovery plan should the Illinois Tollway determine the SDVOSB/VOSB Goals are not being achieved.

The Project will not be awarded to the selected Proposer, unless the SDVOSB/VOSB Performance Plan is approved. The Design-Builder shall update the SDVOSB/VOSB Performance Plan annually, or more frequently to reflect major changes to the SDVOSB/VOSB Achievement Strategy or as requested by Illinois Tollway.

The VOSB Achievement Strategy, together with a corresponding updated VOSB Utilization Plan, should be updated on a regular basis, at least quarterly, as the Design-Builder identifies and commits to utilize additional VOSB firms to meet Contract VOSB participation goals.

#### 4.2 SDVOSB/VOSB Joint Venture

If the Proposer organization or its Subcontractor is a SDVOSB/VOSB Joint Venture with a SDVOSB/VOSB partner, the SDVOSB/VOSB Initial Utilization Plan should include an executed joint venture agreement specifying the terms and conditions of the relationship between the parties, and their relationship and responsibilities to the Contract. The joint venture agreement must be executed prior to submission of the Proposal (if the SDVOSB/VOSB Joint Venture is identified in the Initial SDVOSB/VOSB Utilization Plan) or prior to performing work. Specifically, the SDVOSB/VOSB Joint Venture agreement must:

- Clearly evidence that the certified SDVOSB/VOSB partner will be responsible for a clearly defined portion of the work and that its responsibilities, risks, profits and contributions of capital, and personnel are proportionate to its ownership percentage;
- Include specific details related to the parties' contributions of capital, personnel, and equipment and share of the costs of insurance and other items; the scopes to be performed by the certified SDVOSB/VOSB vendor under its supervision; and
- Include specific details on the commitment of management, supervisory personnel, and operative personnel employed by the certified SDVOSB/VOSB partner to be dedicated to the performance of the Contract.

Only work performed by the SDVOSB/VOSB partner will be credited towards Contract SDVOSB/VOSB participation goals.

#### 4.3 Other requirements

An agreement between a Proposer and a certified SDVOSB/VOSB firm in which the certified SDVOSB/VOSB firm promises not to provide subcontracting or pricing quotations to other Proposers is prohibited.

The Illinois Tollway may request additional information to demonstrate compliance. Proposer agrees to cooperate promptly with the Illinois Tollway in submitting to interviews, allowing entry to places of business, providing further documentation, and soliciting the cooperation of a proposed certified SDVOSB/VOSB firm. Failure to cooperate by the Proposer and the certified SDVOSB/VOSB firms may render the Proposal not responsive.

#### 5. Veteran Small Business Certified Vendor Locator References

Proposers may consult CMS' Veteran Small Business Vendor Directory at [www.sell2.illinois.gov/cms/business](http://www.sell2.illinois.gov/cms/business), as well as the directories of other certifying agencies, but firms must be certified with CMS as SDVOSB/VOSB vendors at the time of Proposal.

#### 6. Design-Builder Assurance

Design-Builder shall not discriminate on the basis of race, color, national origin, sexual orientation or sex in the performance of this Contract. Failure by Design-Builder 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 Illinois Tollway deems appropriate. This assurance must be included in each subcontract that Design-Builder signs with a Subcontractor or supplier.

#### 7. Calculating Certified SDVOSB/VOSB Design-Builder Participation

The SDVOSB/VOSB Utilization Plan shall document work anticipated to be performed, or goods/equipment anticipated to be provided by all certified SDVOSB/VOSB Subcontractors. Only the value of payments made for the work actually performed or the goods/equipment actually provided, and paid for upon satisfactory completion/delivery by certified SDVOSB/VOSB firms is counted toward the Contract SDVOSB/VOSB participation goals. Applicable guidelines for counting payments attributable to Contract SDVOSB/VOSB goals are summarized below:

7.1 The participation of SDVOSB/VOSBs will be calculated based on the amount of the work as defined under the Contract Documents, excluding Contingency Work.

If a Change Order is issued by the Illinois Tollway or Contingency Work is authorized, the Design-Builder, in Illinois Tollway's discretion, will be required to amend its SDVOSB/VOSB Utilization Plan to reflect the recalculated SDVOSB/VOSB dollars and any percentage change in the goals. The Contract SDVOSB/VOSB participation goals may change in the Illinois Tollway's discretion to reflect a Change Order or the authorization of Contingency Work.

7.2 The value of the work actually performed, or goods/equipment provided by the certified SDVOSB/VOSB firm shall be counted towards the goal. The entire amount of that portion of the Contract that is performed by the certified SDVOSB/VOSB firm, including supplies purchased or equipment leased

by the certified SDVOSB/VOSB Design-Builder shall be counted, except supplies purchased and equipment rented from the Design-Builder.

7.3 A firm shall count the portion of the total dollar value of the Veteran Small Business contract equal to the distinct, clearly defined portion of the work of the contract that the certified SDVOSB/VOSB Design-Builder performs toward the goal. A Design-Builder shall also count the dollar value of work subcontracted to other certified SDVOSB/VOSB vendors. Work performed by the non-certified SDVOSB/VOSB party shall not be counted toward the goal. Work that a certified SDVOSB/VOSB Subcontractor subcontracts to a non-certified SDVOSB/VOSB Subcontractor will not count towards the goal.

7.4 Design-Builder shall count toward the Contract SDVOSB/VOSB participation goals: (a) 100% of its expenditures for materials and supplies required under the Contract and obtained from a certified SDVOSB/VOSB manufacturer, and (b) 60% of its expenditures for materials or supplies required under the Contract and obtained from a certified SDVOSB/VOSB Regular Dealer or supplier.

7.5 Design-Builder shall count toward the goals the following expenditures to certified SDVOSB/VOSB Subcontractors that are not manufacturers, Regular Dealers, or suppliers:

7.5.1 The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the Illinois Tollway to be reasonable and not excessive as compared with fees customarily allowed for similar services.

7.5.2 The fees charged for delivery of materials and supplies required by the Contract (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer or a supplier of the materials and supplies being procured, provided that the fee is determined by the Illinois Tollway to be reasonable and not excessive as compared with fees customarily allowed for similar services. The certified SDVOSB/VOSB vendor's trucking firm must be responsible for the management and supervision of the entire trucking operation for which it is responsible on the Contract and must itself own and operate at least one fully licensed, insured and operational truck used on the Contract.

7.5.3 The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by the Illinois Tollway to be reasonable and not excessive as compared with fees customarily allowed for similar services.

7.6 Work performed by certified SDVOSB/VOSB firms that are second-tier Subcontractors may be counted toward the Contract provided that Design-Builder can provide documentation indicating the utilization of such firms.

7.7 Design-Builder shall only count towards the Contract SDVOSB/VOSB participation goals expenditures to certified SDVOSB/VOSB firms that perform a commercially useful function.

7.7.1 A SDVOSB/VOSB firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. The certified SDVOSB/VOSB firm must also be responsible, with respect to materials or supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the materials or supplies, and installing the materials (where applicable) and paying for the material or supplies. To determine whether a firm is performing a commercially useful function, the Illinois Tollway shall evaluate the amount of work subcontracted, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing, and the credit claimed for its performance of the work, industry practices, and other relevant factors.

7.7.2 A certified SDVOSB/VOSB firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed through in order to obtain certified SDVOSB/VOSB firm participation. In determining whether a certified SDVOSB/VOSB firm is such an extra participant, the Illinois Tollway shall examine similar transactions, particularly those in which certified SDVOSB/VOSB vendors do not participate, and industry practices.

7.7.3 Design-Builder shall not count towards the Contract SDVOSB/VOSB participation goals that are not direct, necessary and related to the work of the Contract. Only the amount of services or goods that are directly attributable to the performance of the Contract shall be counted. Ineligible expenditures include general office overhead or other Design-Builder support activities.

7.7.4 If a firm's certification is revoked by its certifying agency during its performance on a contract, the dollar value of work performed under this contract with that firm after it has ceased to be certified shall not be counted. If a SDVOSB/VOSB graduates from its respective certification program, based upon exceeding the firm size or personal net worth limitations after this contract is awarded, the firm's entire participation in compliance with the SDVOSB/VOSB Program will be counted towards meeting the Contract SDVOSB/VOSB participation goals.

If a SDVOSB/VOSB firm is acquired by a non-SDVOSB/VOSB firm, the dollar value of work performed under this contract with that firm after the acquisition shall not be counted.

In determining achievement of the Contract SDVOSB/VOSB participation goals, the participation of a SDVOSB/VOSB firm shall not be counted until that amount has been paid to the SDVOSB/VOSB firm.

## 8. Good Faith Effort Procedures

At the time of Proposal submission, a Proposer shall submit the Initial SDVOSB/VOSB Utilization Plan with accompanying SDVOSB/VOSB LOIs for each SDVOSB/VOSB firm identified and the SDVOSB/VOSB Performance Plan committing to achieve the SDVOSB/VOSB goals. For additional SDVOSB/VOSB participation not identified at the time of Proposal submission, the Design-Builder shall demonstrate Good Faith Efforts post-Award to meet or exceed the Contract SDVOSB/VOSB participation

goals. These Good Faith Efforts should be the necessary and reasonable steps that could reasonably be expected to obtain sufficient SDVOSB/VOSB participation. The Illinois Tollway will consider the quality, quantity and intensity of the kinds of efforts that the Design-Builder has made. Mere pro forma efforts are not Good Faith Efforts; rather, the Design-Builder is expected to make sufficient efforts that would be reasonably expected of a Design-Builder actively and aggressively trying to obtain SDVOSB/VOSB participation to meet the Contract SDVOSB/VOSB participation goals.

Throughout the course of the project, the Illinois Tollway must monitor the participation and activities of the Design-Builder to determine if it has made a good faith effort to secure the work commitment of SDVOSB/VOSBs to meet the Contract SDVOSB/VOSB participation goals.

The following is a list of types of action that the Illinois Tollway will consider as part of the evaluation of the Design-Builder's Good Faith Efforts to obtain SDVOSB/VOSB participation. These listed factors are not intended to be a mandatory checklist and are not intended to be exhaustive. Other factors or efforts brought to the attention of the Illinois Tollway may be relevant in appropriate cases and will be considered by the Illinois Tollway.

8.1 Soliciting through all reasonable and available means (e.g., attendance at SDVOSB/VOSB networking sessions sponsored by the Illinois Tollway, one-on-one meetings, advertising and/or written notices) the interest of all SDVOSB/VOSB firms that have the capability to perform the work of the Contract. A list of certified SDVOSB/VOSBs in the trades considered to determine the Contract SDVOSB/VOSB participation goals may be provided by the Illinois Tollway, but should not be considered exhaustive, and other firms may be available for solicitation by the Design-Builder. The Design-Builder must solicit this interest within sufficient time to allow the SDVOSB/VOSBs to respond to the solicitation, but in any event, no later than five (5) calendar days prior to the submission date of the solicitation. At least two methods of solicitation of SDVOSB/VOSBs must be used (e.g., email and website). The Design-Builder must determine with certainty if the SDVOSB/VOSBs are interested by taking appropriate steps to follow-up initial solicitations.

8.2 Selecting portions of the work to be performed by SDVOSB/VOSBs in order to increase the likelihood that the Contract SDVOSB/VOSB participation goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units to facilitate SDVOSB/VOSB participation, even when the Design-Builder might otherwise prefer to perform these work items with its own forces.

8.3 Providing interested SDVOSB/VOSBs with adequate information about the plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation.

8.4 Negotiating in good faith with interested SDVOSB/VOSB firms.

8.4.1 Making a portion of the work available to SDVOSB/VOSB Subcontractors and suppliers and to select those portions of the work or material needs consistent with the available SDVOSB/VOSB

Subcontractors and suppliers, so as to facilitate SDVOSB/VOSB participation. Evidence of such negotiation includes the names, addresses, e-mail address and telephone numbers of SDVOSB/VOSBs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for SDVOSB/VOSBs to perform the work.

8.4.2 A Design-Builder using good business judgment would consider a number of factors in negotiating with Subcontractors, including SDVOSB/VOSB Subcontractors, and would take a SDVOSB/VOSB firm's price and capabilities as well as Contract SDVOSB/VOSB participation goals into consideration. However, the fact that there may be some additional costs involved in finding and using SDVOSB/VOSBs is not in itself sufficient reason for a Design-Builder's failure to meet the Contract SDVOSB/VOSB participation goals, as long as such costs are reasonable. Also, the ability or desire of a Design-Builder to perform the work of a Contract with its own organization does not relieve the Design-Builder of the responsibility to make Good Faith Efforts. Design-Builder or its Subcontractors are not, however, required to accept higher quotes from SDVOSB/VOSBs if the price difference is excessive or unreasonable.

8.5 SDVOSB/VOSBs may not be rejected as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Design-Builder's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of bids in the Design-Builder's efforts to meet the Contract goals.

8.6 Making efforts to assist interested SDVOSB/VOSBs in obtaining bonding, lines of credit, or insurance as required by the Illinois Tollway or Design-Builder.

8.7 Making efforts to assist interested SDVOSB/VOSBs in obtaining necessary equipment, supplies, materials, or related assistance or services.

8.8 Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of SDVOSB/VOSBs.

8.9 A Design-Builder that rejected a SDVOSB/VOSB firm based on price must provide to the Illinois Tollway all quotes received for the scope of work proposed by the SDVOSB/VOSB from all firms, including non-SDVOSB/VOSBs.

8.10 If the Illinois Tollway determines through its monitoring that the Design-Builder is in jeopardy of not achieving the Contract SDVOSB/VOSB participation goals by the completion of the Project, a request may provide additional written documentation and/or argument concerning the issue of whether an adequate good faith effort was made to meet the Contract SDVOSB/VOSB goals. The request will be forwarded to the "Illinois State Toll Highway Authority, Procurement Department, Chief of Contract Compliance". The Chief of Contract Compliance may extend an opportunity to the Design-Builder to meet in person in order

to consider all issues of whether the Design-Builder made a good faith effort to meet the Contract SDVOSB/VOSB participation goals. Such meeting shall extend the time for a decision. After the review by the Chief of Contract Compliance, the Design-Builder will be sent a written decision within ten (10) working days after receipt of the request for reconsideration or the date of the meeting, explaining the basis for finding that the Design-Builder did or did not meet the goals or make adequate Good Faith Efforts to do so. A final decision by the Chief of Contract Compliance that a good faith effort was made and sufficient may lead to an approval of the SDVOSB/VOSB participation towards the goals by the Design-Builder despite the possible shortfall and shall clear the Contract for Contract closeout. If a final decision that a good faith effort was not made could result in penalties and sanctions as outlined in the Contract and this Special Provision.

#### 9. Contract Compliance:

Compliance with this section is an essential part of the Contract. The following administrative procedures and remedies govern Design-Builder's compliance with the contractual obligations established by the Initial SDVOSB/VOSB Utilization Plan. Design-Builder shall also update its SDVOSB/VOSB Performance Plan submitted as part of its Proposal. The SDVOSB/VOSB Performance Plan shall describe the methods to be employed for achieving the Contract SDVOSB/VOSB participation goals, including Design-Builder's exercise of Good Faith Efforts and the SDVOSB/VOSB Achievement Strategy for meeting the goals. The SDVOSB/VOSB Performance Plan must at a minimum, ensure compliance with the Illinois Tollway's Veteran-Owned Small Business (VOSB) program.

The Illinois Tollway shall approve the Initial SDVOSB/VOSB Utilization Plan and SDVOSB/VOSB Performance Plan with the SDVOSB/VOSB Achievement Strategy. The approved plans become part of the Contract.

To receive the first Notice to Proceed, the Proposer must submit for the Illinois Tollway's review signed subcontracts with all VOSBs proposed on the Initial Utilization Plan to meet the goals within twenty (20) calendar days of Award of the Project. For additional VOSB participation after Award to meet the Contract VOSB participation goals, the Design-Builder shall submit a VOSB Letter of Intent (LOI) for each proposed VOSB firm to Illinois Tollway for approval and the signed VOSB subcontract prior to the performance of work by such VOSB firm.

9.1 The commitments made through the Initial SDVOSB/VOSB Utilization Plan and the SDVOSB/VOSB Participation Statement/LOI may not be amended after the Contract has been executed without the Illinois Tollway's prior written approval.

9.2 Design-Builder may not make changes to its contractual certified SDVOSB/VOSB vendor commitments pre-Award or post-Award or substitute certified SDVOSB/VOSB firms or make any other changes to the approved Initial SDVOSB/VOSB Utilization Plan and any updated SDVOSB/VOSB Utilization Plan without the prior written approval of the Illinois Tollway.

Unauthorized changes or substitutions, including performing the work designated for a certified SDVOSB/VOSB firm with Design-Builder's own forces, shall be a violation of this Special Provision, the SDVOSB/VOSB Utilization Plan and a breach of the Contract.

If a Change Order is issued by the Illinois Tollway or Contingency Work is authorized, the Design-Builder, in Illinois Tollway's discretion, will be required to amend its VOSB Utilization Plan to reflect the recalculated VOSB dollars and any percentage change in the goals. The Contract VOSB participation goals may change in the Illinois Tollway's discretion to reflect a Change Order or the authorization of Contingency Work.

9.3 The facts supporting the request for changes to the Initial VOSB Utilization Plan and any updated VOSB Utilization Plan must not have been known nor reasonably should have been known by the parties prior to entering into the subcontract with the VOSB firm. Design-Builder must negotiate with the certified SDVOSB/VOSB firm to resolve the problem. If requested by either party, the Illinois Tollway shall facilitate such a meeting. The certified SDVOSB/VOSB firm can only be substituted where there has been a mistake or disagreement about the scope of work or goods/equipment, provided that an agreement cannot be reached for a reasonable price or schedule for the correct scope of work. Requests should be sent to [contractcompliance@getipass.com](mailto:contractcompliance@getipass.com).

9.4 Substitutions of a certified SDVOSB/VOSB firm may be permitted under the following circumstances:

- a. Unavailability after receipt of reasonable notice to proceed;
- b. Failure of performance;
- c. Financial incapacity;
- d. Refusal by the certified SDVOSB/VOSB vendor to honor the bid or bid price or scope;
- e. Material mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
- f. Failure of the certified SDVOSB/VOSB vendor to meet insurance, licensing or bonding requirements;
- g. The certified SDVOSB/VOSB vendor's withdrawal of its bid or offer; or
- h. Decertification of the certified SDVOSB/VOSB vendor.

9.5 If it becomes necessary to substitute a certified SDVOSB/VOSB firm or otherwise change the SDVOSB/VOSB Utilization Plan, Design-Builder must notify the Illinois Tollway in writing of the request to substitute a certified SDVOSB/VOSB firm or otherwise change the SDVOSB/VOSB Utilization Plan to [contractcompliance@getipass.com](mailto:contractcompliance@getipass.com) to request for approval. The request must state specific reasons for the substitution or change. The Illinois Tollway will approve or deny a request for substitution or other change in the SDVOSB/VOSB Utilization Plan within five (5) business days of receipt of the request.

9.6 Where Design-Builder has established the basis for the substitution to the Illinois Tollway's satisfaction, it must make Good Faith Efforts to meet the Contract SDVOSB/VOSB participation goals by substituting a certified SDVOSB/VOSB firm. Documentation supporting the replacement of a certified SDVOSB/VOSB firm, or of Good Faith Efforts to replace the certified SDVOSB/VOSB firm, must meet the requirements of the Initial SDVOSB/VOSB Utilization Plan. If the goals cannot be reached and Good Faith Efforts have been made, Design-Builder may substitute with a non-certified SDVOSB/VOSB firm or Design-Builder may perform the work.

9.7 If Design-Builder plans to hire a Subcontractor for any scope of work that was not previously disclosed in the Initial SDVOSB/VOSB Utilization Plan, Design-Builder must obtain the approval of the Illinois Tollway to modify the Initial SDVOSB/VOSB Utilization Plan and must make Good Faith Efforts to ensure that certified SDVOSB/VOSB firms have a fair opportunity to submit a bid or offer on the new scope of work.

9.8 A new certified SDVOSB/VOSB vendor agreement, VOSB Letter of Intent Participation Statement (VOSB Form 2025DB), for the substituted VOSB (if applicable) and an amended VOSB Utilization Plan must be executed and submitted to the Illinois State Toll Highway Authority, Contract Compliance Team at [contractcompliance@getipass.com](mailto:contractcompliance@getipass.com) within five (5) business days of Design-Builder's receipt of the Illinois Tollway's approval for the substitution or other change.

9.9 Veteran payment reporting, in such form or format as specified by the Tollway, must be submitted as specified in the Contract Compliance Payment Reporting Instructions posted on the Tollway's website.

After the performance of the final item of work or delivery of material by a SDVOSB/VOSB firm and final payment to the SDVOSB/VOSB firm by the Design-Builder, but not later than thirty (30) calendar days after payment has been made by Illinois Tollway to the Design-Builder for such work or material, the Design-Builder shall submit to the Construction Manager the SDVOSB/VOSB firms' partial and final waivers of lien via B2GNow, or such other form or format as specified by the Illinois Tollway. Not complying with this requirement may delay processing of pay estimates and/or retainage. If full and final payment has not been made to the SDVOSB/VOSB firm, Design-Builder shall report that a disagreement concerning the final payment exists between the Design-Builder and the SDVOSB/VOSB firm or that the Design-Builder believes that the SDVOSB/VOSB's work has not been satisfactorily completed.

All active Illinois Tollway vendors/contractors/consultants will be required to use B2GNow. Both diverse and non-diverse Subcontractor payments must be reported and confirmed monthly in the system at <https://iltollway.diversitysoftware.com/>.

Design-Builder shall maintain a record of all relevant data with respect to the utilization of certified SDVOSB/VOSB firms, including but without limitation, payroll records, invoices, canceled checks and books of account for a period of at least five years after the completion of the Contract. Full access to these records shall be granted by Design-Builder in a timely fashion upon written demand by the Illinois Tollway to any duly authorized representative thereof, or to any municipal, state or federal authorities. The Illinois Tollway shall have the right to obtain from Design-Builder any additional data reasonably related or necessary to verify any representations by Design-Builder. After the performance of the final item of work or delivery of material by the certified SDVOSB/VOSB vendor and final payment to the certified SDVOSB/VOSB vendor by Design-Builder, but not later than thirty (30) calendar days after such payment, Design-Builder shall submit a statement confirming the final payment and the total payments made to the certified SDVOSB/VOSB firm under the Contract.

9.10 The Illinois Tollway reserves the right to withhold payment to Design-Builder to enforce these provisions and Design-Builder's contractual commitments. Final payment shall not be made pursuant to the Contract until Design-Builder submits sufficient documentation demonstrating compliance with its Initial and revised SDVOSB/VOSB Utilization Plans and SDVOSB/VOSB Performance Plan.

#### 9.11 Partnering for Growth (P4G) Program

The Design-Builder is strongly encouraged to participate in the Illinois Tollway Partnering for Growth (P4G) program. The Design-Builder is encouraged to execute at least one construction mentoring agreement and at least one Professional Services mentoring agreement for work related to the Project. The submission of at least one signed Memorandum of Understanding (MOU) with a Professional Services firm may be included with the response in addition to an affirmative commitment to submit a MOU with a construction firm no later than 30 days before the start of construction. The Design-Builder may submit the Construction MOU at least 30 days before the start of construction work. Following Award of the Contract, if the Design-Builder elects to participate in the P4G program, the Design-Builder will submit a P4G Agreement to Illinois Tollway for each VOSB mentee with an approved MOU. The Agreement will be more detailed than the MOU submitted describing the Protégé's participation by tasks, hours, and deliverables. It will also provide a schedule for monitoring progress, submitting interim reports, and preparing a final assessment of the Mentor and Protégé relationship on the Project.

Additionally, Illinois Tollway staff will conduct periodic compliance reviews to monitor and report the Protégé's progress. Following Illinois Tollway's approval of the Agreement, a quarterly report must be submitted to Illinois Tollway to verify payments toward meeting the stated level of Protégé's participation in the P4G Program. This report shall summarize the services and/or skills provided to Protégé, including hours and areas of involvement, managerial, technical, or financial-related assistance.

#### 10. Sanctions

The Illinois Tollway will periodically review the Design-Builder's compliance with this Special Provision, SDVOSB/VOSB LOIs, SDVOSB/VOSB Utilization Plan and SDVOSB/VOSB Performance Plan. Without limitation, the Design-Builder's failure to comply with this Special Provision, SDVOSB/VOSB

LOIs, SDVOSB/VOSB Utilization Plan and SDVOSB/VOSB Performance Plan; failure to cooperate in providing information regarding its compliance with this Special Provision, SDVOSB/VOSB LOIs, SDVOSB/VOSB Utilization Plan and SDVOSB/VOSB Performance Plan; or provision of false or misleading information or statements concerning compliance, certification status of SDVOSB/VOSBs, Good Faith Efforts or any other material fact or representation shall constitute a material breach of this Contract and may result in damages to Illinois Tollway.

10.1 Such breach or damages entitle the Illinois Tollway to suspend for cause (under Section 18.2(k) of the Contract), declare a default (under Section 20.1 (m) of the Contract), terminate the Contract for cause (under Section 19.5 of the Contract), impose liquidated damages (under Section 21.6 of the Contract) or exercise those remedies provided for in the Contract or at law or in equity. Liquidated damages shall be based on the damage to the Illinois Tollway from the Design-Builder's lack of good faith supporting documentation and/or failure to meet other requirements of this Special Provision in an amount up to the monetary difference between the amount committed to by the Design-Builder in its final SDVOSB/VOSB Utilization Plan and the amount actually paid to SDVOSB/VOSB firms.

Sanctions may include, but are not limited to, monetary sanctions (including non-release of retainage); imposition of the monetary cost of audits resulting in findings of noncompliance; deeming the Design-Builder non-responsible with respect to future business with Illinois Tollway; and any other sanctions as are permitted by law.

In imposing sanctions, Illinois Tollway will consider the bona fide efforts of the Design-Builder to meet the SDVOSB/VOSB goals, its history of Good Faith Efforts on other Illinois Tollway contracts, the size of the Contract, the degree to which the Design-Builder fell below the SDVOSB/VOSB goals, and other factors deemed relevant by Illinois Tollway.

The Design-Builder may appeal the decision to impose sanctions within five (5) working days of its receipt of the written decision by filing an appeal in hard copy or electronic format with the Illinois State Toll Highway Authority's Sanctions Committee. Actual delivery of the hard copy and electronic formats within the five (5) business days is required and mere posting by mail within that period is not sufficient. An appeal may provide additional documentation and/or arguments and request an oral presentation to Illinois Tollway's Sanctions Committee. The Illinois Tollway's Sanctions Committee shall notify the Design-Builder in writing of the final determination and the basis for the determination within ten (10) working days after receipt of the appeal or after the date of the oral presentation by the Design-Builder, whichever is later. The Design-Builder may appeal an adverse decision within five (5) working days of receipt of the final determination to the Executive Director by filing an appeal in hard copy and electronic format to Illinois State Toll Highway Authority, Executive Director, 2700 Ogden Avenue, Downers Grove, Illinois 60515-1703, [contractcompliance@getipass.com](mailto:contractcompliance@getipass.com). The Executive Director or his/her designee, which designee shall not be employed within Illinois Tollway's Contract Compliance Team, may solicit information from the Design-Builder, the Diversity and Strategic Development Department, the Chief of Contract Compliance, the Law Department, Internal Audit, the Procurement Department, and anyone else in his/her discretion, and shall render a final decision on the Design-Builder's appeal within thirty (30) calendar days.

11. Inaccurate or Fraudulent Reporting

The Design-Builder has a duty to accurately report information pursuant to this Special Provision. A Design-Builder who fails to supply accurate information is subject to sanctions imposed by Illinois Tollway. A Design-Builder who intentionally supplies inaccurate information may be subject to civil and/or criminal sanctions.

12. Other Regulations

The adherence to the Contract SDVOSB/VOSB participation goals does not abrogate other responsibilities of the Design-Builder to comply with affirmative action requirements under state law, municipal ordinance, prevailing government regulations or terms contained elsewhere in the Contract.

## EXHIBIT 8: FORM OF GUARANTY AGREEMENT

[PM: Use this form if Design-Builder will be securing its obligations through a Guarantor.]

### FORM OF GUARANTY

THIS GUARANTY (this “**Guaranty**”) is made as of \_\_\_\_, 20\_\_ by \_\_\_\_\_, a (“**Guarantor**”), in favor of the Illinois State Toll Highway Authority, an agency of the State of Illinois (“**Illinois Tollway**”).

### RECITALS

- A. [\_\_\_\_\_] , as Design-Builder (“**Design-Builder**”), and the Illinois Tollway are parties to that certain Contract pursuant to which Design-Builder has agreed to design and construct the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Contract Documents.
- B. To induce the Illinois Tollway to (i) enter into the Contract; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.
- C. Design-Builder is a [STATE], [Form of Organization]. The Guarantor is a [STATE], [Form of Organization].

The execution of the Contract by the Illinois Tollway and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, the Illinois Tollway would not have entered into the Contract with Design-Builder. Therefore, in consideration of the Illinois Tollway’s execution of the Contract and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. Guaranty. Guarantor guarantees to the Illinois Tollway and its successors and assigns the full and prompt payment and performance when due of all of the obligations of Design-Builder arising out of, in connection with, under or related to the Work under the Contract Documents. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the “**Guaranteed Obligations.**”
2. Unconditional Obligations. This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether

or not enforceable against Design-Builder. If any payment made by Design-Builder or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the Contract Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting Design-Builder, Guarantor or their respective assets, and (b) the existence of any claim or set-off which Design-Builder has or Guarantor may have against the Illinois Tollway, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

3. Independent Obligations. Guarantor agrees that the Guaranteed Obligations are independent of the obligations of Design-Builder and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Design-Builder is joined therein. the Illinois Tollway may maintain successive actions for other defaults of Guarantor. the Illinois Tollway's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a. Guarantor agrees that the Illinois Tollway may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against Design-Builder. Guarantor hereby waives the right to require the Illinois Tollway to proceed against Design-Builder, to exercise any right or remedy under any of the Contract Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between Design-Builder and the Illinois Tollway or their respective successors and assigns, with respect to any of the Contract Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the Contract Documents or any modification thereof; (iii) any release of Design-Builder from any liability with respect to any of the Contract Documents; or (iv) any release or subordination of any collateral then held by the Illinois Tollway as security for the performance by Design-Builder of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the Contract Documents or the pursuit by the Illinois Tollway of any

remedies which the Illinois Tollway either now has or may hereafter have with respect thereto under any of the Contract Documents.

d. Notwithstanding anything to the contrary contained elsewhere in this Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the obligations of the Design-Builder under the Contract. Accordingly, in the event that the Design-Builder's obligations are changed by any modification, agreement or stipulation between Design-Builder and the Illinois Tollway or their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so changed.

#### 4. Liability of Guarantor.

a. the Illinois Tollway may enforce this Guaranty upon the occurrence of a breach by Design-Builder of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between the Illinois Tollway and Design-Builder with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. the Illinois Tollway, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of Design-Builder, if and as permitted by the Contract, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of the Illinois Tollway in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that the Illinois Tollway may have against any such security, as the Illinois Tollway in its sole discretion may determine, and (vi) exercise any other rights available to it under the Contract Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than infeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them:

(i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto;

(ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract Documents or any agreement or instrument executed pursuant thereto; (iii) the Illinois Tollway's consent to the change, reorganization or termination of the corporate structure or existence of Design-Builder; (iv) any defenses, set-offs or counterclaims that Design-Builder may allege or assert against the Illinois Tollway in respect of the Guaranteed Obligations, except as provided in Section 21.

5. Waivers. To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require the Illinois Tollway to proceed against Design-Builder or any other Person or to proceed against or exhaust any security held by the Illinois Tollway at any time or to pursue any right or remedy under any of the Contract Documents or any other remedy in the Illinois Tollway's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, Design-Builder or any other Person or the failure of the Illinois Tollway to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by the Illinois Tollway even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against Design-Builder by the operation of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of Design-Builder under any of the Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto; (f) any defense based upon any act or omission of the Illinois Tollway which directly or indirectly results in or aids the discharge or release of Design-Builder, Guarantor or any security given or held by the Illinois Tollway in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

6. Waiver of Subrogation and Rights of Reimbursement. Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against Design-Builder that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of the Illinois Tollway against Design-Builder, or any other security or collateral that the Illinois Tollway now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Design-Builder or any shareholders, partners, members, or joint venturers of Design-Builder to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as Design-Builder shall be in default in the performance

of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Design-Builder or any shareholders, partners, members, or joint venturers of Design-Builder to Guarantor without the prior written consent of the Illinois Tollway. Any payment by Design-Builder or any shareholders, partners, members, or joint venturers of Design-Builder to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for the Illinois Tollway.

7. Waivers by Guarantor if Real Property Security. If the Guaranteed Obligations are or become secured by real property or an estate for years, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

a. the Illinois Tollway may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Design-Builder.

b. If the Illinois Tollway forecloses on any real property collateral pledged by Design-Builder:

(1) The amount of the Guaranteed Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(2) the Illinois Tollway may collect from Guarantor even if the Illinois Tollway, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Design-Builder.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations are secured by real property.

8. Cumulative Rights. All rights, powers and remedies of the Illinois Tollway hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to the Illinois Tollway, whether at law, in equity or otherwise.

9. Representations and Warranties. Guarantor represents and warrants that:

a. it is a corporation duly organized, validly existing, and in good standing under the laws of the State of [select whichever is applicable] [is qualified to do business and is in good standing under the laws of the State of Illinois] [is not engaged in the conduct of business in the State of Illinois and therefore has not qualified to do business in the State of Illinois];

b. it has all requisite corporate power and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) the certificate of incorporation or by-laws of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Contract Documents or referred to therein, the financial status of Design-Builder and the ability of Design-Builder to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the Contract Documents and is fully informed of the remedies the Illinois Tollway may pursue, with or without notice to Design-Builder or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of Design-Builder and will keep itself fully informed as to all aspects of the financial condition of Design-Builder, the performance of the Guaranteed Obligations and of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of the Illinois Tollway to disclose any matter, fact or thing relating to the business, operations or conditions of Design-Builder now known or hereafter known by the Illinois Tollway;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Authority which challenges the validity or enforceability of this Guaranty.

10. Governing Law. The validity, interpretation and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Arizona applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are

preempted by Federal law. Guarantor consents to the jurisdiction of the State of Arizona with regard to this Guaranty. The venue for any action regarding this Guaranty shall be [].

11. Entire Document. This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by the Illinois Tollway referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

12. Severability. If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

13. Notices. Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, addressed as follows:

If to the Illinois Tollway: Illinois State Toll Highway Authority

[]

Attn: []

Telephone: []

E-mail: []

With copies to: Attorney General

[Address]

Telephone: []

E-mail: [] Facsimile:[]

If to Guarantor:

Attention:

Telephone :                      Email: Facsimile:

Either Guarantor or the Illinois Tollway may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notices delivered by email communication shall be deemed received when actual receipt at the email address of the addressee is confirmed. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Central Standard Time and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

14.     Captions. The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

15.     Assignability. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and the Illinois Tollway, but is not assignable by Guarantor without the prior written consent of the Illinois Tollway, which consent may be granted or withheld in the Illinois Tollway's sole discretion. Any assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

16.     Construction of Contract. Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

17.     No Waiver. Any forbearance or failure to exercise, and any delay by the Illinois Tollway in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

18.     Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.

a.     The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the

bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Design-Builder or by any defense which Design-Builder may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. the Illinois Tollway is not obligated to file any claim relating to the Guaranteed Obligations if Design-Builder becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of the Illinois Tollway so to file will not affect Guarantor's obligations under this Guaranty.

b. Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and the Illinois Tollway that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve Design-Builder of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay the Illinois Tollway, or allow the claim of the Illinois Tollway in respect of, any such interest accruing after the date on which such proceeding is commenced.

19. Attorneys' Fees. Guarantor agrees to pay to the Illinois Tollway without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by the Illinois Tollway in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

20. Joint and Several Liability. If the Guarantor is comprised of more than one individual and/or entity, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to Design-Builder and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

21. Defenses. Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all rights and defenses available to Design-Builder under the Contract except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of Design-Builder and any other defense to formation of the Contract, and (c) defenses available to Design-Builder under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT 9: CLAIMS PROCESS

If the Design-Builder files a Claim for an adjustment in a Completion Deadline(s) or Contract Price, the Design-Builder shall utilize the Illinois Tollway's Web-Based Program Management System in accordance with the requirements and procedures specified herein.

If the Claim, after consideration by the Illinois Tollway, is determined by the Illinois Tollway to have merit, the Illinois Tollway will grant an equitable adjustment to the Completion Deadline(s) and/or the Contract Price.

The Design-Builder shall file a Claim with the Illinois Tollway by following the steps below:

### 1. Submission of a Claim

If the Illinois Tollway has issued an Extra Work Order authorizing the Work that is subject of a Claim, the Design-Builder shall be required to file a Claim within 21 days from the date of completion of the Work upon which the Claim is based.

If the Illinois Tollway has not issued a Work Order authorizing the Work that is subject of a Claim, Design-Builder shall file a Claim through the WBPM in a timely manner but no later than thirty (30) days prior to the anticipated date of Substantial Completion.

### 2. Waiver of the Claim

If the notice of intent to make a Claim or the Claim itself is not timely filed and/or filed in a manner substantially consistent with the provisions of this Exhibit, the Claim shall be deemed waived, and the Illinois Tollway shall be released from any and all demands and obligations for extra time or compensation arising from or associated with the underlying Claim.

The Design-Builder shall afford the Illinois Tollway every opportunity and facility for keeping account of the actual nature, cost and impact on the Work schedule. Failure on the part of the Design-Builder to afford the Illinois Tollway opportunity and facility for keeping strict account of the Work will constitute waiver of any Claim for the requested adjustment to the Completion Deadline(s) or Contract Price.

### 3. Claim information and details:

The submitted Claim shall have sufficient detail to enable the Illinois Tollway to ascertain the basis of the Claim and the amount of the Claim. At a minimum, the following information must be provided with each Claim submitted, at the time the Claim is submitted:

- a. A detailed factual statement of the Claim which contains all relevant dates, locations and items of Work affected by the Claim;

- b. The specific provisions of the Contract that the Design-Builder is relying upon to support the Claim and a statement of reasons why the Design-Builder believes said provisions support the Claim. When, pursuant to the terms of the Contract, the Claim relates to a discretionary decision of the Illinois Tollway or a decision of the Illinois Tollway which the Contract provides is final, the Design-Builder shall set out in detail all facts purporting to support its assertion that the Illinois Tollway's exercise of its discretion or ultimate decision should be overridden;
- c. The identification of any documents and the substance of any oral communications purporting to support the Claim. Copies of any clearly identified documents purporting to support the Claim (manuals which are standard to the industry and used by the Design-Builder may be included by reference);
- d. The exact amount of the proposed adjustment of the Contract Price sought together with a breakdown of that amount into direct labor, direct materials, direct equipment and/or time. If there is agreement on unit prices in accordance with Book 1, Section 17.10 (*Change Order Pricing*), the breakdown also should include direct jobsite overhead and direct offsite overhead;
- e. The proposed number of additional days required to start the Work or complete the Work shall be recorded, documented, and supported by a detailed description of the project conditions that justify the Claim for Completion Deadline(s) extension; and
- f. A statement to the effect that the information contained in the Claim is made under penalty of perjury and that the person signing the Claim certifies that the statements made within the Claim are true, fully documented and supported by the underlying Contract. This statement must be notarized by a duly licensed Notary Public.

#### 4. Review and Approval Procedure

The Illinois Tollway has up to six levels of administrative review in relation to a Claim. At each level of review, the reviewing party shall consider the information submitted, and promptly request clarification or submission of any additional information it deems relevant or necessary, which Design-Builder shall be granted up to 10 days to provide.

The reviewing party at each level shall either approve or reject a Claim within the time period set forth below. An approval at any level shall be considered full resolution of the Claim, unless the Design-Builder appeals the resolution to the next level of review. In the event of a rejection, the reviewing party shall forward its comments to the rejection to the next review level within the same time period prescribed for completing its determination:

1. Construction Manager (CM)– If filed by Design-Builder in a timely fashion, the CM shall approve or reject the Claim within **10 calendar days** of the date when the Claim was submitted or the requested clarification or additional information was received, whichever is later.

2. Corridor Construction Manager (CCM) (if applicable) – The CCM shall approve or reject the Claim within **15 calendar days** of the date when the Claim was forwarded by the CM or the requested clarification or additional information was received, whichever is later.

3. Project Manager (PM) – The PM shall approve or reject the Claim within **3 business days (in projects where there is a CM) or 15 calendar days (in projects without a CM)** when the Claim was forwarded by the CCM or the CM (in projects without a CM) or the requested clarification or additional information was received, whichever is later.

4. Deputy Program Manager (DPM) (if applicable) – The DPM shall approve or reject the Claim within **3 business days** when the Claim was forwarded by the PM or the requested clarification or additional information was received, whichever is later.

5. Claims Administrator – The Claims Administration shall approve or reject the Claim within **30 calendar days** when the Claim was forwarded by the DPM or the PM (in projects where there is no DPM) or the requested clarification or additional information was received, whichever is later.

6. Chief Engineering Officer (CEO)/Chief of Engineering for Program Implementation (CEPI) – If a Claim is not resolved to the satisfaction of Design-Builder or the Claims Administrator does not provide a decision within the time period set forth above, Design-Builder may appeal to the CEO/CEPI within **15 calendar days** of the earlier of the time the decision was made or the time it was due to be made. Upon the submittal of a timely appeal, a Claim presentation meeting may be scheduled with the CEO/CEPI. The CEO's/CEPI's final decision will be rendered within 14 calendar days of the latter of the request for appeal or the Claim presentation meeting.

The CEO's/CEPI's written decision shall be the final administrative action of the Illinois Tollway.

## 5. Outcomes of Review

Claims review may result in one of the following outcomes.

a. Claim is approved.

If the Claim is approved at any level of administrative review, the Claim will not proceed to the next level of review, and an Authorization to Proceed (ATP) and, subsequently, a Change Order shall be issued in accordance with applicable Illinois Tollway policy.

b. Claim is rejected

If a reviewer rejects a Claim, the Claim shall advance to the next level of review. If a reviewer is unable to render a decision within the time prescribed, the Claim shall be deemed rejected at that level and shall advance to the next level of review. As set forth above, the CEO's/CEPI's written decision shall be the final administrative action of the Illinois Tollway, following which the Design-Builder may suit judicial review.

## 6. Miscellaneous

- a. The Design-Builder shall have no right to delay or halt the Work due to any dispute in connection with compensation of the Work. Completion of the Work shall be performed within the approved Completion Deadline(s) despite the pendency of any Claim.
- b. When additional, extra and/or altered Work is of such a character or magnitude, in the sole judgment of the Illinois Tollway, that the amount of time reasonably necessary to perform the Work as so revised will extend beyond the Completion Deadline(s), the Completion Deadline(s) may be extended by the Illinois Tollway prior to commencement of the extra or altered Work.
- c. The Design-Builder's Claim for an adjustment to Completion Deadline(s) shall be subject to the limitations stated in Book 1, Section 17.7 (*Adjustments to Completion Deadline(s)*). The Design-Builder shall submit a Claim to increase the Contract Price, subject to the limitations stated in Book 1, Section 17.8 (*Adjustments to Contract Price*).
- d. It is the responsibility of the Design-Builder to keep full and complete records of the costs and additional time incurred as a result of the facts or circumstances underlying a Claim. The Design-Builder shall permit the Illinois Tollway access to those records, and any other records, needed to evaluate and make a determine regarding the facts or contentions involved in the Claim. At all reasonable time and without charge to the Illinois Tollway, the Design-Builder shall provide access to the Illinois Tollway, for audit and inspection, of any records, and shall allow the Illinois Tollway and other Persons to make copies of such records (at no expense to Design-Builder). All records related to a Claim shall be retained and made available until and the Claim is finally resolved. Examples of records relevant to a Claim include all books and other evidence reflecting Design-Builder's associated costs, expenses, and delays. The Design-Builder shall retain those records in accordance with Book 1, Section 26.3.5 (*Retention of Records*).
- e. All Claims filed against the Illinois Tollway shall be subject to audit at any time following the filing of the Claim in accordance with Book 1, Section 26.3.4 (*Claims Audit*).

**EXHIBIT 10: WARRANTIES**

REFERENCE	DESCRIPTION	CONTRACTOR WARRANTY PERIOD	MANUFACTURER WARRANTY PERIOD
S.P.	EXPANSION JOINTS (JOINT SEAL SYSTEM - P.C.C. PAVEMENT) and NEW BRIDGE EXPANSION JOINTS	3 years	3 years
1067.09(j), Illinois Tollway Supplemental Specifications	LIGHT EMITTING DIODE (LED) LUMINAIRE <i>Complete luminaire (consisting of the housing, optical assembly, LED</i>	1 year	10 years

	<i>arrays or assemblies, LED drivers, integral control devices, surge protection devices, and internal wiring/terminal blocks)</i>		
S.P.	PAVEMENT MARKINGS	1 year	5 years

## EXHIBIT 11: STATE REQUIREMENTS

### 1. Wage Stipulations

This Contract calls for the construction of a **“public work,”** within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/1, et seq. or is a service contract subject to the prevailing wage requirement of the Illinois Procurement Code, 30 ILCS 500/25-60 (**“Code”**). The Illinois Prevailing Wage Act requires Design-Builder, contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current **“prevailing rate of wages”** (hourly cash wages plus fringe benefits) in the locality (county) where the work is performed. The Code requires vendors awarded certain service contracts to pay service workers no less than the general prevailing wage rate of hourly wages (hourly cash wages plus amount for fringe benefits in the locality (county) where the work is performed.

The Illinois Department of Labor publishes the prevailing wage rates on its website <https://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx>. The Illinois Department of Labor revises the prevailing wage rates and the Design-Builder, contractor/subcontractor has an obligation to check the Illinois Department of Labor’s website for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor’s website. Design-Builder, all contractors and subcontractors rendering services under this contract must comply with all requirements of the Illinois Prevailing Wage Act and Code, including but not limited to all wage requirements, notice, and record keeping duties.

The Design-Builder to whom the Contract is awarded shall insert into each subcontract and into the project specifications for each subcontract a written stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the contract. Each subcontractor shall insert into each lower tiered subcontract and into the project specifications for each lower tiered subcontract a stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the contract.

NOTE: The prevailing wages are revised by the Department of Labor and are available on the Department’s official website, which shall be deemed proper notification of any rate changes under this subsection. Vendor is responsible for contacting the Illinois Department of Labor to ensure understanding of prevailing wage requirements at 217-782-6206 or (<http://www.state.il.us/agency/idol/index.htm>).

Design-Builder will be responsible for ensuring that EEO work hours including those of their subcontractors are reported in the Tollway’s Capture system.

### AMENDMENTS TO ILLINOIS PREVAILING WAGE ACT

Effective July 16, 2014, the Illinois Prevailing Wage Act has been amended. Below is a summary of some of the important changes that may affect you:

- For each calendar month construction on the Illinois Tollway project occurs, a certified payroll must be filed no later than the 15th of the following month.
- Payroll records must be kept for five (5) years from the date of last payment on a contract or subcontract.
- Any person who willfully files a false payroll is guilty of a Class A misdemeanor.
- Any person who willfully fails to create, keep, maintain, or produce records as or when required by the Act is guilty of a Class A misdemeanor.
- Any contractor or subcontractor convicted or found guilty of the above is subject to automatic and immediate debarment and prohibited from participating in any public works project for four (4) years with no right to a hearing.

The full text of the Prevailing Wage Act can be found here: <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2405&ChapterID=68>

Effective immediately, per CPO Notice 2021.03.

#### EMPLOYMENT OF PUBLIC WORKERS ON PUBLIC WORKS:

In a period of excessive unemployment rates, State contractors (1) constructing or building any public works or (2) cleaning-up and disposing on-site of hazardous waste, and that clean-up or on-site disposal is funded or financed in whole or in part with State funds or funds administered by the State, are required to employ at least 90% Illinois laborers on such project. For projects involving clean-up and on-site disposal of hazardous waste, emergency response or immediate removal activities are excluded. This requirement applies to all labor whether skilled, semi-skilled or unskilled, whether manual or non-manual. A period of excessive unemployment rates is defined as any month immediately following two consecutive calendar months during which the level of unemployment in the State of Illinois has exceeded 5% as measured by the United States Bureau of Labor Statistics in its monthly publication of employment and unemployment figures. Any public works project financed in whole or in part by federal funds administered by the State of Illinois is covered under the provisions of this requirement, to the extent permitted by any applicable federal law or regulation. See 30 ILCS 570/1, et seq. Contractors may receive an exception from this requirement by submitting a request and supporting documents certifying that Illinois laborers are either not available or are incapable of performing the particular type of work involved. The certification must: (a) be submitted to the agency within the first quarter of the Contract Term; (b) provide sufficient support that demonstrates the exception is met; (c) be signed by an authorized signatory of the contractor; and (d) be approved by the agency.

The Illinois Prevailing Wage Act defines a period of excessive unemployment rates as any month immediately following two consecutive calendar months during which the State unemployment rate

exceeds 5%. To understand the details of the Employment of Illinois Workers on Public Works Act, please read it in its entirety:

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=549&ChapterID=7>

## **2. Tax Exemptions**

The Illinois Tollway is currently exempted from the payment of Illinois Retailer's Occupational Tax, Use Tax, Service Tax, Municipal Taxes and Federal Excise Tax.

The tax exempt number and form will become a part of the contract with the successful bidder

## **3. Tollway Power and Funds**

The Illinois Tollway has been created and derives its power under and pursuant to *“An Act in relation to the construction, operation, regulation and maintenance of a system of toll highways, and to create the Illinois State Toll Highway Authority, and to define its powers and duties, approved August 7, 1967,”* (Illinois Compiled Statutes, 605 ILCS 10/1, et seq. , as amended from time to time, hereinafter called the *“Act”*).

No payment or other obligations under this contract are or shall ever be construed to be obligations of the State of Illinois.

## **4. Illinois Human Rights Act**

Design-Builder is advised that the Illinois Tollway has heretofore by resolution adopted all of the applicable requirements and provisions of the Illinois Fair Employment Practices Act, now the Illinois Human Rights Act (Illinois Compiled Statutes, 775 ILCS 5/1-101, et seq., as amended from time to time) and all of the applicable rules and regulations promulgated thereunder, and that all such applicable requirements, provisions and rules and regulations are deemed to be a part of the contract and to apply to the contractor as if fully set out herein.

## **5. Multi-Project Labor Agreement**

The Multi-Project Labor Agreement is not in effect for this Contract.

## **6. Substance Abuse Prevention on Public Works Projects Act (SAPP) 820 ILCS 265/1, et seq.**

Pursuant to Section 15 of the Substance Abuse Prevention on Public Works Projects Act, 820 ILCS 265/15, all contractors/subcontractors shall have a SAPP program in place, with certain requirements, before starting work. The requirements of this statute are material to the contract, and the contractor shall require the same of all approved subcontractors.

## **7. Report of a Change in Circumstances**

Design-Builder agrees to report to the Illinois Tollway as soon as practically possible, but no later than twenty-one (21) days following any change in facts or circumstances that might impact Design-Builder’s ability to satisfy its legal or contractual responsibilities and obligations under this contract. Required reports include but

are not limited to changes in Design-Builder's Certification/Disclosure Forms, Design-Builder's IDOT pre-qualification status, or certification or licensing required for this project. Additionally, Design-Builder agrees to report to the Illinois Tollway within the above timeframe any arrests, indictments, convictions or other matters involving Design-Builder, Design-Builder Related Entities, or any of its principals, that might occur while this contract is in effect. The reporting requirement does not apply to common offenses, including but not limited to minor/traffic offenses.

Further, the contractor agrees to incorporate substantially similar reporting requirements into the terms of any and all subcontractors relating to work performed under this agreement. Design-Builder agrees to forward or relay to the Illinois Tollway any reports received from subcontractors pursuant to this paragraph within twenty-one (21) days.

Finally, Design-Builder acknowledges and agrees that the failure of Design-Builder to comply with this reporting requirement shall constitute a material breach of Contract which may result in this contract being declared void.

## **8. Inspector General**

Design-Builder hereby acknowledges that pursuant to Section 8.5 of the Toll Highway Act. 605 ILCS 10/8.5, the Inspector General of the Illinois Tollway has the authority to conduct investigations into certain matters including but not limited to allegations of fraud, waste and abuse, and to conduct reviews. Design-Builder shall fully cooperate in any OIG investigation or review. Cooperation includes providing access to all information and documentation related to the goods/services described in this agreement, and disclosing and making available all personnel involved or connected with these goods/services or having knowledge of these goods/services. All subcontracts must inform subcontractors of this provision and their duty to comply.

**EXHIBIT 12-A: PERFORMANCE BOND**

[PM: Insert an executed version of the Performance Bond as part of the execution version of the Contract.]

**EXHIBIT 12-B: PAYMENT BOND**

[PM: Insert an executed version of the Performance Bond as part of the execution version of the Contract.]

## EXHIBIT 13: PROJECT INFORMATION INDEX

#	DOCUMENT	TYPE
1	Intergovernmental Agreements	Supplemental
2	Existing Utility Plans from Historical CAD	Supplemental
3	Control Point Model File	Supplemental
4	Patching Model File (CAD)	Supplemental
5	Roadway Design Model File (CAD)	Supplemental
6	60% Revised Plan Set	Supplemental
7	Survey Model File	Supplemental
8	Cross Section Files	Supplemental
9	Geopak Files	Supplemental
10	All Existing CAD not Specified as Directive	Supplemental
11	Historical CAD	Supplemental
12	Cleaning and Televising Contract Plans	Supplemental
13	Historical Drawings	Supplemental
14	Historical Design Deviations	Supplemental
15	Base Sheets	Supplemental
16	4802 Barrier Warrant (60%)	Supplemental
17	Wetland Delineation CAD	Supplemental
18	Preliminary Utility Coordination	Supplemental
19	Asset Management Plan	Supplemental
20	All Structural Model Files	Supplemental
21	Railroad Agreements	Supplemental
22	Historical BWA	Supplemental
23	Invest Scorecard	Supplemental
24	RR-22-4876 Cleaning and Televising Results	Supplemental
25	Responses to questions received during the RFQ phase	Supplemental
26	Responses to questions received during the RFP phase [PM: add for contract execution]	Supplemental

27	Conceptual Proposed Lighting Controller Layout	Supplemental
28	Preliminary Railroad Coordination Documents	Supplemental
29	Preliminary Utility Coordination Documents	Supplemental
30	Preliminary Detour Coordination Documents	Supplemental

**EXHIBIT 14: BOND AGAINST DEFECTIVE WORK**

**THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY  
2700 OGDEN AVENUE DOWNERS  
GROVE, ILLINOIS 60515**

**SURETY BOND  
(GUARANTY AGAINST DEFECTIVE WORK)**

CONTRACT NO.: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, \_\_\_\_\_,  
as principal (also called the "Design-Builder" herein) and \_\_\_\_\_,  
as Surety, are held and firmly bound unto THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY in  
the penal sum of \$ \_\_\_\_\_  
good and lawful money of the United States of America for the payment of which sum of money will and  
truly to be made we bind ourselves, our successors and assigns, jointly and severally, firmly  
by these Presents.

WHEREAS, the Design-Builder has completed all parts of The Work relating to the improvement  
provided for by the above-numbered Contract (which contract is hereby referred to and made a part hereof  
as if written herein at length), THE CONDITION OF THE ABOVE OBLIGATION is such that if the said  
, shall, for a period of one year from the date of certification of contract completion as stated in Article  
109.08(b) of the Illinois Tollway Supplemental Specifications, replace all work performed and materials  
furnished that were not performed or furnished according to the terms of the Contract, and make good  
defects thereof regardless of cause which have become apparent before the expiration of said one year  
period.

If the Design-Builder refuses or neglects to replace, repair or make good any part of The  
Work within five (5) days of written notification of the need to do so by THE ILLINOIS STATE  
TOLL HIGHWAY AUTHORITY, THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY may  
have The Work done by others, and the cost thereof shall be paid by the Design-Builder or his Surety.

In an emergency, as determined by the Chief Engineering Officer, the Authority has reserved  
the right to immediately effect both temporary and permanent repairs, or arrange for others to effect such

repairs, without notification to the Design-Builder, and the Design-Builder agrees that in such event the Authority may charge such costs as may be incurred against the Design-Builder or his Surety.

The obligations of the Design-Builder and Surety under the Bond specified hereinabove shall not be construed as limiting, diminishing or in any way affecting the liability and obligations of the Design-Builder and Surety under the terms of the Contract Bond.

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Principal

By: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Surety

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

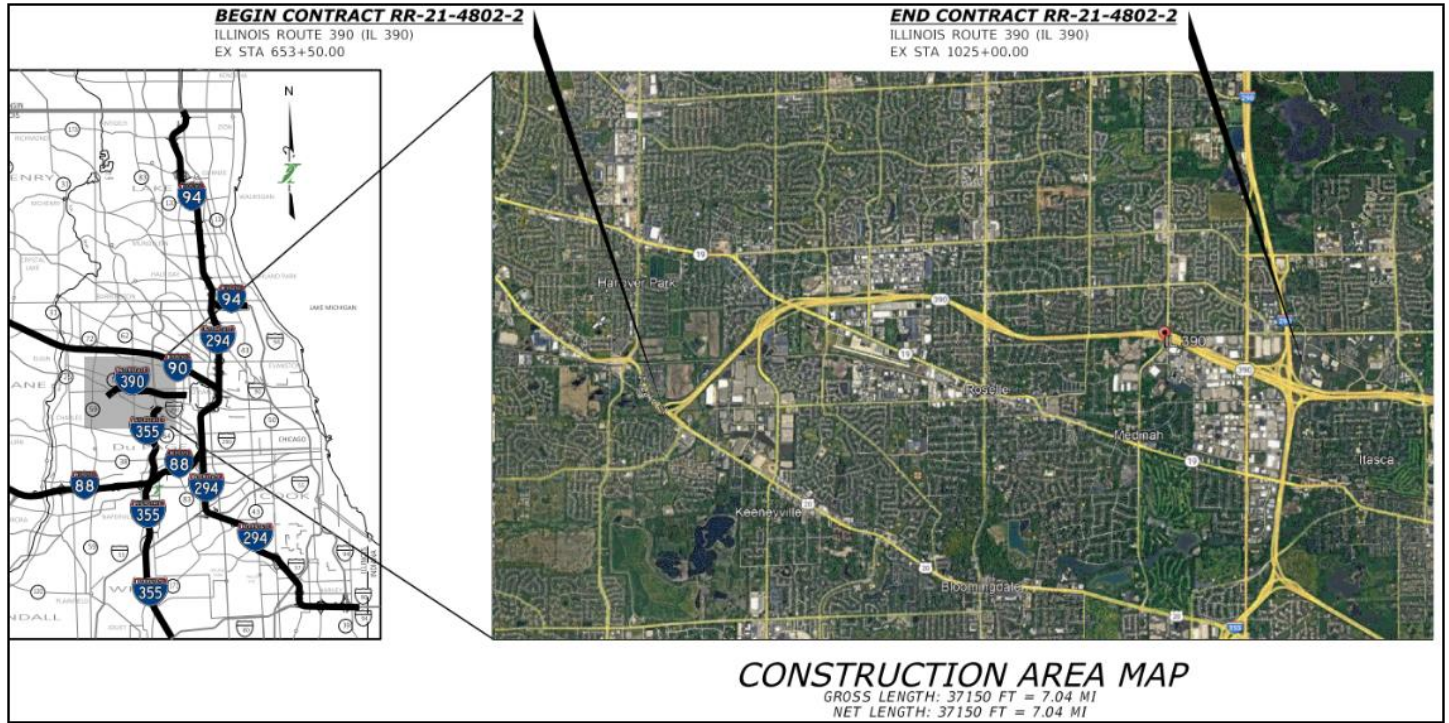
Attest:

\_\_\_\_\_  
Secretary

EXHIBIT 15: PROJECT MAP

RR-23-4920R

RR-23-4920R



**EXHIBIT 16: VENDOR DISCLOSURE (NO IPG REGISTRATION)**

A vendor responding to a solicitation by the State of Illinois must return the information requested within this section with their bid or offer if they are not registered in the Illinois Procurement Gateway (IPG) and do not have an approved, unexpired IPG Registration Number. Failure to do so may render their bid or offer non-responsive and result in disqualification.

Please read this entire Vendor Disclosure and provide the requested information as applicable and per the instructions. All forms and signature areas contained in this Vendor Disclosure must be completed in full and submitted along with the bid in an Invitation for Bid, and completed in full and submitted along with the technical response and price proposal, which combined will constitute the Offer, in a Request for Proposal.

Vendor Name:	Phone:
Street Address:	Email:
City, State Zip:	Vendor Contact:

The following table captures the key differences in terminology between the Design-Bid-Build and Design-Build delivery methods:

In compliance with the State and Federal Constitutions, the Illinois Human Rights Act, the U.S. Civil Rights Act, and Section 504 of the Federal Rehabilitation Act, the State of Illinois does not discriminate in employment, contracts, or any other activity.

The State of Illinois encourages prospective vendors to consider hiring qualified veterans and Illinois residents discharged from any Illinois adult correctional center, in appropriate circumstances.

<b>Definitions</b>		
<b>Design-Bid-Build Term</b>	<b>Design-Build Term</b>	<b>Design-Build Term Definition</b>
Bidder/Offeror	Proposer	Shall mean a Design-Build team, entity, or entities submitting an Statement of Qualification (SOQ) in response to this RFQ.
Vendor	Major Participant	Shall mean any of the following entities: all general partners or joint venture members of Proposer; all individuals, persons, proprietorships, partnerships, limited liability partnerships, corporations, professional corporations, limited liability companies, business associations, or other legal entity however organized, holding (directly or indirectly) a 20 percent or greater interest in Proposer; any subcontractor that will perform Work valued at 20 percent or more of the Contract Price; the lead design firm(s); and each design subconsultant that will perform 20 percent or more of the Design Work.
Bid/Offer/Proposal/Response	Statement of Qualifications (SOQ)	Shall mean the information prepared and submitted by a Proposer in response to this RFQ.
Contractor	Design-Builder/Design-Build Team	shall mean a Proposer that has entered into a Design-Build Contract with the Department under [the ITI] Act. (Section 10 of the ITI Act).
Invitation to Bid	Request for Qualifications	Shall mean the document issued by the Illinois Tollway to solicit Statements of Qualification (SOQs) for this Design-Build project.
Submission	SOQ Submission Due Date	Shall mean the last date the Illinois Tollway may accept SOQ submissions, as defined in this RFQ.

# OUTLINE

## VENDOR DISCLOSURE

Complete this section if you are not using an IPG (Illinois Procurement Gateway) Registration #

	Part
Business and Directory Information .....	1.
Illinois Department of Human Rights Public Contracts Number .....	2.
Authorized to Transact Business or Conduct Affairs in Illinois .....	3.
Standard Illinois Certifications .....	4.
State Board of Elections .....	5.
Disclosure of Business Operations in Iran.....	6.
Financial Disclosures and Conflicts of Interest .....	7.
Taxpayer Identification Number .....	8.

1.1. Name of Business (official name and DBA)

[Click here to enter text.](#)

1.2. Business Headquarters (address, phone and fax)

[Click here to enter text.](#)

[Click here to enter text.](#)

[Click here to enter text.](#)

1.3. If a Division or Subsidiary of another organization provide the name and address of the parent

[Click here to enter text.](#)

1.4. Billing Address

[Click here to enter text.](#)

[Click here to enter text.](#)

1.5. Name of Chief Executive Officer

[Click here to enter text.](#)

1.6. Company Web Site Address

[Click here to enter text.](#)

1.7. Type of Organization (sole proprietor, corporation, etc.--should be same as on Taxpayer ID form below)

[Click here to enter text.](#)

1.8. Length of time in business

[Click here to enter text.](#)

1.9. Annual Sales for Offeror's most recently completed fiscal year

[Click here to enter text.](#)

1.10. Show number of full-time employees, on average, during the most recent fiscal year

1.11. Is your company at least 51% owned and controlled by individuals in one of the following categories? If "Yes," please check the category that applies:

1.11.1. Minority (30 ILCS 575/2(A)(1) & (3))  Yes

1.11.2. Women (30 ILCS 575/2(A)(2) & (4))  Yes

1.11.3. Person with Disability (30 ILCS 575/2(A)(2.05) & (2.1))  Yes

1.11.4. Disadvantaged (49 CFR 26)  Yes

1.11.5. Veteran (30 ILCS 500/45-57)  Yes

- 2.1. If Offeror employed fifteen or more full-time employees at the time of submission of their response to this solicitation or any time during the previous 365-day period leading up to submission, it must have a current IDHR Public Contract Number or have proof of having submitted a completed application for one **prior** to contract award or prior to bid opening for construction or construction-related services. 775 ILCS 5/2-101. If the Agency cannot confirm compliance, it will not be able to consider a Vendor's bid or offer. Please complete the appropriate sections below:

Name of Company (and DBA): .

(check if applicable) The number is not required as the company has not met or exceeded the number of employees that makes registration necessary under the requirements of the Human Rights Act described above.

IDHR Public Contracts Number: Expiration Date: .

- 2.2. If number has not yet been issued, provide the date a completed application for the number was submitted to IDHR: .
- 2.3. Upon expiration and until their Contractor Identification Number is renewed, companies will not be eligible to be awarded contracts by the State of Illinois or other jurisdictions that require a current IDHR number as a condition of contract eligibility. 44 ILL. ADM. CODE 750.210(a).
- 2.4. Numbers issued by the Department of Human Rights (or its predecessor agency, the Illinois Fair Employment Practices Commission) prior to July 1, 1998 are no longer valid. This affects numbers below 89999-00-0. Valid numbers begin with 900000-00-0.
- 2.5. If Offeror's organization holds an expired number, it must re-register with the Department of Human Rights.
- 2.6. Offeror may obtain an application form by:
- 2.6.1. Telephone: Call the IDHR Public Contracts Unit at (312) 814-2431 between Monday and Friday, 8:30 AM - 5:00 PM, CST. (TDD (312) 263-1579).
- 2.6.2. Internet: You may download the form from the Department of Human Rights' website at <https://dhr.illinois.gov/>.
- 2.6.3. Mail: Write to the Department of Human Rights, Public Contracts Unit, 100 West Randolph Street, Suite 10-100, Chicago, IL 60601.


3. A person, other than an individual acting as a sole proprietor, must be a duly constituted legal entity prior to submitting a bid, offer, or response. The legal entity must be authorized to transact business or conduct affairs in Illinois prior to execution of the contract. 30 ILCS 500/20-43.

These requirements do not apply to construction contracts that are subject to the requirements of 30 ILCS 500/30-20 and 30 ILCS 500/33-10. The prequalification requirements of Sections 30-20 and 33-10 shall include the requirement that the bidder be registered with the Illinois Secretary of State.

Prior to execution of the contract, the State may request evidence from a vendor that certifies it is authorized to transact business or conduct affairs in Illinois. Failure to produce evidence in a timely manner may be considered grounds for determining the Vendor non-responsive or not responsible. For information on registering to transact business or conduct affairs in Illinois, please visit the Illinois Secretary of State's Department of Business Services at their website at ([http://cyberdriveillinois.com/departments/business\\_services/home.html](http://cyberdriveillinois.com/departments/business_services/home.html)) or your home county clerk.

**EVIDENCE OF BEING AUTHORIZED TO TRANSACT BUSINESS OR CONDUCT AFFAIRS IN ILLINOIS IS THE SECRETARY OF STATE'S CERTIFICATE OF GOOD STANDING**

File Number 776-383-1


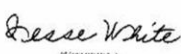


*To all to whom these Presents Shall Come, Greeting:*

*I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that*

XYZ CONSULTING, INC. INCORPORATED IN GEORGIA AND LICENSED TO TRANSACT BUSINESS IN THIS STATE ON JANUARY 20, 2011, APPEARS TO HAVE COMPLIED WITH ALL THE PROVISIONS OF THE BUSINESS CORPORATION ACT OF THIS STATE RELATING TO THE PAYMENT OF FRANCHISE TAXES AND AS OF THIS DATE IS A FOREIGN CORPORATION IN GOOD STANDING AND AUTHORIZED TO TRANSACT BUSINESS IN THE STATE OF ILLINOIS.

*In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 7TH day of JUNE A.D. 2011 .*



STATE OF ILLINOIS  
OFFICE OF THE SECRETARY OF STATE  
JESSE WHITE  
11/10/2011 10:45:00 AM  
WWW.CYBERDRIVEILLINOIS.COM

Vendor acknowledges and agrees that compliance with this subsection in its entirety for the term of the contract and any renewals is a material requirement and condition of this contract. By executing this contract Vendor certifies compliance with this subsection in its entirety, and is under a continuing obligation to remain in compliance and report any non-compliance.

This subsection, in its entirety, applies to subcontractors used on this contract. Vendor shall include these Standard Illinois Certifications in any subcontract used in the performance of the contract.

A contractor or subcontractor that has entered into a contract for more than one year in duration for the initial term or any renewal term shall certify, by January 1 of each fiscal year covered by the contract after the initial fiscal year, to the applicable chief procurement officer of any changes that affect its ability to satisfy the requirements of Article 50 of the Procurement Code pertaining to eligibility for contract award. If a contractor or subcontractor is not able to truthfully certify that it continues to meet all requirements, it shall provide with its Standard Illinois Certifications a detailed explanation of the circumstances leading to the change in certification status. If a contractor or subcontractor continues to meet all requirements of this Article, it shall not be required to submit any certification or if the work under the contract has been substantially completed before contract expiration, but the contract has not yet expired. A contractor or subcontractor that makes a false statement material to the Standard Illinois Certifications is, in addition to any other penalties or consequences prescribed by law, subject to liability under the Illinois False Claims Act for submission of a false claim. 30 ILCS 500/50-2.

If the Parties determine that any certification in this section is not applicable to this contract it may be stricken without affecting the remaining subsections.

4.1. As part of each certification, Vendor acknowledges and agrees that should Vendor or its subcontractors provide false information, or fail to be or remain in compliance with the Standard Illinois Certification requirements, one or more of the following sanctions will apply:

- the contract may be void by operation of law,
- the State may void the contract, and
- the Vendor and its subcontractors may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific certifications does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.

4.2. Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies he/she is not in default on an educational loan. 5 ILCS 385/3.

- 4.3. Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies it he/she has not received (i) an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code or (ii) an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code. 30 ILCS 105/15a; 40 ILCS 5/14-108.3; 40 ILCS 5/16-133.
- 4.4. For contracts other than construction contracts subject to the requirements of 30 ILCS 500/30-20 and 30 ILCS 500/33-10, Vendor certifies that it is a legal entity as of the date for submitting this bid, offer, or proposal. A person (other than an individual acting as a sole proprietor) must be a duly constituted legal entity to qualify as a bidder or offeror prior to submitting a bid, offer, or proposal. The legal entity must be authorized to transact business or conduct affairs in Illinois prior to execution of the contract. 30 ILCS 500/20-43.
- 4.5. For construction contracts subject to 30-20 and 33-10 of the Procurement Code, Vendor shall be registered with the Secretary of State as part of the pre-qualification process. 30 ILCS 500/20-43.
- 4.6. To the extent there was a current Vendor providing the services covered by this contract and the employees of that Vendor who provided those services are covered by a collective bargaining agreement, Vendor certifies (i) that it will offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid or offer; and (ii) that it shall offer employment to all employees currently employed in any existing bargaining unit who perform substantially similar work to the work that will be performed pursuant to this contract. This does not apply to heating, air conditioning, plumbing and electrical service contracts. 30 ILCS 500/25-80.
- 4.7. Vendor certifies it has neither been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor made an admission of guilt of such conduct that is a matter of record. 30 ILCS 500/50-5.
- 4.8. If Vendor has been convicted of a felony, Vendor certifies at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business. 30 ILCS 500/50-10.
- 4.9. If Vendor or any officer, director, partner, or other managerial agent of Vendor has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, Vendor certifies at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the State shall declare the contract void if this certification is false. 30 ILCS 500/50-10.5.
- 4.10. Vendor certifies it is not barred from having a contract with the State based upon violating the prohibitions related to either submitting/writing specifications or providing assistance to an employee of the State of Illinois by reviewing, drafting, directing, or preparing any invitation for bids, a request for proposal, or request of information, or similar assistance (except as part of a public request for such information). 30 ILCS 500/50-10(b), 30 ILCS 500/50-10.5(e).

- 4.11. Vendor certifies that it and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt or is actively disputing or seeking resolution), and Vendor and its affiliates acknowledge the State may declare the contract void if this certification is false or if Vendor or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt. 30 ILCS 500/50-11, 50-60.
- 4.12. Vendor certifies that it and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act and acknowledges that failure to comply may result in the contract being declared void. 30 ILCS 500/50-12.
- 4.13. Vendor certifies that it has not been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last five years, and is therefore not barred from being awarded a contract. 30 ILCS 500/50-14.
- 4.14. Vendor certifies it has neither paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract. 30 ILCS 500/50-25.
- 4.15. Vendor certifies it is not in violation of the "Revolving Door" provisions of the Illinois Procurement Code. 30 ILCS 500/50-30.
- 4.16. Vendor certifies that it has not retained a person or entity to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement. 30 ILCS 500/50-38.
- 4.17. Vendor certifies that if it has hired a person required to register under the Lobbyist Registration Act to assist in obtaining any State contract, that none of the lobbyist's costs, fees, compensation, reimbursements, or other remuneration were billed to the State. 30 ILCS 500/50-38.
- 4.18. Vendor certifies it will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers, or employees of the State. 30 ILCS 500/50-40, 50-45, 50-50.
- 4.19. Vendor certifies steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring Agency/University grants an exception. 30 ILCS 565.
- 4.20. Drug Free Workplace
  - 4.20.1. If Vendor employs 25 or more employees and this contract is worth more than \$5,000, Vendor certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act.
  - 4.20.2. If Vendor is an individual and this contract is worth more than \$5,000, Vendor certifies it shall not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the performance of the contract. 30 ILCS 580.

- 4.21. Vendor certifies that neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the United States. Department of Commerce. 30 ILCS 582.
- 4.22. Vendor certifies it has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States. 720 ILCS 5/33 E-3, E-4.
- 4.23. Vendor certifies it complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, which include providing equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies. 775 ILCS 5/2-105.
- 4.24. Vendor certifies it does not pay dues to or reimburse or subsidize payments by its employees for any dues or fees to any "discriminating club." 775 ILCS 25/2.
- 4.25. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor or indentured labor under penal sanction. 30 ILCS 583.
- 4.26. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor of any child under the age of 12. 30 ILCS 584.
- 4.27. Vendor certifies that any violation of the Lead Poisoning Prevention Act, as it applies to owners of residential buildings, has been mitigated. 410 ILCS 45.
- 4.28. Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
- 4.29. Vendor certifies that information technology, including electronic information, software, systems and equipment, developed or provided under this contract comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as published at ([www.dhs.state.il.us/iitaa](http://www.dhs.state.il.us/iitaa)). 30 ILCS 587.
- 4.30. Vendor certifies that it has read, understands, and is in compliance with the registration requirements of the Elections Code (10 ILCS 5/9-35) and the restrictions on making political contributions and related requirements of the Illinois Procurement Code. 30 ILCS 500/20-160 and 50-37. Vendor will not make a political contribution that will violate these requirements.

In accordance with section 20-160 of the Illinois Procurement Code, Vendor certifies as applicable:

Vendor is not required to register as a business entity with the State Board of Elections.

or

Vendor has registered with the State Board of Elections. As a registered business entity, Vendor acknowledges a continuing duty to update the registration as required by the Act.

4.31. Vendor certifies that if it is awarded a contract through the use of the preference required by the Procurement of Domestic Products Act, then it shall provide products pursuant to the contract or a subcontract that are manufactured in Illinois or the United States. 30 ILCS 517.

4.32. Vendor certifies that, for the duration of this contract it:

- will post its employment vacancies in Illinois and border states on the Department of Employment Security's IllinoisJobLink.com website or its successor system; or
- will provide an online link to these employment vacancies so that this link is accessible through the <https://illinoisjoblink.illinois.gov/> website its successor system; or
- is exempt from 20 ILCS 1005/1005-47 because the contract is for construction-related services as that term is defined in section 1-15.20 of the Procurement Code; or the contract is for construction and vendor is a party to a contract with a bona fide labor organization and performs construction. 20 ILCS 1005/1005-47.

4.33. Vendor certifies it is not prohibited by federal agencies pursuant to a United States Department of Homeland Security Binding Operational Directive due to cybersecurity risks. 30 ILCS 500/25-90.

5. Section 50-37 of the Illinois Procurement Code prohibits political contributions of certain vendors, bidders and offerors. Additionally, section 9-35 of the Illinois Election Code governs provisions relating to reporting and making contributions to state officeholders, declared candidates for State offices and covered political organizations that promote the candidacy of an officeholder or declared candidate for office. The State may declare any resultant contract void if these Acts are violated.

Generally, if a vendor, bidder, or offeror is an entity doing business for profit (i.e. sole proprietorship, partnership, corporation, limited liability company or partnership, or otherwise) and has contracts with State agencies that total more than \$50,000 or whose aggregate pending bids or proposals and current State contracts that total more than \$50,000, the vendor, bidder, or offeror is prohibited from making political contributions and must register with the State Board of Elections. 30 ILCS 500/20-160.

**EVIDENCE OF REGISTRATION WITH THE STATE BOARD OF ELECTIONS  
IS THE CERTIFICATE OF REGISTRATION**



6. In accordance with 30 ILCS 500/50-36, each bid, offer, or proposal submitted for a State contract, other than a small purchase defined in Section 20-20 of the Illinois Procurement Code, will include a disclosure of whether or not the bidder, offeror, or proposing entity, or any of its corporate parents or subsidiaries, within the 24 months before submission of the bid, offer, or proposal had business operations that involved contracts with or provision of supplies or services to the Government of Iran, companies in which the Government of Iran has any direct or indirect equity share, consortiums or projects commissioned by the Government of Iran and:
- more than 10% of the company’s revenues produced in or assets located in Iran involve oil-related activities or mineral-extraction activities; less than 75% of the company’s revenues produced in or assets located in Iran involve contracts with or provision of oil-related or mineral – extraction products or services to the Government of Iran or a project or consortium created exclusively by that Government; and the company has failed to take substantial action; or
  - the company has, on or after August 5, 1996, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each that in the aggregate equals or exceeds \$20 million in any 12- month period that directly or significantly contributes to the enhancement of Iran’s ability to develop petroleum resources of Iran.

A bid or offer that does not include this disclosure may be given a period after the bid or offer is submitted to cure non-disclosure. A chief procurement officer may consider the disclosure when evaluating the bid or offer or awarding the contract.

- There are no business operations that must be disclosed to comply with the above cited law.
- The following business operations are disclosed to comply with the above cited law:

[Click here to enter text.](#)

The Financial Disclosures and Conflicts of Interest form (“form”) must be accurately completed and submitted by the vendor, parent entity(ies), and subcontractors. There are **nine** steps to this form and each must be completed as instructed. A bid, offer, or response with an annual value of more than \$100,000 that does not include this form shall be considered non-responsive. The Agency will consider this form when evaluating the bid, offer, or response or awarding the contract. A vendor seeking or holding a contract with an annual value of more than \$100,000 shall provide this form which will become a material part of the contract.

The requirement of disclosure of financial interests and conflicts of interest is a continuing obligation. If circumstances change and the disclosure is no longer accurate, then disclosing entities must provide an updated form.

Separate forms are required for the vendor, parent entity(ies), and subcontractors.

**This disclosure is submitted for:**

- Vendor
- Vendor’s Parent Entity(ies) (100% ownership)
- Subcontractor(s)
- Subcontractor’s Parent Entity(ies) (100% ownership)

Project Name	<a href="#">Click here to enter text.</a>
Illinois Procurement Bulletin Number	<a href="#">Click here to enter text.</a>
Contract Number	<a href="#">Click here to enter text.</a>
Vendor Name	<a href="#">Click here to enter text.</a>
Doing Business As (DBA)	<a href="#">Click here to enter text.</a>
Disclosing Entity	<a href="#">Click here to enter text.</a>
Disclosing Entity’s Parent Entity	<a href="#">Click here to enter text.</a>

Subcontractor	<a href="#">Click here to enter text.</a>
Instrument of Ownership or Beneficial Interest	Choose an item. <input type="checkbox"/> If you selected Other, please describe:

## STEP 1 SUPPORTING DOCUMENTATION SUBMITTAL

You must select one of the six options below and select the documentation you are submitting. You must provide the documentation that the applicable section requires with this form.

Option 1 – Publicly Traded Entities

1.A.  Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$123,420) of the annual salary of the Governor.

OR

1.B.  Attach a copy of the Federal 10-K or provide a web address of an electronic copy of the Federal 10-K, and skip to Step 3.

Option 2 – Privately Held Entities with more than 100 Shareholders

2.A.  Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$123,420) of the annual salary of the Governor.

OR

2.B.  Complete Step 2, Option A for each qualifying individual or entity holding any ownership share in excess of 5% and attach the information Federal 10-K reporting companies are required to report under 17 CFR 229.401.

Option 3 – All other Privately Held Entities, not including Sole Proprietorships

3.A.  Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$123,420) of the annual salary of the Governor.

Option 4 – Foreign Entities

4.A.  Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$123,420) of the annual salary of the Governor.

OR

4.B.  Attach a copy of the Securities Exchange Commission Form 20-F or 40-F and skip to Step3.

Option 5 – Not-for-Profit Entities

Complete Step 2, Option B.

Option 6 – Sole Proprietorships

Skip to Step 3.

## STEP 2

### DISCLOSURE OF FINANCIAL INTEREST OR BOARD OF DIRECTORS

(All entity types, except sole proprietorships must complete)

Complete **either** Option A (for all entities other than not-for-profits) or Option B (for not-for-profits). Additional rows may be inserted into the tables or an attachment may be provided if needed.

#### OPTION A – Ownership Share and Distributive Income

**Ownership Share** – If you selected Option 1.A., 2.A., 2.B., 3.A., or 4.A. in Step 1, provide the name and address of each individual or entity and their percentage of ownership if said percentage exceeds 5%, or the dollar value of their ownership if said dollar value exceeds \$123,420.

Check here if including an attachment with requested information in a format substantially similar to the format below.

TABLE – X			
<i>Name</i>	<i>Address</i>	<i>Percentage of Ownership</i>	<i>\$ Value of Ownership</i>
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Click here to enter text.	Click here to enter text.	Click here to enter text.

**Distributive Income** – If you selected Option 1.A., 2.A., 3.A., or 4.A. in Step 1, provide the name and address of each individual or entity and their percentage of the disclosing vendor’s total distributive income if said percentage exceeds 5%

of the total distributive income of the disclosing entity, or the dollar value of their distributive income if said dollar value exceeds \$123,420.

Check here if including an attachment with requested information in a format substantially similar to the format below.

<i>Name</i>	<i>Address</i>	<b>% of Distributive Income</b>	<b>\$ Value of Distributive Income</b>
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

Please certify that the following statements are true.

I have disclosed all individuals or entities that hold an ownership interest of greater than 5% or greater than \$123,420.

Yes  No

I have disclosed all individuals or entities that were entitled to receive distributive income in an amount greater than \$123,420 or greater than 5% of the total distributive income of the disclosing entity.

Yes  No

**OPTION B – Disclosure of Board of Directors (Not-for-Profits)**

If you selected Option 5 in Step 1, list members of your board of directors. Please include an attachment if necessary.

<b>TABLE – Z</b>	
<i>Name</i>	<i>Address</i>
Click here to enter text.	Click here to enter text.

Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.

**STEP 3  
DISCLOSURE OF LOBBYIST OR AGENT**

Yes  No. Is your company represented by or do you employ a lobbyist required to register under the Lobbyist Registration Act (lobbyist must be registered pursuant to the Act with the Secretary of State) or other agent who is not identified through Step 2, Option A above and who has communicated, is communicating, or may communicate with any State officer or employee concerning the bid or offer? If yes, please identify each lobbyist and agent, including the name and address below.

If you have a lobbyist that does not meet the criteria, then you do not have to disclose the lobbyist's information.

Name	Address	Relationship to Disclosing Entity

Describe all costs/fees/compensation/reimbursements related to the assistance provided by each representative lobbyist or other agent to obtain this Agency contract:

**STEP 4  
PROHIBITED CONFLICTS OF INTEREST**

Step 4 must be completed for each person disclosed in Step 2, Option A and for sole proprietors identified in Step 1, Option 6 above. Please provide the name of the person for which responses are provided:

1. Do you hold or are you the spouse or minor child who holds an elective office in the State of Illinois or hold a seat in the General Assembly?  Yes  No
2. Have you, your spouse, or minor child been appointed to or employed in any offices or agencies of State government and receive compensation for such employment in excess of 60% (\$123,420) of the salary of the Governor?  Yes  No
3. Are you or are you the spouse or minor child of an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority?  Yes  No

4. Have you, your spouse, or an immediate family member who lives in your residence currently or who lived in your residence within the last 12 months been appointed as a member of a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor?  Yes  No
5. If you answered yes to any question in 1-4 above, please answer the following: Do you, your spouse, or minor child receive from the vendor more than 7.5% of the vendor's total distributable income or an amount of distributable income in excess of the salary of the Governor (\$205,700)?  Yes  No
6. If you answered yes to any question in 1-4 above, please answer the following: Is there a combined interest of self with spouse or minor child more than 15% in the aggregate of the vendor's distributable income or an amount of distributable income in excess of two times the salary of the Governor (\$411,400)?  Yes  No

**STEP 5**  
**POTENTIAL CONFLICTS OF INTEREST RELATING TO PERSONAL RELATIONSHIPS**

Step 5 must be completed for each person disclosed in Step 2, Option A and for sole proprietors identified in Step 1, Option 6 above.

Please provide the name of the person for which responses are provided:

1. Do you currently have, or in the previous 3 years have you had State employment, including contractual employment of services?  Yes  No
2. Has your spouse, father, mother, son, or daughter, had State employment, including contractual employment for services, in the previous 2 years?  Yes  No
3. Do you hold currently or have you held in the previous 3 years elective office of the State of Illinois, the government of the United States, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois?  Yes  No
4. Do you have a relationship to anyone (spouse, father, mother, son, or daughter) holding elective office currently or in the previous 2 years?  Yes  No
5. Do you hold or have you held in the previous 3 years any appointive government office of the State of Illinois, the United States of America, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois, which office entitles the holder to compensation in excess of expenses incurred in the discharge of that office?  Yes  No
6. Do you have a relationship to anyone (spouse, father, mother, son, or daughter) holding appointive office currently or in the previous 2 years?  Yes  No

7. Do you currently have or in the previous 3 years had employment as or by any registered lobbyist of the State government?  Yes  No
8. Do you currently have or in the previous 2 years had a relationship to anyone (spouse, father, mother, son, or daughter) that is or was a registered lobbyist?  Yes  No
9. Do you currently have or in the previous 3 years had compensated employment by any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections?  Yes  No
10. Do you currently have or in the previous 2 years had a relationship to anyone (spouse, father, mother, son, or daughter) who is or was a compensated employee of any registered election or reelection committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections?  Yes  No

## STEP 6

### EXPLANATION OF AFFIRMATIVE RESPONSES

If you answered "Yes" in Step 4 or Step 5, please provide on an additional page a detailed explanation that includes, but is not limited to the name, salary, State agency, and position title of each individual.

**STEP 7**  
**POTENTIAL CONFLICTS OF INTEREST**  
**RELATING TO DEBARMENT & LEGAL PROCEEDINGS**

This step must be completed for each person and entity disclosed in Step 2, Option A, Step 3, and for each entity and sole proprietor disclosed in Step 1.

Please provide the name of the person or entity for which responses are provided:

1. Within the previous ten years, have you had debarment from contracting with any governmental entity?  Yes  No
2. Within the previous ten years, have you had any professional licensure discipline?  Yes  No
3. Within the previous ten years, have you had any bankruptcies?  Yes  No
4. Within the previous ten years, have you had any adverse civil judgments and administrative findings?  Yes  No
5. Within the previous ten years, have you had any criminal felony convictions?  Yes  No

If you answered “Yes”, please provide a detailed explanation that includes, but is not limited to the name, State agency, and position title of each individual.

**STEP 8**  
**DISCLOSURE OF CURRENT AND PENDING CONTRACTS**

If you selected Option 1, 2, 3, 4, or 6 in Step 1, do you have any contracts, pending contracts, bids, proposals, subcontracts, leases or other ongoing procurement relationships with units of State of Illinois government?

Yes  No.

If “Yes”, please specify below. Additional rows may be inserted into the table or an attachment may be provided if needed.

Agency/University	Project Title	Status	Value	Contract Reference/P.O./Illinois Procurement Bulletin #

--	--	--	--	--

Please explain the procurement relationship:

**STEP 9  
SIGN THE DISCLOSURE**

This disclosure is signed, and made under penalty of perjury for all for-profit entities, by an authorized officer or employee on behalf of the bidder or offeror pursuant to Sections 50-13 and 50-35 of the Illinois Procurement Code. This disclosure information is submitted on behalf of:

Name of Disclosing Entity:

Signature: \_\_\_\_\_

Date:

Printed Name:

Title:

Phone Number:

Email Address:

## STATE OF ILLINOIS TAXPAYER IDENTIFICATION NUMBER

I certify that:

The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

I am a U.S. person (including a U.S. resident alien).

- If you are an individual, enter your name and SSN as it appears on your Social Security Card.
  - If you are a sole proprietor, enter the owner's name on the name line followed by the name of the business and the owner's SSN or EIN.
  - If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's name on the name line and the D/B/A on the business name line and enter the owner's SSN or EIN.
  - If the LLC is a corporation or partnership, enter the entity's business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).
- For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.

Name:

Business Name:

Taxpayer Identification Number:

Social Security Number:

or

Employer Identification Number:

Legal Status (check one):

Individual

Sole Proprietor

Partnership

Legal Services Corporation

Tax-exempt

Governmental

Nonresident alien

Estate or trust

Pharmacy (Non-Corp.)

Pharmacy/Funeral Home/Cemetery (Corp.)

- |  |  |
|--|--|
| <input type="checkbox"/> Corporation providing or billing<br>medical and/or health care services     | <input type="checkbox"/> Limited Liability Company<br>(select applicable tax classification) |
| <input type="checkbox"/> Corporation NOT providing or billing<br>medical and/or health care services | <input type="checkbox"/> C = corporation   |
|  | <input type="checkbox"/> P = partnership   |

Signature of Authorized Representative: \_\_\_\_\_

Date:

**EXHIBIT 17: IPG ACTIVE REGISTERED VENDOR DISCLOSURE**

BidBuy Reference #: Procurement/Contract #:

**\*\* STOP and READ THIS \*\*** *You may only submit this form if you have an **ACTIVE (unexpired and approved)** registration in the Illinois Procurement Gateway (IPG).*

This IPG Active Registered Vendor Disclosure may be used when responding to an Invitation for Bid (IFB) or a Request for Proposal (RFP) if the vendor is registered in the Illinois Procurement Gateway (IPG) and has an active State of Illinois Vendor Registration Number. The IPG assigns each vendor a unique State of Illinois Vendor Registration Number and expiration date upon the Chief Procurement Office’s acceptance of the vendor’s IPG application.

If a vendor does not have an active State of Illinois Vendor Registration Number, then the vendor must complete and submit Vendor Disclosure (formerly named Forms A) with their response. Failure to do so may render the submission non-responsive and result in disqualification.

Please read this entire section and provide the requested information as applicable. All parts in the IPG Active Registered Vendor Disclosure must be completed in full and submitted along with the vendor’s bid, offer, or response.

**1. Certification of Illinois Procurement Gateway Registration**

My business has an active State of Illinois Vendor Registration Number.

To ensure that you have an active registration in the IPG, search for your business name in the IPG Registered Vendor Directory. If your company does not appear in the search results, then you do not have an active IPG registration.

State of Illinois Vendor Registration Number:

IPG Expiration Date:

**2. Certification Timely to this Solicitation or Contract**

Vendor certifies it is not barred from having a contract with the State based upon violating the prohibitions related to either submitting/writing specifications or providing assistance to an employee of the State of Illinois by reviewing, drafting, directing, or preparing any invitation for bids, a request for proposal, or request of information, or similar assistance (except as part of a public request for such information). 30 ILCS 500/50-10.5(e).  Yes  No

**3. Disclosure of Lobbyist or Agent** (Complete only if bid, offer, or contract has an annual value over \$100,000)

Is your company or parent entity(ies) represented by or do you or your parent entity(ies) employ a lobbyist required to register under the Lobbyist Registration Act (lobbyist must be registered pursuant to the Act with the Secretary of State) or an agent who has communicated, is communicating, or may communicate with any State officer or employee concerning the bid or offer? If yes, please identify each lobbyist and agent, including the name and address below.  Yes  No

If yes, please identify each lobbyist and agent, including the name and address below. If you have a lobbyist that does not meet the criteria, then you do not have to disclose the lobbyist’s information. Additional rows may be inserted into the table or an attachment may be provided if needed.

Name	Address	Relationship to Disclosing Entity

Describe all costs/fees/compensation/reimbursements related to the assistance provided by each representative lobbyist or other agent to obtain this Agency contract:

**4. Disclosure of Current and Pending Contracts**

Complete only if: (a) your business is for-profit and (b) the bid, offer, or contract has an annual value over \$100,000. Do not complete if you are a not-for-profit entity.

Yes  No. Do you have any contracts, pending contracts, bids, proposals, subcontracts, leases or other ongoing procurement relationships with units of State of Illinois government?

If “Yes”, please specify below. Additional rows may be inserted into the table or an attachment in the same format may be provided if needed.

Agency	Project Title	Status	Value	Contract Reference/P.O./Illinois Procurement Bulletin #
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

**5. Signature**

As of the date signed below, I certify that:

- My business' information and the certifications made in the Illinois Procurement Gateway are truthful and accurate.
- The certifications and disclosures made in this IPG Active Registered Vendor Disclosure are truthful and accurate.

This IPG Active Registered Vendor Disclosure is signed by an authorized officer or employee on behalf of the bidder, offeror, or vendor pursuant to Sections 50-13 and 50-35 of the Illinois Procurement Code, and the affirmation of the accuracy of the financial disclosures is made under penalty of perjury.

This disclosure information is submitted on behalf of:

Vendor Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Street Address: \_\_\_\_\_ Email: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_ Vendor Contact: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

I certify that:

The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

I am a U.S. person (including a U.S. resident alien).

- If you are an individual, enter your name and SSN as it appears on your Social Security Card.

- If you are a sole proprietor, enter the owner's name on the name line followed by the name of the business and the owner's SSN or EIN.
- If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's name on the name line and the D/B/A on the business name line and enter the owner's SSN or EIN.
- If the LLC is a corporation or partnership, enter the entity's business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).
- For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.

Name:

Business Name:

Taxpayer Identification Number:

Social Security Number:

or

Employer Identification Number:

Legal Status (check one):

Individual

Sole Proprietor

Partnership

Legal Services Corporation

Tax-exempt

Corporation providing or billing  
medical and/or health care services

Corporation NOT providing or billing  
medical and/or health care services

Governmental

Nonresident alien

Estate or trust

Pharmacy (Non-Corp.)

Pharmacy/Funeral Home/Cemetery (Corp.)

Limited Liability Company

(select applicable tax classification)

C = corporation

P = partnership

Signature of Authorized Representative: \_\_\_\_\_

Date: