



CHICAGO TRANSIT AUTHORITY

567 West Lake Street
Chicago, Illinois 60661-1498
TEL 312 664-7200
www.transitchicago.com

November 9, 2009

Subject: Requisition No. B09OP03436 – Request for Proposals (RFP) for the Purchase of Electricity for Exclusive Use by the Chicago Transit Authority for a Period of up to Thirty-Six Months Beginning with the Next Meter Read Date after January 1, 2010.

Re: Addendum No. 3

Dear Proposer:

Attached is Addendum No. 3 modifying the RFP. Please take this information into account when preparing your proposal. Proposals are due no later than Noon, Chicago time, on Monday, November 16, 2009.

The Chicago Transit Authority is seeking proposals for the subject procurement. Proposal packages are to be delivered to:

By Mail
Chicago Transit Authority
Bid Office
P.O. Box 7554
Chicago, IL 60680-7554

Delivery Service or In Person Drop-off
Chicago Transit Authority
Bid Office – 2nd Floor
567 W. Lake Street
Chicago, IL 60661-1498

Proposal Due Date: Monday, November 16, 2009

Proposals must be received no later than Noon, Chicago time, on Monday, November 16, 2009
Proposals received after that time will be returned unopened.

Where proposals are sent by delivery service or delivered in-person to the CTA Bid Office, the bidders shall be responsible for their delivery to the Bid Office before the advertised date and hour for the opening of bids. If the delivery of the proposal is delayed beyond the date and hour set for the bid opening, proposals thus delayed will not be considered and will be returned unopened. The Bid Office hours are Monday through Friday from 8:00 am to 4:30 pm Chicago time, except holidays.

**Ten copies of the Technical section, and
Ten copies of the Price section are to be provided**

Your response should identify the requisition (RFP) number, the name of the project, the name and address of your firm, a contact person and phone number in each section.

There are no other changes at this time.

Sincerely,

Robert Conlin
General Manager, Purchasing

cc: File B09OP03436

Addendum No. 5

Page #	Section	Provision	Specific Exception, Non Conformance, and/or Substitute Language	CTA Response
Pg 2	Definitions	Event of Default	In subpart (a), reduce 15 business day cure period for late payment to 5 business days. Fifteen business day cure period for non-payment is unreasonably long. On the other hand, there no cure period of is provided in subpart (c) for the failure to “perform any material covenant”, and there should be a reasonable cure period provided for such default – e.g., 20 business days.	15 business days is reduced to 5. See attached copy. Also see corresponding change to Section 15. 5 business days notice already provided in Section 15.
Pg 3	§1	Scheduling Services	Add provision requiring CTA to provide reasonable advance notice of any material change in usage due to change in operations.	No. It is not practical for a mass transportation rail operator to notify a power company in advance of changes in its rail operations.
Pgs 5-6	§5	Price	In addition to pass-through(s) for NITS and RPS, add a clause that allows pass-through(s) (both increases and savings) are resulting from changes in law or regulation, which would apply to any pricing product.	See new Section 32 -- Changes in Law in the attached contract.
Pg 6	§6	Billing	Per Addendum #2, Responses, page 3 of 6, dual billing is required. CTA intends to receive one invoice from ComEd for distribution service and one invoice from the supplier for energy services. However, this clause does not include same. Add provision “Customer will receive dual billing whereby one invoice is from Contractor for Contractor energy electricity charge and one from EDU for distribution service each with applicable taxes (“The Dual Billing Option”).	CTA will be billed by ComEd for Retail Delivery Service (ComEd Rate RDS) and CTA will pay these amounts directly to ComEd. Such ComEd RDS services billed by ComEd to CTA must not be included in the price proposal.
Pg 6	§8	Payment	Clarify reference to Customer notifying Contractor of disputed charges within time limits in paragraph 15. Paragraph 15 deals with cure periods for default, and does not address time period for notice of disputed charges.	See revised Section 8 in the attached contract.
Pg 6	§8	Payment	Requesting revising payment terms from “Customer will pay Contractor’s bill within 21 days from Customer’s actual receipt of both an accurate invoice and all supporting documentation...to “Under Dual Billing Option, payments are due to the Contractor on or before twenty-one (21) days after the billing date on Contractor’s invoice or the postmark date on the envelope, whichever is later. Contractor may offer budget billing in its discretion.”	See revised Section 8 in the attached contract. Contractor can elect one of two alternatives.
Pg 6	§8	Payment	Section 8 states CTA wants 21 day payment terms. Will CTA approve 16 day terms?	“21 days” changed to “21 calendar days.” See revised Section 8 in the attached contract.

Pg 6	§8	Payment	<p>Requesting revising “In the event that Customer disputes the charges on the invoices” to “If under Dual Billing Option any payment for the Contractor Electricity Energy Charge made by the Customer to Contractor or to EDU is late under applicable payment terms, Customer may be assessed the late fee. If the EDU fails to timely obtain or transmit a meter reading, Contractor may issue or cause to be issued a bill based on Customer estimated energy usage and charges during the billing period. Contractor may elect to defer sending monthly bills for all periods where actual usage is not available from the EDU. Contractor may include or cause to be included in any subsequent bill adjustments related to previous billing including estimates, previous billing errors, and meter read errors, or other errors or omissions. In the event that Customer disputes a bill for the Contractor Electricity Charge, Customer may pay any undisputed portion of the bill by the due date specified in the applicable payment terms. If the unpaid, disputed portion of the bill is subsequently resolved in favor of Contractor, a late fee will be applied to such unpaid amounts.</p>	<p>The terms “Dual Billing Option” and “Contractor Electricity Charge” are not included in the contract.</p> <p>CTA will pay ComEd separately for delivery services provided under ComEd’s Retail Delivery Service Tariff (RDS).</p> <p>See revised Section 8 in the attached contract.</p>
Pg 7	§11	Force Majeure	<p>The right of a party to cancel after 7 days of non performance due to force majeure should be limited to performance which is integral to the Agreement, such as failure to supply power to Customer.</p>	No change.
Pg 7	§11	Force Majeure	<p>Since Contractors are not a union shop, such rules normally would not that apply to contractors, especially since it later state that labor strikes are not considered force majeure events. Will the CTA accept modifications?</p>	<p>The following sentence is deleted for consistency with other language in the Section</p> <p>“The requirement that an event of Force Majeure will be remedied with all reasonable dispatch does not require either Party to settle strikes or lockouts by acceding to the demands of the striker.”</p>
Pg 8	§13	Financial Obligation	<p>This is almost a duplication of the same language in 12? Notice within 48 hours should be changed to notice within 2 business days. (actually in 12 CTA says 3 days so there is a little conflict need to straighten out)</p>	<p>There is no duplication or conflict. 12 applies “at the time of execution” and 13 applies following execution “during the term of this Agreement.”</p> <p>48 hours is changed to two business days. See attached contract.</p>
Page 8	§14	Facility Openings and Closing	<p>Add Delete, need clarification around the timeline for the swaps, if they delete a meter now can they wait two months before they add something similar back and still be fine, also we generally include a paragraph that add of meters below 100KW demand can be done at the contract rate without an need to price at current market value for the remainder of the term</p>	<p>See corrected response to Question 26 from Addendum No. 2.</p>
Pgs 9 - 11	§15	Default Cure	<p>Default - Change calendar days to business days. Throughout document all</p>	<p>A definition of “day” has been added to the</p>

		Periods	references to days need to be business days.	definitions section. Business days and calendar days have been made consistent within each section.
Pgs 9 - 1	§16	Remedy and Liquidated Damages	<p>In the second sentence, delete “or otherwise commits an Event of Default of as defined herein”, because Customer should only be able to purchase replacement power if Contractor does not supply power; and further, the right of Customer to terminate the Agreement (under this sentence) should be expressly subject to the time periods for termination provided in paragraph 15.</p> <p>Further, on page 10, in the first full paragraph after the bolded paragraph, dealing with Contractor right to terminate for Customer default and recover unwind costs, Contractor should not be required to actually sell the electricity purchased for Customer, and Contractor should be able to calculate unwind costs based on available market prices.</p>	<p>See parenthetical added to the attached contract form expressly subjecting this to the time period in Section 15.</p> <p>Contract only requires Contractor to use its best reasonable efforts.</p>
Pg 11	§18	Records and Audits	<p>In subparagraph (iv), the interest charge of 18% for overcharges is much too high. We suggest a rate closer to 5% per annum.</p>	<p>The interest rate in Section 18 is changed from 18 percent to the Interest Rate stated in the Definitions.</p> <p>The following definition is added:</p> <p>“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.</p> <p>See revised Definitions and Section 18 in the attached contract.</p> <p>See revised Section 18 in the attached contract.</p>
Pg 11	§18	Records and Audits	18A. We have to hold bill history at least three years, and then get CTA written permission to destroy them after that. Is this acceptable?	

Pg 14	§28	No Consequential Damages	Delete subparts (ii), (iii), and (iv) as these are much too broad exceptions to the standard no consequential damage provision. For self-insured Contractors, an exception for claims covered by insurance is inappropriate. Contractor's "unlawful refusal to perform" could arguably cover any failure of performance. And the indemnity exception could cover a failure to properly perform as well (e.g., "omissions" – see paragraph 10, "Indemnity")	See revised Section 28 in the attached contract.
Pg 19	§45	Illinois Human Rights Act	Clarify to what extent, if any, that Contractor is required to show affirmative action plans with respect to this Agreement.	This section is from the Illinois Human Rights Act 775 ILCS 5 and applies to all public contracts entered into in the State of Illinois. The Illinois Department of Human Rights oversees these requirements. The Illinois Human Rights Act and the Illinois Administrative Code are available online at www.ilga.gov .
Pg 21	§49	Assignment	Add a provision that Customer cannot assign this Agreement or rights there under in whole or in part to any person or entity whose credit is not as good as Customer (as of the Effective Date of this Agreement).	See revised Section 49 in attached agreement. "Customer agrees that it shall only assign this Agreement to a person or entity whose creditworthiness is the same as or better than Customer's as of the effective date of this Agreement."
	§43	Permits and Licenses	If the CTA has permit requirements for electric service we need to clarify that we are not responsible for paying their permit costs assessed on CTA by ComEd. Please confirm same.	CTA has no permit requirements applicable to this contract. Contractor is responsible for the cost of complying with all ComEd tariffs applicable to ARES doing business in its service area. Contractor is also responsible for the cost of complying with Illinois Commerce Commission requirements for ARES doing business in Illinois.
		Exhibit O	A Sample Guarantee Agreement was provided. Addendum No. (3) was issued on Friday, October 23, 2009 at 9:10 Am. Upon viewing the solicitation we notice pages may be missing for the Sample Guarantee Agreement and does not allow proper review. We request the CTA to resend. Our comments therefore, shall be sent subsequently since we just received the material.	Full form was provided. See revised response to Addendum No. 2, question 14.

	Exhibit P	A Sample Irrevocable Letter of Credit was provided. Addendum No. (3) was issued on Friday, October 23, 2009 at 9:10 Am. Upon viewing the solicitation we notice pages may be missing for the Sample Guarantee Agreement and does not allow proper review. We request the CTA to resend. Our comments therefore, shall be sent subsequently since we just received the material.	Full form was provided. See revised response to Addendum No. 2, question 14.
	Exhibits O, P	We did not see the "parental guarantee" form that was mentioned in the questions. Is this going to be released at a later date? If not, could you please send that?	See above.
	Special Conditions	For Block is the wholesale block where the adder applies to the block volume and the overage? We generally do retail block where the adder only applies to over the block usage. The bandwidth is on a monthly level which we don't offer. If we were to offer a bandwidth it would be interval and settle against actual LMP, not the average monthly clearing price, but they say they will not accept that type of bandwidth which is the only real kind. We would need to discuss with the CTA.	CTA requires that Proposers submit pricing in accordance with the specifications contained in the SPECIAL CONDITIONS- BLOCK PRICING and SPECIAL CONDITIONS – BANDWIDTH RESTRICTIONS sections of the Agreement. A Proposer who does otherwise runs the risk of submitting a non-conforming offer which cannot be evaluated alongside conforming offers submitted by other Proposers.
	Special Conditions	Special Conditions – Bandwidth Restriction Under the bandwidth provisions in the RFP, monthly consumption above or below the Contract Quantities, plus or minus the specific bandwidth are to be charged or credited at the simple average of Real Time hourly LMP prices for the ComEd Zone for the days included in the applicable billing cycle. Will the CTA accept monthly bandwidth settlement at the hourly load weighted average price of Real Time hourly LMP prices for the ComEd Zone? A weighted average hourly calculation of price will provide a more accurate calculation of cost.	No, the Questioner quotes the language of the RFP which is what CTA requires, i.e., a simple average calculation.

CHANGES IN ACCOUNT/METER NUMBERS

Acct Number	Address	City	Class	Meter Type	Meter - 1	Meter - 2	Meter - 3	Meter - 4	Comments
0721131022	1934 S LAWNDALE AVE 945 W WELLINGTON AVE CHICAGO	CHICAGO	NT-B	Demand	121047624				remove from list
1101012070		CHICAGO	NT-B	Demand	140402019	140244810			remove from list
1430291009	300 W CHICAGO AVE CHICAGO 430 S HALSTED CHGO NEW ACC NO.	CHICAGO	NT-B	Demand	117861540	117933742			remove from list
1430322018		CHICAGO	NT-B	Demand	094483878	115818124	141336692	141418982	remove from list
3963233000	200 W RANDOLPH	CHICAGO	NT-B	Demand	141476501				remove from list
2607070059	1150 E 89TH ST	CHICAGO	NT-A	Recording	141441665	141426192			Add to Non-Traction-A account grouping

OTHER QUESTIONS

Q. We shall only be able to respond and bid on the 12 month term and fixed price only products. Will this bid be accepted?

A. Proposers have the option of presenting pricing for 12 month, 24 months and/or 3 months. CTA will consider all conforming quotes for these periods and the Proposer does not have to submit pricing for every term to be considered for the term(s) for which they do submit a quote. However, if CTA elects to enter into a contract for something other than a 12 month period, obviously a Proposer who only submits a price for a 12 month term will not be considered. Similarly it is not necessary for a Proposer to submit executable pricing in Attachment B (Block Purchase) for that Proposer to be considered for fixed price should CTA elect to contract for a fixed price.

Q. If the CTA removes accounts post bid or contract, will there be a penalty?

A. See Section 14 of the Contract and CTA's response to Question 25 of Addendum 2, as modified by CTA's answer to Question 25 below in this Addendum 5. If CTA drops facilities and does not replace them with similar facilities, CTA will consider keeping Contractor whole for its costs if the economic impact on Contractor can be demonstrated.

Q. Could the CTA provide a mutual Non Disclosure Agreement?

A. No.

Q. Under the 'Transmission Charges' section on the CTA contract, could we remove or reword the final three sentences of the paragraph? Specifically, the term 'necessary' [to deliver the Electric Energy to Customer], could that be re-worded?

A. No, however Questioner should refer to CTA's answer regarding Section 5 Price and the addition of a new Section 32 Change in Law to the Contract.

Q. [Regarding the billing formula for block settlement, we] will bill the CTA for all usage at the zonal RT LMP, so that the CTA is only charged based on actual consumption. The contractor shall settle price differences between the LMP and block quantity, and price on the next bill. Differences shall be charged or credited to the CTA based on a percentage provided by the CTA for each account as represented in the equation below: Interval usage will be used to bill hourly charges for interval meters and EDC assigned load profiles will be used to allocate monthly usage to intervals.

Step 1) Initial bill (to be issued after interval or scalar usage is received from the EDC):

Energy charge =

Step 2) Deficiency / excess adjustment (to be issued on the next bill cycle):

Energy Adjustment =

Where: = hourly interval quantity metered or profiled using EDC assigned profiles

= loss rate specified in the contract

= Real Time Zonal LMP = supply service fee

= block price (each block to be settled and shown on the bill individually)

= block quantity (each block to be settled and shown on the bill individually)

This methodology results in the same costs to the CTA and the cost to administer billing will be lower thereby reducing the overall cost to the CTA. Will this be acceptable as a substitution?

A. No. If CTA selects this product structure, CTA will require the winning Proposer to issue a bill at the conclusion of each billing cycle that conforms to CTA's specifications contained in the RFP Section III, 4(c) and that incorporates the effect of both the block power purchase and the spot power purchase in that period.

Q Per Addendum #2 Responses, page 5 of 6, CTA has emergency backup generation capability used in the event of utility outage only. However, we don't see the inclusion in the contract around onsite back-up generation. We would like to provide language that is needed to be included. Is this acceptable to the CTA?

A No additional language is needed. As provided in Section 25 of the Agreement, CTA's Addendum response to this question is part of the Agreement.

Q The RFP states that future changes to transmission (NITS) charges not included in the BAFO and contracted price may be passed through by the supplier. Does that just pertain to changes to the tariff price for NITS or does it also include changes in the transmission Peak Load Contribution for the Accounts?

A The CTA expects no dramatic changes in the PLC. The winning Proposer will not be allowed to pass along changes in cost (up or down) associated with changes in the Peak Load Contribution.

Q May the supplier pass through price adjustments caused by future changes to the CTA's capacity Peak Load Contribution values?

A Same answer as for preceding question.

Q Will the supplier be able to pass through future changes to PJM Reliability Pricing Model (RPM) capacity charges? While preliminary RPM costs are known up through May 2013, PJM can and has in the past made changes to the price before or at the time the RPM charge becomes final for a given plan year. It is the CTA's expectation that the supplier take on the risk for such price changes given they are effectively a regulated tariff charge?

A No, suppliers will not be allowed to pass through changes in capacity prices. Yes, CTA expects suppliers to take on this risk.

Q A couple of questions in regard to the Traction accounts that have an expected ramp up of 7 MWs:

Q In the last addendum released, the answer to question 29 states that account number 6537023006 will be "partially affected". Does CTA have a better idea of what percentage will affect each account?

A Figure 6 MW acct 2771018003 and 1 MW 6537023006

Q Is the ramp up going to be gradual or all at once? If so what is the ramp up period?

A Gradual starting 2011 and ending 2012 as new rail cars are delivered and schedules adjusted.

Q Does CTA have a better idea of when the expansion will finalize?

A See above.

CTA's response to question number 14 from the first round of questions is corrected as follows with the addition of the following language:

Q. We request using our standard Parental Guarantee. Is this acceptable to CTA?

A. The financial viability of Proposer and its guarantor is of critical importance to CTA. CTA expects guarantees and letters of credit to conform to the requirements of the Contract and Exhibits included with RFP in all material respects. CTA will review guarantor information as part of the evaluation process. Guarantee issues which may lead to disqualification of Proposer include, among other things:

- Failure to meet the ratings requirements
- Incorporation of additional provisions into the guarantee through reference to other agreements (other than the CTA power contract).
- Incorporation of other agreements (other than the CTA power contract) into the guarantee through references to the other agreements.
- Early termination provisions which may result in failure to cover future CTA losses under the Contract.
- Choice of forum outside of Cook County, Illinois
- Lack of guarantor contact information --such as notice information and addresses

CTA's response to question number 25 from the first round of questions is corrected as follows with the addition of the following language:

Q25. [Regarding Section 14, Facility Openings and closings, is] CTA willing to allow contractor/supplier to define what is of "similar demand, energy and load profile?"

A25. No. CTA expects most of these situations to be fairly clear cut, involving the substitution of a new substation for an old one with no material change in usage. That having been said, CTA expects the winning Proposer to be reasonable in its assessment of these situations.

ELECTRICITY CONTRACT

Electricity Sales Agreement between Customer and _____

This Agreement is between the Chicago Transit Authority ("Customer" or "CTA"), a body corporate and politic and unit of local government, and _____ ("Contractor"), who are collectively identified as the "Parties." This Agreement is the culmination of a process that started with the CTA Request for Proposal ("RFP") entitled "Request for Electricity for Railroads and Certain Large Facilities Used by CTA Commencing January 1, 2010" (CTA RFP No. B09OP03436). This Agreement, including the attached Exhibits shall constitute the entire understanding between the Parties. However, any representations made by the Contractor in its response to the RFP shall survive the execution of this Agreement and be incorporated herein by reference. If there is any conflict between the presentations made by the Contractor in his response to the RFP and the terms of this Agreement, the terms and conditions in this Agreement shall prevail. No modifications or supplements to this Agreement will be effective unless agreed to and signed by both parties. Nothing contained in this Agreement creates any rights or benefits in or for any third party. This Agreement applies to the account numbers and meters identified for the facilities listed in the attachments hereto ("Listed Facilities"). The Parties agree as follows:

DEFINITIONS: The following definitions and any additional terms defined within this Agreement and/or applicable attachments shall apply hereunder and under all notices and communications made pursuant to this Agreement:

"Adequate Assurance": Any financial security in a form and amount satisfactory to Customer, including, but not limited to, a cash deposit, bond, letter of credit or parental guarantee.

"Agreement": This contract entered into between Customer and Contractor including any and all Exhibits attached hereto, as well as all written representations and warranties made by Contractor in response to CTA RFP No. B09OP03436.

"Bankruptcy Event": Means, with respect to a Party, that such Party will (i) make a general assignment for the benefit of creditors; (ii) become bankrupt or insolvent, however evidenced, or be unable to pay its debts as they fall due; (iii) be the subject of a voluntary or involuntary proceeding under any bankruptcy, insolvency or similar law; or (iv) have a trustee, receiver or similar official appointed with respect to it or any substantial portion of its assets.

"Contract Rate": The price set forth in the Agreement as Fixed Generation Charges at which Customer agrees to purchase and Contractor agrees to sell Electric Energy.

"Day or day": Means a calendar day unless business days are specified.

"Defaulting Party": A Party to whom one or more Events of Default applies, including, if applicable, an Event of Default affecting a Party's Guarantor.

"Delivery Charges": Any and all costs and charges approved by the Illinois Commerce Commission for inclusion in Delivery Company's tariff applicable to the delivery of Electric Energy to Customer by the Delivery Company.

“Delivery Company”: Customer’s local delivery company providing service to Listed Facilities Commonwealth Edison Company (“ComEd”) is serving Customer under this agreement. The Delivery Company is not to be considered a Subcontractor under this Agreement.

“Delivery Point”: means existing and future points of interconnection between the RTO controlled grid or a third-party transmission system and/or distribution system, as applicable, and the Delivery Company’s transmission system and/or distribution system.

“Delivery Services”: Transmission, delivery and other related ancillary services provided by the Delivery Company and necessary to permit Customer to receive the Electric Energy at its Listed Facilities.

“Electric Energy: Full requirements electric energy supply purchased by Customer for its consumption.

“Event of Default”: The occurrence of any of the following for reasons other than Force Majeure with respect to a party: (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) business days after receipt of written notice; (b) any written representation or warranty made by a Party in any of its submissions to the other Party is false or misleading in any material respect when made or when deemed made or repeated; (c) the failure to perform any material covenant or obligation set forth in this Agreement; (d) a party is subject to a Bankruptcy Event; (e) a Party consolidates or merges into or transfers all or substantially all of its assets to another entity and that the resulting entity fails to assume all obligations of such party under this Agreement, or (f) the failure of the Contractor to timely supply the Electric Energy .

An Event of Default with respect to a Party’s Guarantor shall include: (i) if any written representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated; (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guarantee made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice; (iii) a Guarantor is subject to a Bankruptcy Event; (iv) the failure of a Guarantor’s guarantee to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party without the written consent of the other Party; or (v) a Guarantor shall attempt to repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guarantee; or (vi) failure to maintain at all times senior unsecured debt rated BBB- or greater by Standard & Poor’s Rating Group or its successor, or Baa3 or greater by Moody’s Investor Services, Inc.

“Interest Rate”: Means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

“Non-Defaulting Party”: Means when there is a Defaulting Party, the Party that is not the Defaulting Party.

“Party”: Contractor and Customer are individually referred to as a “Party” within this Agreement.

“Parties”: Contractor and Customer are collectively referred to as “Parties” as the context of this Agreement requires.

“Replacement Energy”: Electric Energy that Customer purchases from a supplier of last resort or another ARES or RES as a result of Contractor’s Event of Default in the performance of its obligations hereunder.

“Listed Facilities”: The collective properties, including the associated accounts and meter numbers governed by this Agreement and identified on an Attachment.

“Subcontractors”: Any person or entity with whom Contractor contracts to provide any part of the Electric Energy, including subcontractors and subconsultants of any tier, suppliers and materials providers.

“Summer & Nonsummer months: To the extent seasonal prices are requested, the summer and nonsummer months will be as defined by the Delivery Company consistent with Illinois regulations.

“Transmission Tariff”: All applicable transmission tariffs, as amended from time to time, on file with the Federal Energy Regulatory Commission.

1. Service Provided by Contractor

This is a full requirements contract for the supply of Electric Energy to Customer’s Listed Facilities. “Full Requirements” means all necessary electric energy, capacity, ancillary services and other products or services necessary to serve electric retail load. Contractor agrees to sell and provide to Customer, on a firm basis, 100 percent of Customer’s Electric Energy needs to instantaneously meet its electric power and energy requirements at the Listed Facilities during the term and at the prices set forth in this Agreement. Contractor shall assume responsibility for the purchase, transmission, and delivery of the Electric Energy. Contractor shall be authorized to (i) execute on behalf of Customer all authorizations required to switch electricity suppliers as may be necessary to carry out the provisions of this Agreement, and (ii) make all necessary arrangements for the purchase and delivery to the Delivery Point(s) of such Electric Energy for the Listed Facilities, including providing or procuring all services related to the sale and delivery to the Delivery Point(s) of Electric Energy for the Listed Facilities, including, without limitation the following services as applicable: ancillary transmission services, transmission, generation, balancing, forecasting, scheduling, and nominating. Title to Electric Energy sold will pass to the Customer at the Delivery Point(s).

SCHEDULING SERVICES

Contractor will be responsible for scheduling services in accordance with ComEd’s Rates RDS. Contractor assumes liability for any scheduling, imbalance or similar penalties, fees or charges imposed by ComEd.

2. Customer’s Obligations

Subject to the terms of this Agreement, Customer shall purchase 100 percent of Customer’s Electric Energy required by the Listed Facilities, excluding any Electric Energy that may be provided by Customer’s own back-up self-generation. Customer will execute any and all reasonable agreement(s) required by the Delivery Company (i) for the purpose of providing distribution services to Customer; (ii) to enable Customer to take service from an Alternative Retail Energy Supplier; and (iii) as may be required for Contractor to fulfill its obligations under this Agreement.

3. Service Commencement; Terms

The term of this Agreement shall commence with respect to each of the Listed Facilities on the first meter read date after December 31, 2009, and expire on _____, 200__ (the "Expiration Date"). Service to each of the Listed Accounts will continue until the first meter read date after the Expiration Date.

4. Meter Readings; Transition

Contractor understands that not all of the Listed Facilities have the same meter reading dates. The Contractor agrees to commence service for the Listed Facilities as necessary to accommodate the transition from service with the current contractor. During this transition period, Customer will not be obligated to accept and pay for any Electrical Energy that it is unable to receive and use due to Delivery Company's failure to provide meter readings.

Customer requires a seamless transition from its current electrical supplier to Contractor. It is agreed that Contractor will assist Customer in its transition from Customer's current supplier to Contractor. It is understood and agreed that in no event shall Customer be obligated to pay two suppliers for electric power supply in respect to the same facility and the same hours. Furthermore, Customer will be under no obligation to pay any penalties if the Contractor fails to deliver electric power to the ComEd system, fails to provide any documentation, and complete any processes required by ComEd, PJM, or other similar organization.

At the conclusion of this Agreement, including any extensions agreed to by the Parties, the Contractor will use reasonable efforts to assist Customer in the transition to the new service provider. Prior to the expiration of the contract term the parties will, in good faith, cooperate in planning a transition, if necessary, to a new contractor.

5. Price

The price or price formula (as described in the Special Conditions section of this Agreement) for Electric Energy sold hereunder for the Listed Facilities in this Agreement shall be the accepted price or price formula as stated in Contractor's _____, 2009 [Proposal or BAFO] for separate pricing for "CTA Traction Power Facilities", "CTA Non-Traction Group A Facilities" and "CTA Non-Traction Group B Facilities" for __ months. The price or price formula set forth is the offer or Best and Final Offer (cumulatively referred to as "BAFO") accepted and confirmed in writing by Customer. The method for submitting Proposals or BAFOs shall be as set forth in the RFP. Unless expressly stated otherwise in this Agreement, all charges, including but not limited to electric energy supply costs, capacity costs, transmission costs, transmission losses, distribution losses, congestion charges, ancillary charges, must be included in the fixed price or price formula.

The Contractor shall provide Electrical Energy to the facilities for the duration of the contract per the terms of CTA RFP No. B09OP03436 and this Electricity Sales Agreement.

CONTRACT QUANTITIES

This is a full requirements contract to meet the instantaneous needs of Customer's electric power and energy requirements at the Listed Facilities shown on the attachments. Contractor shall provide all

electricity needed for the Listed Facilities. Quantities required may vary depending upon weather conditions, season, and other factors. While Customer has provided Contractor with certain historical profile data showing its prior electrical use, Customer is not making any material representation to Contractor as to how much electricity Customer will consume during the contract term or any financial results to be anticipated by entering into this Agreement. The parties acknowledge that any electrical needs or related data that may have been discussed or provided to Contractor by Customer were, in part, from third party sources. While Customer has no knowledge of any material misrepresentation of such third party sources, Customer does not warrant such information. Contractor has made all decisions regarding this Agreement based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by Customer. Contractor has entered into this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks.

FIXED PRICING

Fixed Generation Charges shall be fixed for the entire term of the Agreement except as otherwise provided for herein. The Proposal/BAFO price shall include all items identified herein as Fixed Generation Charges and shall not change during the entire term of this Agreement, except as provided in the Transmission Charges section herein. Fixed Generation Charges shall include all of the following costs and charges:

- Electric Energy Supply Costs
- Capacity Costs
- Transmission Costs (Network Integrated Transmission Service or NITS)
- Transmission Losses
- Distribution Losses
- Congestion Charges
- Ancillary Charges

The Ancillary Charges shall include the charges for all ancillary services required to serve Customer. Such services, as prescribed by the Open Access Transmission Tariffs (OATT's) current tariff, shall include, but not be limited to:

- Schedule 1 – Scheduling, System Control and Dispatch Service
- Schedule 1A- Transmission Owner Scheduling, System Control and Dispatch Service
- Schedule 2 – Reactive Supply and Voltage Control from Generation Sources
- Schedule 3 – Regulation and Frequency Response Service
- Schedule 4 – Energy Imbalance Service
- Schedule 5 - Operating Reserve – Spinning Reserve Service
- Schedule 6 – Operating Reserve – Supplemental Reserve Service
- Schedule 6A – Black Start Service.

In the event that the tariff of the Delivery Company based portion of Transmission Losses, or Distribution Losses changes (increases or decreases) during the term of this Agreement as authorized by state and federal regulatory bodies, such change in prices may be passed through to Customer without any mark-up by a corresponding change in the applicable portion of its bill. Documentation regarding any change in tariff charges, including new charges, shall be provided when such changes occur. Such change will take effect on the first available bill after the effective date of the change and may be pro-rated to accommodate an effective date that does not coincide with Customer's billing

cycle. In no event shall the Electric Energy Supply Costs and Congestion Charges change during the entire term of this Agreement.

TRANSMISSION CHARGES

Any changes (increases or decreases) to RTO-billed Network Integrated Transmission Service or NITS charges, subsequent to the execution date of this Agreement and not already included in the Proposal or BAFO accepted by Customer shall be directly passed through to Customer without any mark-up by a corresponding change in the applicable portion of its bill. In the event the RTO's reconciliation with the Contractor results in a credit back to the Contractor, the Contractor will pass through to Customer its share of the credit. The Contractor shall not pass through any RTO, ComEd or miscellaneous charges not provided for under this Agreement. Contractor will only pass through those charges necessary to deliver the Electric Energy to Customer. Contractor shall use its best efforts to minimize the number of pass through charges and the amount of such pass through charges.

RENEWABLE PORTFOLIO STANDARD COMPLIANCE COSTS

Starting June 1, 2009, Alternative Retail Electric Suppliers are required to comply with the Renewables Portfolio Standard (RPS) for the State of Illinois. Any RPS compliance costs incurred subsequent to the execution date of this Agreement and not already included in the Proposal or BAFO accepted by Customer shall be directly passed through to Customer without any mark-up by a corresponding change in the applicable portion of its bill. Contractor shall use its best efforts to minimize the number of pass through charges and the amount of such pass through charges.

6. Billing

Contractor shall promptly provide a summary bill for the Listed Facilities using a format mutually acceptable to the parties. Unless otherwise agreed to, the monthly bill format shall consist of a summary page and detail for each Listed Facility that include the following:

- kWh usage during the billing period
- cost charged

In the case of a Block Pricing structure as described in the Special Conditions section of this Agreement, the bill shall clearly state for the billing period:

- the quantity and price of On Peak Forward Block power purchased
- the quantity and price of Off Peak Forward Block power purchased
- the quantity and price of any Index Energy purchased, by hour
- the price and cost of the Fixed Retail Adder charge.

7. INTENTIONALLY OMITTED

8. Payment

Customer will pay Contractor's bill within 21 calendar days from Customer's actual date of receipt of both an accurate invoice and all supporting documentation reasonably necessary for Customer to verify all services provided under this Agreement. **The preceding sentence applies unless Contractor inserts a number of days in the next paragraph and initials after the next paragraph.**

Customer will pay Contractor's bill within _____ calendar days [**Contractor to insert number of calendar days, minimum 28, and initial if Contractor prefers this language to the language of the preceding paragraph.**] from invoice date of both an accurate invoice and all supporting documentation reasonably necessary for Customer to verify all services provided under this Agreement. Invoice date must be the same as the postmark date or additional days will be added to reflect the postmark date. **Contractor to initial here if Contractor wants this paragraph to apply: _____ [initials]**

In the event that Customer disputes the charges on its invoice, Customer shall notify the Contractor in writing of the charges disputed and the basis of the dispute. Customer will use its reasonable efforts to promptly notify the Contractor of any such disputed charges. The Contractor shall use its reasonable efforts to timely investigate and resolve any such disputes. Upon reconciliation of any such dispute, any resulting adjustments shall be applied to the next monthly invoice. In the event that Customer disputes charges on its invoice, Customer will pay charges that are not disputed. Customer is not obligated to pay for any Electric Energy that Contractor fails to provide pursuant to and in accordance with this Agreement.

Contractor shall submit all invoices to:

Chicago Transit Authority
Attn: Emily Ziring
567 W. Lake Street, 7th Floor
Chicago, IL 60661

Customer will be billed by ComEd for delivery services provided under ComEd's Retail Delivery Service Tariff (RDS). Customer will pay ComEd directly for such services.

9. Warranties

Contractor warrants that it has the right to sell Electric Energy and provide (either directly or through purchase from others) all ancillary related services required herein, and that such Electric Energy shall be delivered hereunder and will be free from all liens of any kind. Contractor warrants that all Electric Energy it delivers or causes to be delivered to the Delivery Company's system shall comply with all applicable requirements of the Delivery Company's federal and state tariffs.

10. Indemnity

To the extent permitted by law, Contractor covenants and agrees that it shall defend, indemnify and hold harmless Customer, its directors, officers, agents and employees from any and all suits, claims, expenses (including, but not limited to attorney's fees) or losses which may be imposed for any bodily injury, including death resulting therefrom, or property damage, including the loss of use thereof, arising out of, or in connection with, the Electric Energy to be furnished by Contractors, its employees, subcontractors or agents under the Agreement, and caused by any error, omission or negligent act of Contractor, its employees, subcontractors or agents. Contractor and all independent subcontractors expressly understand and agree that any insurance protection furnished by Contractor or subcontractors, as required hereunder, shall in no way limit Contractor's responsibility under the provisions of this Agreement to indemnify, save and hold harmless Customer. This provision shall survive cancellation or expiration of this Agreement as to events that occurred before such cancellation or termination and for which written demand is received by the indemnifying Party before the second anniversary of such termination or cancellation.

11. Force Majeure

If either Party is unable, wholly or in part, by Force Majeure (as defined below) to carry out its obligations under this Agreement, and upon such Party giving written notice and full particulars of such Force Majeure to the other Party as soon as practicable after the occurrence of the cause, the obligations of the Party giving notice, so far as its obligations are affected by the Force Majeure, will be suspended during the continuance of the Force Majeure. Oral notice of the Force Majeure event is also acceptable if given to the Customer's contact person to be identified in writing by the parties, but only if such oral notice is followed by written notice as soon as practicable. The suspension will last no longer than the Force Majeure. Each party shall seek to remedy the Force Majeure with all reasonable dispatch. If an event of Force Majeure lasts for 7 continuous days, the Party not subject to the Force Majeure has the option of terminating this Agreement at any time after the 7th day, so long as the event of Force Majeure is continuing, without further liability by providing the other Party written notice of such intent. During such period of Force Majeure, Customer will continue to be obligated to make payments for all Electric Energy delivered to and consumed at its facilities in accordance with the terms of this Agreement.

Force Majeure means any of the following causes to the extent not reasonably within the control, and without fault or negligence, of the Party affected thereby and which by the exercise of due diligence by the affected Party could not have been prevented: acts of God, civil disturbances, interruptions caused by governmental or court orders, unwillingness or inability of the transmission operator to provide transmission service or the curtailment of Contractor's transmission service through no fault of Contractor that prevents Contractor from delivering the Electric Energy to the Delivery Company. **Neither labor strikes, economic hardship, nor economic conditions, nor a change in economic conditions or in the price paid by Contractor for Electric Energy or the price at which Contractor is able to sell Electric Energy other than pursuant to this Agreement will constitute a Force Majeure under this Agreement.**

12. Guarantee/Letter of Credit

If at the time of execution of this Agreement, the senior unsecured debt of the Contractor is rated lower than BBB- by Standard & Poor's Rating Group or its successor, or lower than Baa3 by Moody's Investor Services, Inc., or its successor, or if the Contractor has no such Standard & Poor's or Moody's debt rating, then, in order to ensure the faithful performance of this Agreement, the Contractor agrees to provide before _____, 2009 and maintain at all times during the course of this Agreement an irrevocable letter of credit or a guarantee either of which shall be in the amount of \$3,000,000. The performance guarantee shall be a guarantee executed by a parent corporation or another entity acceptable to Customer. Either document shall be in a form substantially similar to the specimen attached to this Agreement or such other form acceptable to Customer. During the term of this Agreement, if the senior unsecured debt of the performance guarantor is rated lower than BBB- by Standard & Poor's Rating Group or its successor, or lower than Baa3 by Moody's Investor Services, Inc., or its successor, the Contractor shall notify Customer in writing of such downgrade within three business days. Upon receipt of such notification, or if Customer otherwise learns of the downgrade, Customer may request from the Contractor Adequate Assurance acceptable to Customer in like amount. Any bank or financial institution issuing a letter of credit must have the following: (a) a branch in Illinois to effectuate a draw or permit a draw by fax; (b) maintain a credit rating no lower than BBB- by Standard & Poor's Rating Group or its successor, or lower than Baa3 by Moody's Investor Services or its successor; and (c) have capital and surplus of at least \$500,000,000.

13. Financial Obligation

Each Party agrees to provide financial information reasonably requested by the other Party to facilitate credit review at any time during the course of this Agreement.

If the Contactor has senior unsecured debt that is rated, and during the term of this Agreement, the senior unsecured debt of the Contractor is rated lower than BBB-by Standard & Poor's Rating Group or its successor, or lower than Baa3 by Moody's Investor Services, Inc., or its successor, the Contractor shall notify Customer in writing of such downgrade within two (2) business days. Upon receipt of such notification, Customer may request from the Contractor Adequate Assurance of performance, which Adequate Assurance shall be in the form of the Guarantee or Letter of Credit referenced in paragraph 12. Such Adequate Assurance must be delivered within five (5) business days of request. Upon 10 days notice, Customer may require and Contractor shall provide a new irrevocable letter of credit to be issued from a bank or financial institution that is acceptable to Customer and meets the rating standards set forth in paragraph 12 should the issuing bank's or institution's rating standard fall below such requirements.

14. Facility Openings and Closings

Customer shall be entitled to close individual Listed Facilities prior to the end of the term set forth herein without penalty, provided it replaces said Listed Facilities with other locations having a similar demand, energy and load profile (the "Replacement Facility"). Unless otherwise agreed upon in writing by both Parties, such Replacement Facility will be added to the Agreement at the same Contract Rate for the Listed Facility scheduled to be closed, provided the start date for the Replacement Facility is on or before the date such Listed Facility closes. Customer may add additional facilities (not replacing closed facilities) to the Agreement at the current market price as proposed by Contractor and agreed to by the Parties and as set forth in a new or revised price for said facility. Customer and Contractor shall execute new or revised schedules as necessary for any changes to the facilities served under this Agreement.

15. Default/Cure Periods

Upon the occurrence of an Event of Default and at any time thereafter so long as such Event of Default continues, the Non-Defaulting Party may by written notice to the Defaulting Party declare this Agreement to be in default. The Defaulting Party must remedy such Event of Default within five (5) business days after receiving notice from the Non-Defaulting Party. If the Defaulting Party fails to cure its default within the applicable cure period, the Non-Defaulting Party may upon five (5) business days written notice thereafter terminate this Agreement and exercise, at its election, any rights or remedies it may have under this Agreement, or as provided under law (unless otherwise limited by this Agreement).

Notwithstanding the foregoing, if Contractor: (i) has any senior unsecured debt rated lower than BBB-by the Standard & Poor's Rating group or its successor, or lower than Baa3 by the Moody's Investor Services, Inc., or its successor, and Contractor fails to provide the Guarantee or Letter of Credit required by paragraphs 12 and 13; (ii) declares bankruptcy or makes an assignment for the benefit of creditors, or (iii) fails to provide Adequate Assurance to Customer within 5 business days of Customer's demand, when such demand is based upon Customer's good faith belief that the ability of the Defaulting Party to perform its obligations under this Agreement is materially impaired, then Customer has the right, with five (5) business days written notice, to terminate this Agreement at any time. Customer shall pay for Electric Energy already provided and Customer will have no further liability to Contractor.

Any Event of Default that occurs with respect to the guarantor or bank or financial institution issuing a Letter of Credit shall be deemed an Event of Default with respect to the Contractor unless Contractor and a substitute guarantor or bank or financial institution promptly (within 5 business days) satisfy all breaches of the requirements of this Contract which are Events of Default.

16. Remedy and Liquidated Damages

It is understood that Customer is a public transit agency providing vital services to the public and time is of the essence. Notwithstanding anything herein to the contrary, in the event that the Contractor fails to timely deliver the requested Electric Energy to Customer due to no fault of Customer, or otherwise commits an Event of Default as defined herein, Customer may immediately purchase the Electric Energy required by the Listed Facilities from the provider of last resort or from another ARES or RES and Customer may terminate this Agreement by written notice to the Contractor (subject to the notice requirements of Section 15) and unless such failure is attributable to Force Majeure, in which case the termination rights in paragraph 11 shall apply, Customer shall have no further obligation to the Contractor hereunder, other than the obligation to pay for Electric Energy provided by Contractor prior to the termination date. In the event and to the extent the Contractor commits an Event of Default, Customer will have the right to obtain Replacement Energy from other providers, selected at Customer's sole discretion. In such event, if Customer purchases Replacement Energy at prices in excess of the Contract Rate prices under this Agreement, Contractor shall pay to Customer an amount equal to the difference between the Contract Rate and the price at which Customer purchases Replacement Energy for the remainder of the contract term plus 5% of such difference for administrative costs. For illustrative purposes only, if Customer was required to obtain 1,000,000 kWh of Replacement Energy at a total cost of \$50,000 and the cost of power at the Contract Rate would have totaled \$30,000, Customer would be entitled to the difference (\$20,000) plus 5% (\$1,000) for a total of \$21,000. **IN THE EVENT OF CONTRACTOR'S DEFAULT, THE RIGHT TO TERMINATE THIS AGREEMENT AND CONTRACTOR'S OBLIGATION TO PAY FOR CUSTOMER'S EXCESS COSTS FOR PROCURING REPLACEMENT ENERGY, PLUS 5% OF THE DIFFERENCE FOR ADMINISTRATIVE COSTS AS DESCRIBED ABOVE, SHALL BE CUSTOMER'S EXCLUSIVE REMEDY, AND CONTRACTOR'S SOLE OBLIGATION FOR CONTRACTOR'S EVENT OF DEFAULT PURSUANT TO THE TERMS OF THIS AGREEMENT. THE CONTRACTOR'S INDEMNITY OBLIGATIONS SHALL SURVIVE PURSUANT TO THE TERMS OF THIS AGREEMENT AS TO EVENTS THAT OCCURRED BEFORE SUCH CANCELLATION OR TERMINATION AND FOR WHICH WRITTEN DEMAND IS RECEIVED BY THE INDEMNIFYING PARTY BEFORE THE SECOND ANNIVERSARY OF SUCH TERMINATION OR CANCELLATION.**

If Customer commits an Event of Default as defined herein, Contractor may terminate this Agreement by written notice to Customer and Contractor shall have no further obligation to Customer hereunder. In such event, Contractor shall use best reasonable efforts to re-sell the electric Energy that would have been sold to Customer hereunder. However, if Contractor is unable to sell such Electric Energy, at a price per kWh that is equal to or greater than the Contract Rate, then Customer shall pay the Contractor an amount equal to the difference between the Contract Rate and the price at which Contractor sells such Electric Energy for the actual quantity which Customer purchased from other sources for the remainder of the contract term plus 5% of such difference for administrative costs. For illustrative purposes only, if Customer obtained 1,000,000 kWh of electric energy from another source and the difference between the cost of power at Contractor's Contract Rate and the cost at the mitigated price was \$30,000, Customer would be obligated to pay the \$30,000 difference plus 5% (\$1,500) for a total of \$31,500. **CUSTOMER'S OBLIGATION TO PAY SUCH AMOUNT TO CONTRACTOR**

AND CONTRACTOR'S RIGHT TO TERMINATE THIS AGREEMENT, SHALL BE CONTRACTOR'S EXCLUSIVE REMEDY, AND CUSTOMER'S SOLE OBLIGATION TO CONTRACTOR IN THE EVENT OF CUSTOMER'S EVENT OF DEFAULT PURSUANT TO THE TERMS OF THIS AGREEMENT.

Contractor shall use commercially reasonable efforts to mitigate any losses. Customer shall use commercially reasonable efforts to mitigate any losses subject to compliance with Customer's purchasing regulations. **TO THE EXTENT DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.**

If either party defaults under this Agreement, without limiting its rights herein, a non-defaulting party may set off any and all amounts that the defaulting Party owes to it against any or all amounts it owes the defaulting Party (whether or not then due).

17. Insurance Requirements

Contractor, at its sole expense, shall procure, maintain and keep in force during the entire term of this Agreement the insurance types and amounts listed in Appendix N, Insurance Requirements, of CTA's RFP No. B09OP03436.

18. Records and Audits

A. Records

- (i) The Contractor must deliver or cause to be delivered to Customer promptly, at a mutually agreeable place and time, all documents prepared for Customer under the terms of this Agreement, or reasonably required by Customer to verify the accuracy of any bill or charge, in accordance with the time limits prescribed in this Agreement, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the Electric Energy services under this Agreement.

Contractor must maintain any such records not delivered to Customer or demanded by Customer for a period of 3 years after the final payment made in connection with this Agreement.

- B.** (i) Contractor and any of its Subcontractors must furnish Customer with all information that may be reasonably requested pertaining to all costs and charges that the Contractor is authorized to pass-through to the Customer under this Agreement which relate to the delivery of the Electric Energy. Contractor must keep books, documents, paper, records and accounts in connection with the services open to audit, inspection, copying, abstracting and transcription and must make these records available (in paper and electronic form) to Customer, its auditors at reasonable and mutually convenient times and places during the performance of the Electric Energy services.

- (ii) Contractor must maintain its books, records, documents and other evidence and adopt accounting procedures and practices sufficient to reflect properly all pass-through costs and charges of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the performance of this Agreement. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.
- (iii) No provision in this Agreement granting Customer a right of access to records and documents is intended to impair, limit or affect any right of access to such records and documents that Customer would have had in the absence of such provisions.
- (iv) Customer may in its sole discretion audit the records of Contractor or its Subcontractors relating to all pass-through costs and charges, at a mutually agreeable place and time during the term of this Agreement or within three years after the Agreement ends, in connection with the goods, work, or services provided under this Agreement. Each calendar year or partial calendar year is considered an "audited period." If, as a result of such an audit, it is determined that Contractor or any of its Subcontractors has overcharged Customer in the audited period, Customer will notify Contractor. Contractor must then promptly reimburse Customer for any amounts Customer has paid Contractor due to the overcharges, plus interest at the Interest Rate from the date of payment of the overcharge. Contractor will not be responsible for any interest on overcharges that result, through no fault of Contractor, from incorrect meter readings or meter readings supplied by the Delivery Company to the Contractor.

19. INTENTIONALLY OMITTED.

20. Confidentiality

Customer is a body corporate and politic and a unit of local government. Customer is subject to the Freedom of Information Act, 5 ILCS 140/1, *et seq.*, which declares, among other things, that it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government. It is Customer's intent to make this entire Agreement and the prices paid available to the public.

However, in the event either Party considers any information in this Agreement confidential or proprietary, such information shall be identified at the time of submittal. Such information shall be held in confidence by the recipient and shall be disclosed only to those of its employees or authorized representative(s) who require access in the performance of their duties to the recipient. The recipient will exercise reasonable care in the safeguarding of such confidential information. The Parties agree that only information they have a good faith belief to be confidential or proprietary, and which they have a good faith basis to designate confidential or proprietary will be so designated.

Exceptions: Neither Party shall be liable for the disclosure or use of any information designated as confidential that: (a) is, or becomes, publicly known, other than by breach of this Agreement; (b) is obtained by the recipient from another person without restriction; (c) is previously known by the recipient without restrictions; (d) is, at any time, developed by the recipient independently of any disclosures hereunder; (e) is disclosed pursuant to the consent of the party that considers such information confidential; or (f) is required to be disclosed by law, including, but not limited to the Freedom of Information Act, 5 ILCS 140/1, *et seq.*, provided that prior to disclosing such information the recipient shall notify the other party of the demand to disclose or provide the information and the

recipient agrees to reasonably cooperate if the other party deems it necessary to seek a protective arrangement.

21. Compliance with all Laws

Contractor must observe and comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later and whether or not they appear in this Agreement, and Contractor must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Contractor must require all Subcontractors to do so, also.

Notwithstanding anything in this Agreement to the contrary, references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

22. Severability

If any provision(s) of this Agreement is held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein; the remaining provisions will remain in full force and will not be affected by the invalid, illegal or unenforceable provision or by its severance.

23. Non-waiver

Either Party's failure at any time to require strict performance by the other Party of any provision of this Agreement will not waive a party's right to demand strict compliance with any other provision of this Agreement or such provision at any other time. Any waiver of any terms of this Agreement must be in writing and shall not diminish the future enforceability of this Agreement.

24. Necessary Documents

Each Party agrees to execute and deliver all further documents, and take all further action reasonably necessary to effectuate the purpose of this Agreement, including any prerequisites required by Delivery Company.

25. Deemed Inclusion

Provisions required (as of the Effective Date) by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement.

The following additional attachments are deemed included:

Attachments:

- Special Conditions
 - Block Pricing
 - Bandwidth Restriction
- Sample Guarantee/Letter of Credit

- Listed Facilities
- ___/___/2009 Proposal/BAFO
- CTA RFP No. B09OP03436 and Addenda

26. Independent Contractor

This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Contractor and Customer. The rights and the obligations of the parties are only those set forth in this Agreement. Contractor must perform under this Agreement as an independent contractor and not as a representative, employee, agent, or partner of Customer.

27. Representations

Contractor represents that it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Electric Energy required; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and Contractor warrants it can and will provide, or cause to be provided, the Electric Energy services in strict accordance with the provisions and requirements of this Agreement. Customer represents that it has the capacity and authority to enter into an agreement for the purchase of electric energy; to authorize a third party to make all necessary arrangements for the purchase and delivery of such Electric Energy to the Listed Facilities.

28. No Consequential Damages

In no event will either Party be liable to the other or to any third-party, for any special, incidental, consequential, punitive or exemplary damages arising out of or in connection with this Agreement, whether such damage claim is a result of breach of contract, tort liability (including negligence), strict liability, or otherwise. The limitation of liability in this paragraph does not apply to: (i.) Contractor's liability for Contractor's or its Subcontractors fraud or gross negligence, including, but not limited to misrepresentations made by Contractor in any submission to Customer at any time during the RFP process; (ii) any claims covered by and for which proceeds are provided by any insurance, bond, letter of credit or other guarantee provided for herein; and (iii.) Contractor's unlawful refusal to perform its obligations pursuant to this Agreement

29. Miscellaneous

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois. The forum of choice for the parties to resolve any dispute which may arise out of this Agreement is the appropriate state court of competent jurisdiction located in Cook County, Illinois. This Agreement shall not be construed against a Party by reason of who prepared it. Each Party represents and warrants that the person signing this Agreement is authorized to do so and that this Agreement is a valid and binding obligation of such Party. The parties agree that fax copies of executed original copies of this Agreement shall be sufficient and admissible evidence of the content and existence of this Agreement to the same extent as the originally executed copy or copies (if executed in counterpart).

30. Notices

Any and all notices given in connection with this Agreement shall be deemed adequately given only if in writing and addressed to the party for whom such notices are intended at the address set forth below. All notices shall be sent by personal delivery, Fed Ex or other overnight messenger service, first class registered or certified mail, postage prepaid, return receipt requested, or by facsimile. A written notice shall be deemed to have been given to the recipient party on the earlier of (a) the date it is delivered to the address required by this Agreement; (b) the date delivery is refused as the address required by this Agreement; (c) with respect to notices sent by mail, the date as of which the postal service indicates such notices to be undeliverable at the address required by this Contract; or (d) on the date sent, if delivered by facsimile at the number(s) set forth below and upon proof of delivery as evidenced by the sending fax machine. The Agreement number must be prominently featured in the heading of all notices sent hereunder.

Any and all notices referred to in this Agreement, or that either party desires to give to the other, shall be addressed as follows:

Contractor: Notices, Correspondence and Parcel Deliveries, Contractor Fax Number	Customer: Chicago Transit Authority Notices and parcel Deliveries 567 W. Lake Street Chicago IL 60661 Attn: Emily Ziring Phone number: 312 681-3527
Payments (as indicated on invoice)	

31. Choice of Law; Venue; Attorney Fees and Expenses

The validity, performance, and construction of this Agreement will be governed and interpreted in accordance with the laws of the State of Illinois, without giving effect to conflict of law principles. Any controversy or claim arising from or relating to this Agreement will be settled in accordance with the express terms of this Agreement by a court located in the State of Illinois (and each Party hereto waives any right to object to venue in this regard). EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY OR TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION CLAIMS IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. If either Party pursues court action to enforce its rights under this Agreement, the non-prevailing Party shall promptly reimburse the prevailing Party for all its reasonable attorney fees, expenses and costs. **[The preceding sentence applies unless the Contractor, at its option, inserts its initials next to the following alternative sentence.]**

Each Party shall be responsible for all of its attorney fees, expenses and costs regardless of whether or not it prevails in any court action to enforce its rights under this Agreement. Contractor must initial here if this sentence is preferred: _____

32. Change in Laws

If there is a change in applicable federal or state law, in applicable tariffs or the regulatory interpretation, ordinances, rules, executive orders or applicable regulations (collectively, "Changes in

Law") after the date of this Agreement that materially and adversely affects a party's (the "Affected Party") ability to perform its obligations hereunder or which makes performing such obligations economically burdensome, then the Affected Party will send written notice to the other party. The written notice will identify the costs (and the method by which those costs were determined) that would-be incurred by the Affected Party if it continues to perform its obligations under this Agreement in accordance with the Change in Law. If the party receiving the notice of the Change in Law does not within 30 calendar days of receiving the Affected Party's notice agree to pay the additional costs associated with the Affected Party's complying with the Change in Law, then the Affected Party has the right to cancel this Agreement upon 30 calendar days advance written notice to the other party. The cancellation notice will detail the specific changes relied upon. No Change in Law which is enacted prior to the effective date of this Agreement shall be considered a material and adverse Change in Law under this Section.

33. Forward Contract; Inapplicability of Commodities Exchange Act

The Parties acknowledge and agree that this Agreement is a "forward contract" and that Contractor is a "forward contract merchant" for purposes of the U.S. Bankruptcy Code, as amended. Further, Contractor is not providing advice regarding the value or advisability of trading in "commodity interests" as defined in the Commodity Exchange Act, 7 U.S.C. §§ 1-25, et seq., as amended (the "CEA"), including futures contracts and commodity options or any other activity which would cause Contractor or any of its affiliates to be considered a commodity trading advisor under the CEA.

34. Contract Changes

Any change, modification, change order, or amendment (hereinafter "Contract Change") to this Agreement must be in writing and approved and signed by CTA and Contractor. Contract Changes can include, but are not limited to, changes to scope, time extensions, cost, contract terms, or any combination thereof. Contractor shall be liable for satisfactorily correcting, and/or all costs resulting from, any change not ordered in writing and signed by the CTA.

35. Substance Abuse

To the extent the Contractor, Subcontractor, or any party contracted for work as a result of this Agreement performs a safety sensitive function, Contractor agrees to comply with, and assures their employees comply with all applicable drug and alcohol abuse testing requirements that may be found under state and federal law as they apply to public contracting.

36. No Third Party Beneficiaries

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

37. Independent Contractor

The Contractor will perform the Scope of Services under this Agreement as an independent Contractor, and nothing herein is intended or will be construed to create any partnership, agency, or joint venture relationship between the Authority and the Contractor or any Subcontractor. Neither the Contractor nor its Subcontractors, or the employees or agents of any of them, will be deemed for any purpose to be employees of the Authority. The Contractor will be solely responsible for the withholding or payment of all applicable Federal, State, and local personal income taxes, social

security taxes, unemployment and sickness disability insurance, and other payroll taxes with respect to the Contractor's employees.

38. Obligation to Comply with the Authority's Inspector General Ordinance

The Contractor agrees to comply with all of the requirements of Authority Ordinance No. 99-173, as it may be amended from time to time, the provisions of which are incorporated into this Agreement to the same force and effect as if set forth in full herein. As required by Ordinance No. 99-173, as amended, the Contractor agrees to cooperate fully and expeditiously with the Authority's Inspector General in all investigations or audits. This obligation applies to all officers, directors, agents, partners, employees, and Subcontractors of the Contractor.

39. Limitation of Liability

In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there will be no liability upon the board members, officials, agents or employees of the Authority, including without limitation the General Manager, Purchasing, and the Project Manager, either personally or as officials of the Authority, it being understood that in such matters they act as representatives of the Authority.

In carrying out any provisions of this Agreement there will be no liability upon the board members, officers, agents or employees of the Contractor, it being understood that such persons act as representatives of the Contractor.

40. Advertising and Publicity

Contractor must not disclose, use or refer to this Agreement or any of its terms, or the name of the Authority in any advertising, publicity releases, promotional materials or materials distributed to existing or prospective customers, without the prior written consent of the Project Manager. Notwithstanding the above, Contractor may identify the Authority as a customer or client in a general customer reference list.

41. Representations of Contractor

In connection with the execution of this Agreement, the Contractor represents and warrants:

1. That it, each of its joint venture members if a joint venture, and its Subcontractors, are not in default at the time of the execution of this Agreement, or deemed by the General Manager, Purchasing to have, within 3 years immediately preceding the date of this Contract, been found to be in default, in connection with any contract awarded by the Authority.
2. That this Agreement is feasible of performance in accordance with all of its provisions and requirements and that the Contractor can and will perform, or cause to be performed, the Scope of Services in accordance with the provisions and requirements of this Agreement.
3. The parties acknowledge that, except only for those representations, statements, or promises expressly contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, neither Party has relied upon any other representation, statement or promise of the other Party, either made orally or in writing.

4. That, Contractor acknowledges that the Authority, in its selection of the Contractor to perform the Scope of Services hereunder, materially relied upon the Contractor's response(s) to the Authority's solicitation

42. Compliance with All Laws

The Contractor will at all times observe and comply with all laws, ordinances, regulations, and codes of the Federal, State, City, Authority and other local government agencies that may in any manner affect the contents of the RFP or the performance of the Agreement.

43. Permits and Licenses

Unless otherwise expressly provided, the Contractor is fully responsible for identifying, requiring and obtaining, at its own expense, all permits and licenses necessary to provide the Scope of Services described in this Agreement.

44. Civil Rights

1. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 USC § 12132, and Federal Transit Law at 49 USC § 5332, the Contractor agrees that it will not discriminate against any employee or applicant on the basis of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Agreement:
 - a. **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e, and Federal Transit Laws at 49 USC § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect Services provided under this Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action will include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with all implementing requirements FTA may issue.
 - b. **Age.** In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623 and Federal Transit Law at 49 USC §

5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. **Disabilities.** In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC § 12112, the Contractor agrees that it will comply with the requirements of US Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. During the performance of this Agreement, the Contractor agrees as follows:
- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action will include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
 - c. The Contractor will send to each labor union or representative of workers with whom the representative has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Authority's General Manager, Purchasing, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and will post copies of the notice in conspicuous places available to employees and applicants for employment.
 - d. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - e. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Authority and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.
 - f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this

Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies applied as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor must include the provisions of the above Paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Authority may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Federal Government contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- 4. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

45. Illinois Human Rights Act

During the term of this Agreement, the Contractor must:

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

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

46. Disclosure of Ownership

Any person, business entity, or agency that submits a proposal for the purpose of contracting with the Authority is required to complete all certifications, forms and statements contained in the Authority's RFP.

47. Ethics Ordinance

Contractor agrees to comply with the CTA Ethics Ordinance, CTA Ordinance No. 004-76, as amended from time to time, the provisions of which are hereby incorporated into this Agreement. The Contractor agrees that, as provided by Section 5.3 of the CTA Ethics Ordinance, any contract negotiated, entered into, or performed in violation of any of the provisions of the Ethics Ordinance shall be voidable as to the Authority at the election of the Authority.

48. Conflict of Interest

1. No Board member, officer or employee of the Authority or other unit of local government, who exercises any functions or responsibilities in connection with the carrying out of the Scope of Services or the carrying out of the Scope of Services to which this Agreement pertains, may have any personal interest, direct or indirect, in this Agreement or the proceeds thereof.
2. In accordance with 41 USC § 22, the Contractor agrees that no member of or Delegate to the Congress of the United States, or the Illinois General Assembly and no members of the Chicago Transit Board or Authority employees, may be admitted to any share or part of this Agreement or to any private financial interest, profit, or benefit arising herefrom.
3. The Contractor covenants that it, its officers, directors and employees, and the officers, directors, and employees of such of its members if a joint venture, and Subcontractors presently have no interest and will not acquire any interest, direct or indirect, in the Scope of Services to which this Agreement pertains, which would conflict in any manner or degree with the performance of the Services hereunder. The Contractor further covenants that, in the performance of this Agreement, no person having any such interest will be employed by the Contractor.
4. An organizational conflict of interest exists when the nature of work to be performed under a proposed third party contract or subcontract may, without some restriction on future activities, result in an unfair competitive advantage to the third party contractor

or Subcontractor or impair its objectivity in performing the Agreement. The Contractor is prohibited from performing any work or services for the Authority that conflict with work or services that the Contractor performs under any other contract with the Authority. The restrictions in this paragraph are applicable to all Subcontractors. The Contractor has sole responsibility for compliance with this provision. Any violation of this provision is a material breach of the Agreement, which is cause for termination.

49. Assignment

- A. This Agreement is binding upon the Parties' respective successors and permitted assignees.
- B. The Contractor may not assign this Agreement in whole or in part without the written approval of the Purchasing Agent. In no case will such written approval relieve the Contractor from its obligations or change the terms of the Agreement.
- C. The Customer agrees that it shall only assign this Agreement to a person or entity whose creditworthiness is the same as or better than Customer's as of the effective date of this Agreement.

Decision to Switch Suppliers; Authorization to Obtain Information

CUSTOMER HEREBY CONFIRMS ITS DECISION TO SWITCH SUPPLIERS TO CONTRACTOR subject to the conditions in this Agreement. Unless otherwise specified in this Agreement or in an amendment hereto executed by both Parties, all Electric Energy required by Listed Facilities associated with the Account Number(s) specified in the attachments will be switched to Contractor as of the commencement of service date(s) specified herein. Customer hereby authorizes Contractor to receive Customer's historical and ongoing usage information from the ComEd.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below their respective signatures.

THIS AGREEMENT SHALL BECOME EFFECTIVE UPON THE EXECUTION OF THIS DOCUMENT BY BOTH PARTIES AND CUSTOMER'S WRITTEN ACCEPTANCE OF CONTRACTOR'S BEST AND FINAL OFFER

SIGNATORY PAGE

IN WITNESS WHEREOF, on the __ day of _____, 2009, the parties have executed this Agreement.

_____ [Name of Company]

By: _____

Its: _____

Attest:

Secretary* (Seal)

NOTE If the contract is executed by other than the President or a Vice President and Secretary, a corporate resolution must be attached in duplicate authorizing execution by the designated parties.

To be completed by CTA

By: _____ **Chicago Transit Authority**

Its: _____

SPECIAL CONDITIONS

These special conditions take precedence over any inconsistent provisions in the Agreement.

SPECIAL CONDITIONS -- BLOCK PRICING

[Applicable if CTA purchases pursuant to a Block Pricing Proposal]

Forward Block Purchase: During the Term of this Agreement, Customer may purchase any amount of the energy component of its electricity requirements from Contractor as a Fixed Contract Quantity. Customer shall request a forward purchase at least five (5) business days prior to Customer's desired start date for such purchase. Such notification shall: (i) set forth the incremental forward purchase amount in whole MW increments, (ii) designate the time period as expressed in NERC wholesale periods 5X16 (On Peak), 2X16 (Weekends) or 7X8 (Off Peak), and (iii) designate the month or months to which the forward purchase will apply.

The On Peak and Off Peak charges quoted shall be as follows: The On Peak period, as defined by NERC, are the hours between 7 am and 11 pm prevailing Eastern Time, Monday through Friday, except for NERC-defined holidays. The NERC-defined holidays are: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. The Off Peak period shall be all other hours. This definition of On Peak and Off Peak charges shall apply to all usage and price related components.

Index Energy Purchase: Customer will pay the Day Ahead Charge, which equals the product of the hourly Day Ahead Locational Marginal Price for the ComEd Zone ("ComEd Day Ahead LMP") and the quantity equal to the forecasted usage minus the Fixed Contract Quantity. If the Day Ahead Charge is negative, Contractor will credit the amount to Customer.

In addition, Customer will pay the Real Time Charge, which equals the product of the hourly Real Time Locational Marginal Price for the ComEd Zone and the quantity equal to Customer's total actual usage for that hour minus the forecasted usage for that same hour. If the Real Time Charge is negative, Contractor will credit the amount to Customer.

Fixed Retail Adder: The Fixed Retail Adder is intended to reimburse Contractor for necessary costs not included in the energy price and shall be billed to the Customer as a separate line item in \$/kWh applied to each kWh actually consumed by Customer. Retail Energy Costs consist of: capacity, ancillary services, network integrated transmission service or NITS, congestion, transmission losses, distribution losses, ISO/PJM Administration costs, and Contractor margin.

Price Formula: The price formula defining what CTA will pay under the Block Pricing structure in any month during the term of the Agreement is as follows:

Forward Block Purchase, plus

Index Energy Purchase for energy consumed by Customer above the Forward Block Purchase, plus
Fixed Retail Adder (\$/kWh) times the kWh actually consumed by Customer.

SPECIAL CONDITIONS – BANDWIDTH RESTRICTION

[Applicable only if CTA purchases subject to bandwidth restrictions]

Customer agrees to buy Contract Quantity (CQ) kWh, plus or minus _____%, of aggregate load per month as set forth in Schedule 2. The Contractor shall provide a monthly kWh band of ____% (plus or minus) at the Agreement rate. To the extent that Customer uses the Electric Energy outside the bandwidth, all charges associated with Transmission Losses, Distribution Losses, Congestion Charges, Ancillary Charges, Transmission Charges, Distribution Charges, and Miscellaneous Charges incurred or avoided shall be passed through without any mark up.

If during any month of delivery Customer uses energy above _____% of the monthly CQ kWh, the additional energy will be charged at the market price using ComEd Zone average **monthly prices**. ***The average monthly prices are defined as the simple average of all real time hourly prices at the PJM ComEd Zone, for the actual days of the billing cycle.***

If during any month of delivery Customer's metered usage is less than _____% of the monthly CQ kWh, Contractor shall invoice Customer an amount equal to _____% of the monthly CQ kWh multiplied by the Contract Price, and shall credit Customer by an amount equal to the metered usage below the bandwidth multiplied by the market price using ComEd Zone average monthly prices.

There will be a monthly reconciliation of the incremental purchased or sold power for Customer. Only monthly total kWh usage shall be used in the calculation of the CQ utilization. Half-hourly, hourly, daily or weekly reconciliation will not be accepted. In rare situations, however, there may be minor additional charges in transmission charges if the Contractor's overall portfolio falls outside the allowed band with their suppliers, provided this occurs solely due to Customer's unexpected usage. Customer shall, in no event, be required to reimburse the Contractor for ComEd charges or PJM charges to the extent that the Contractor could have avoided or reduced such charges unless the Contractor can substantiate the assessed charges and establish to Customer's reasonable satisfaction why such charges were consistent with the prudent management of Customer's accounts.

ELECTRICITY CONTRACT

Electricity Sales Agreement between Customer and _____

This Agreement is between the Chicago Transit Authority ("Customer" or "CTA"), a body corporate and politic and unit of local government, and _____ ("Contractor"), who are collectively identified as the "Parties." This Agreement is the culmination of a process that started with the CTA Request for Proposal ("RFP") entitled "Request for Electricity for Railroads and Certain Large Facilities Used by CTA Commencing January 1, 2010" (CTA RFP No. B09OP03436). This Agreement, including the attached Exhibits shall constitute the entire understanding between the Parties. However, any representations made by the Contractor in its response to the RFP shall survive the execution of this Agreement and be incorporated herein by reference. If there is any conflict between the presentations made by the Contractor in his response to the RFP and the terms of this Agreement, the terms and conditions in this Agreement shall prevail. No modifications or supplements to this Agreement will be effective unless agreed to and signed by both parties. Nothing contained in this Agreement creates any rights or benefits in or for any third party. This Agreement applies to the account numbers and meters identified for the facilities listed in the attachments hereto ("Listed Facilities"). The Parties agree as follows:

DEFINITIONS: The following definitions and any additional terms defined within this Agreement and/or applicable attachments shall apply hereunder and under all notices and communications made pursuant to this Agreement:

"Adequate Assurance": Any financial security in a form and amount satisfactory to Customer, including, but not limited to, a cash deposit, bond, letter of credit or parental guarantee.

"Agreement": This contract entered into between Customer and Contractor including any and all Exhibits attached hereto, as well as all written representations and warranties made by Contractor in response to CTA RFP No. B09OP03436.

"Bankruptcy Event": Means, with respect to a Party, that such Party will (i) make a general assignment for the benefit of creditors; (ii) become bankrupt or insolvent, however evidenced, or be unable to pay its debts as they fall due; (iii) be the subject of a voluntary or involuntary proceeding under any bankruptcy, insolvency or similar law; or (iv) have a trustee, receiver or similar official appointed with respect to it or any substantial portion of its assets.

"Contract Rate": The price set forth in the Agreement as Fixed Generation Charges at which Customer agrees to purchase and Contractor agrees to sell Electric Energy.

"Day or day": Means a calendar day unless business days are specified.

"Defaulting Party": A Party to whom one or more Events of Default applies, including, if applicable, an Event of Default affecting a Party's Guarantor.

"Delivery Charges": Any and all costs and charges approved by the Illinois Commerce Commission for inclusion in Delivery Company's tariff applicable to the delivery of Electric Energy to Customer by the Delivery Company.

“Delivery Company”: Customer’s local delivery company providing service to Listed Facilities Commonwealth Edison Company (“ComEd”) is serving Customer under this agreement. The Delivery Company is not to be considered a Subcontractor under this Agreement.

“Delivery Point”: means existing and future points of interconnection between the RTO controlled grid or a third-party transmission system and/or distribution system, as applicable, and the Delivery Company’s transmission system and/or distribution system.

“Delivery Services”: Transmission, delivery and other related ancillary services provided by the Delivery Company and necessary to permit Customer to receive the Electric Energy at its Listed Facilities.

“Electric Energy: Full requirements electric energy supply purchased by Customer for its consumption.

“Event of Default”: The occurrence of any of the following for reasons other than Force Majeure with respect to a party: (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ~~fifteen (15)~~ five (5) business days after receipt of written notice; (b) any written representation or warranty made by a Party in any of its submissions to the other Party is false or misleading in any material respect when made or when deemed made or repeated; (c) the failure to perform any material covenant or obligation set forth in this Agreement; (d) a party is subject to a Bankruptcy Event; (e) a Party consolidates or merges into or transfers all or substantially all of its assets to another entity and that the resulting entity fails to assume all obligations of such party under this Agreement, or (f) the failure of the Contractor to timely supply the Electric Energy .

An **Event of Default** with respect to a Party’s Guarantor shall include: (i) if any written representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated; (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guarantee made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice; (iii) a Guarantor is subject to a Bankruptcy Event; (iv) the failure of a Guarantor’s guarantee to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party without the written consent of the other Party; or (v) a Guarantor shall attempt to repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guarantee; or (vi) failure to maintain at all times senior unsecured debt rated BBB- or greater by Standard & Poor’s Rating Group or its successor, or Baa3 or greater by Moody’s Investor Services, Inc.

“Interest Rate”: Means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

“Non-Defaulting Party”: Means when there is a Defaulting Party, the Party that is not the Defaulting Party.

“Party”: Contractor and Customer are individually referred to as a “Party” within this Agreement.

“Parties”: Contractor and Customer are collectively referred to as “Parties” as the context of this Agreement requires.

“Replacement Energy”: Electric Energy that Customer purchases from a supplier of last resort or another ARES or RES as a result of Contractor’s Event of Default in the performance of its obligations hereunder.

“Listed Facilities”: The collective properties, including the associated accounts and meter numbers governed by this Agreement and identified on an Attachment.

“Subcontractors”: Any person or entity with whom Contractor contracts to provide any part of the Electric Energy, including subcontractors and subconsultants of any tier, suppliers and materials providers.

“Summer & Nonsummer months: To the extent seasonal prices are requested, the summer and nonsummer months will be as defined by the Delivery Company consistent with Illinois regulations.

“Transmission Tariff”: All applicable transmission tariffs, as amended from time to time, on file with the Federal Energy Regulatory Commission.

1. Service Provided by Contractor

This is a full requirements contract for the supply of Electric Energy to Customer’s Listed Facilities. “Full Requirements” means all necessary electric energy, capacity, ancillary services and other products or services necessary to serve electric retail load. Contractor agrees to sell and provide to Customer, on a firm basis, 100 percent of Customer’s Electric Energy needs to instantaneously meet its electric power and energy requirements at the Listed Facilities during the term and at the prices set forth in this Agreement. Contractor shall assume responsibility for the purchase, transmission, and delivery of the Electric Energy. Contractor shall be authorized to (i) execute on behalf of Customer all authorizations required to switch electricity suppliers as may be necessary to carry out the provisions of this Agreement, and (ii) make all necessary arrangements for the purchase and delivery to the Delivery Point(s) of such Electric Energy for the Listed Facilities, including providing or procuring all services related to the sale and delivery to the Delivery Point(s) of Electric Energy for the Listed Facilities, including, without limitation the following services as applicable: ancillary transmission services, transmission, generation, balancing, forecasting, scheduling, and nominating. Title to Electric Energy sold will pass to the Customer at the Delivery Point(s).

SCHEDULING SERVICES

Contractor will be responsible for scheduling services in accordance with ComEd’s ~~Rate~~ Rates RDS. Contractor assumes liability for any scheduling, imbalance or similar penalties, fees or charges imposed by ComEd.

2. Customer’s Obligations

Subject to the terms of this Agreement, Customer shall purchase 100 percent of Customer’s Electric Energy required by the Listed Facilities, excluding any Electric Energy that may be provided by Customer’s own back-up self-generation. Customer will execute any and all reasonable agreement(s) required by the Delivery Company (i) for the purpose of providing distribution services to Customer; (ii) to enable Customer to take service from an Alternative Retail Energy Supplier; and (iii) as may be required for Contractor to fulfill its obligations under this Agreement.

3. Service Commencement; Terms

The term of this Agreement shall commence with respect to each of the Listed Facilities on the first meter read date after December 31, 2009, and expire on _____, 200__ (the "Expiration Date"). Service to each of the Listed Accounts will continue until the first meter read date after the Expiration Date.

4. Meter Readings; Transition

Contractor understands that not all of the Listed Facilities have the same meter reading dates. The Contractor agrees to commence service for the Listed Facilities as necessary to accommodate the transition from service with the current contractor. During this transition period, Customer will not be obligated to accept and pay for any Electrical Energy that it is unable to receive and use due to Delivery Company's failure to provide meter readings.

Customer requires a seamless transition from its current electrical supplier to Contractor. It is agreed that Contractor will assist Customer in its transition from Customer's current supplier to Contractor. It is understood and agreed that in no event shall Customer be obligated to pay two suppliers for electric power supply in respect to the same facility and the same hours. Furthermore, Customer will be under no obligation to pay any penalties if the Contractor fails to deliver electric power to the ComEd system, fails to provide any documentation, and complete any processes required by ComEd, PJM, or other similar organization.

At the conclusion of this Agreement, including any extensions agreed to by the Parties, the Contractor will use reasonable efforts to assist Customer in the transition to the new service provider. Prior to the expiration of the contract term the parties will, in good faith, cooperate in planning a transition, if necessary, to a new contractor.

5. Price

The price or price formula (as described in the Special Conditions section of this Agreement) for Electric Energy sold hereunder for the Listed Facilities in this Agreement shall be the accepted price or price formula as stated in Contractor's _____, 2009 [Proposal or BAFO] for separate pricing for "CTA Traction Power Facilities", "CTA Non-Traction Group A Facilities" and "CTA Non-Traction Group B Facilities" for __ months. The price or price formula set forth is the offer or Best and Final Offer (cumulatively referred to as "BAFO") accepted and confirmed in writing by Customer. The method for submitting Proposals or BAFOs shall be as set forth in the RFP. Unless expressly stated otherwise in this Agreement, all charges, including but not limited to electric energy supply costs, capacity costs, transmission costs, transmission losses, distribution losses, congestion charges, ancillary charges, must be included in the fixed price or price formula.

The Contractor shall provide Electrical Energy to the facilities for the duration of the contract per the terms of CTA RFP No. B09OP03436 and this Electricity Sales Agreement.

CONTRACT QUANTITIES

This is a full requirements contract to meet the instantaneous needs of Customer's electric power and energy requirements at the Listed Facilities shown on the attachments. Contractor shall provide all electricity needed for the Listed Facilities. Quantities required may vary depending upon weather

conditions, season, and other factors. While Customer has provided Contractor with certain historical profile data showing its prior electrical use, Customer is not making any material representation to Contractor as to how much electricity Customer will consume during the contract term or any financial results to be anticipated by entering into this Agreement. The parties acknowledge that any electrical needs or related data that may have been discussed or provided to Contractor by Customer were, in part, from third party sources. While Customer has no knowledge of any material misrepresentation of such third party sources, Customer does not warrant such information. Contractor has made all decisions regarding this Agreement based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by Customer. Contractor has entered into this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks.

FIXED PRICING

Fixed Generation Charges shall be fixed for the entire term of the Agreement except as otherwise provided for herein. The Proposal/BAFO price shall include all items identified herein as Fixed Generation Charges and shall not change during the entire term of this Agreement, except as provided in the Transmission Charges section herein. Fixed Generation Charges shall include all of the following costs and charges:

- Electric Energy Supply Costs
- Capacity Costs
- Transmission Costs (Network Integrated Transmission Service or NITS)
- Transmission Losses
- Distribution Losses
- Congestion Charges
- Ancillary Charges

The Ancillary Charges shall include the charges for all ancillary services required to serve Customer. Such services, as prescribed by the Open Access Transmission Tariffs (OATT's) current tariff, shall include, but not be limited to:

- Schedule 1 – Scheduling, System Control and Dispatch Service
- Schedule 1A- Transmission Owner Scheduling, System Control and Dispatch Service
- Schedule 2 – Reactive Supply and Voltage Control from Generation Sources
- Schedule 3 – Regulation and Frequency Response Service
- Schedule 4 – Energy Imbalance Service
- Schedule 5 - Operating Reserve – Spinning Reserve Service
- Schedule 6 – Operating Reserve – Supplemental Reserve Service
- Schedule 6A – Black Start Service.

In the event that the tariff of the Delivery Company based portion of Transmission Losses, or Distribution Losses changes (increases or decreases) during the term of this Agreement as authorized by state and federal regulatory bodies, such change in prices may be passed through to Customer without any mark-up by a corresponding change in the applicable portion of its bill. Documentation regarding any change in tariff charges, including new charges, shall be provided when such changes occur. Such change will take effect on the first available bill after the effective date of the change and may be pro-rated to accommodate an effective date that does not coincide with Customer's billing cycle. In no event shall the Electric Energy Supply Costs and Congestion Charges change during the entire term of this Agreement.

TRANSMISSION CHARGES

Any changes (increases or decreases) to RTO-billed Network Integrated Transmission Service or NITS charges, subsequent to the execution date of this Agreement and not already included in the Proposal or BAFO accepted by Customer shall be directly passed through to Customer without any mark-up by a corresponding change in the applicable portion of its bill. In the event the RTO's reconciliation with the Contractor results in a credit back to the Contractor, the Contractor will pass through to Customer its share of the credit. The Contractor shall not pass through any RTO, ComEd or miscellaneous charges not provided for under this Agreement. Contractor will only pass through those charges necessary to deliver the Electric Energy to Customer. Contractor shall use its best efforts to minimize the number of pass through charges and the amount of such pass through charges.

RENEWABLE PORTFOLIO STANDARD COMPLIANCE COSTS

Starting June 1, 2009, Alternative Retail Electric Suppliers are required to comply with the Renewables Portfolio Standard (RPS) for the State of Illinois. Any RPS compliance costs incurred subsequent to the execution date of this Agreement and not already included in the Proposal or BAFO accepted by Customer shall be directly passed through to Customer without any mark-up by a corresponding change in the applicable portion of its bill. Contractor shall use its best efforts to minimize the number of pass through charges and the amount of such pass through charges.

6. Billing

Contractor shall promptly provide a summary bill for the Listed Facilities using a format mutually acceptable to the parties. Unless otherwise agreed to, the monthly bill format shall consist of a summary page and detail for each Listed Facility that include the following:

- kWh usage during the billing period
- cost charged

In the case of a Block Pricing structure as described in the Special Conditions section of this Agreement, the bill shall clearly state for the billing period:

- the quantity and price of On Peak Forward Block power purchased
- the quantity and price of Off Peak Forward Block power purchased
- the quantity and price of any Index Energy purchased, by hour
- the price and cost of the Fixed Retail Adder charge.

7. INTENTIONALLY OMITTED

8. Payment

Customer will pay Contractor's bill within 21 calendar days from Customer's actual date of receipt of both an accurate invoice and all supporting documentation reasonably necessary for Customer to verify all services provided under this Agreement. The preceding sentence applies unless Contractor inserts a number of days in the next paragraph and initials after the next paragraph.

Customer will pay Contractor's bill within _____ calendar days [Contractor to insert number of calendar days, minimum 28, and initial if Contractor prefers this language to the language of the

preceding paragraph.] from invoice date of both an accurate invoice and all supporting documentation reasonably necessary for Customer to verify all services provided under this Agreement. Invoice date must be the same as the postmark date or additional days will be added to reflect the postmark date. Contractor to initial here if Contractor wants this paragraph to apply: [initials]

In the event that Customer disputes the charges on its invoice, Customer shall notify the Contractor in writing of the charges disputed and the basis of the dispute. ~~While~~ Customer will use its reasonable efforts to promptly notify the Contractor of any such disputed charges, ~~the time in which to do so shall be governed by the time limits set forth in paragraph 15.~~ The Contractor shall use its reasonable efforts to timely investigate and resolve any such disputes. Upon reconciliation of any such dispute, any resulting adjustments shall be applied to the next monthly invoice. In the event that Customer disputes charges on its invoice, Customer will pay charges that are not disputed. Customer is not obligated to pay for any Electric Energy that Contractor fails to provide pursuant to and in accordance with this Agreement.

Contractor shall submit all invoices to:

Chicago Transit Authority
Attn: Emily Ziring
567 W. Lake Street, 7th Floor
Chicago, IL 60661

Customer will be billed by ComEd for delivery services provided under ComEd's Retail Delivery Service Tariff (RDS). Customer will pay ComEd directly for such services.

9. Warranties

Contractor warrants that it has the right to sell Electric Energy and provide (either directly or through purchase from others) all ancillary related services required herein, and that such Electric Energy shall be delivered hereunder and will be free from all liens of any kind. Contractor warrants that all Electric Energy it delivers or causes to be delivered to the Delivery Company's system shall comply with all applicable requirements of the Delivery Company's federal and state tariffs.

10. Indemnity

To the extent permitted by law, Contractor covenants and agrees that it shall defend, indemnify and hold harmless Customer, its directors, officers, agents and employees from any and all suits, claims, expenses (including, but not limited to attorney's fees) or losses which may be imposed for any bodily injury, including death resulting therefrom, or property damage, including the loss of use thereof, arising out of, or in connection with, the Electric Energy to be furnished by Contractors, its employees, subcontractors or agents under the Agreement, and caused by any error, omission or negligent act of Contractor, its employees, subcontractors or agents. Contractor and all independent subcontractors expressly understand and agree that any insurance protection furnished by Contractor or subcontractors, as required hereunder, shall in no way limit Contractor's responsibility under the provisions of this Agreement to indemnify, save and hold harmless Customer. This provision shall survive cancellation or expiration of this Agreement as to events that occurred before such cancellation or termination and for which written demand is received by the indemnifying Party before the second anniversary of such termination or cancellation.

11. Force Majeure

If either Party is unable, wholly or in part, by Force Majeure (as defined below) to carry out its obligations under this Agreement, and upon such Party giving written notice and full particulars of such Force Majeure to the other Party as soon as practicable after the occurrence of the cause, the obligations of the Party giving notice, so far as its obligations are affected by the Force Majeure, will be suspended during the continuance of the Force Majeure. Oral notice of the Force Majeure event is also acceptable if given to the Customer's contact person to be identified in writing by the parties, but only if such oral notice is followed by written notice as soon as practicable. The suspension will last no longer than the Force Majeure. Each party shall seek to remedy the Force Majeure with all reasonable dispatch. ~~The requirement that an event of Force Majeure will be remedied with all reasonable dispatch does not require either Party to settle strikes or lockouts by acceding to the demands of the striker.~~ If an event of Force Majeure lasts for 7 continuous days, the Party not subject to the Force Majeure has the option of terminating this Agreement at any time after the 7th day, so long as the event of Force Majeure is continuing, without further liability by providing the other Party written notice of such intent. During such period of Force Majeure, Customer will continue to be obligated to make payments for all Electric Energy delivered to and consumed at its facilities in accordance with the terms of this Agreement.

Force Majeure means any of the following causes to the extent not reasonably within the control, and without fault or negligence, of the Party affected thereby and which by the exercise of due diligence by the affected Party could not have been prevented: acts of God, civil disturbances, interruptions caused by governmental or court orders, unwillingness or inability of the transmission operator to provide transmission service or the curtailment of Contractor's transmission service through no fault of Contractor that prevents Contractor from delivering the Electric Energy to the Delivery Company. **Neither labor strikes, economic hardship, nor economic conditions, nor a change in economic conditions or in the price paid by Contractor for Electric Energy or the price at which Contractor is able to sell Electric Energy other than pursuant to this Agreement will constitute a Force Majeure under this Agreement.**

12. Guarantee/Letter of Credit

If at the time of execution of this Agreement, the senior unsecured debt of the Contractor is rated lower than BBB- by Standard & Poor's Rating Group or its successor, or lower than Baa3 by Moody's Investor Services, Inc., or its successor, or if the Contractor has no such Standard & Poor's or Moody's debt rating, then, in order to ensure the faithful performance of this Agreement, the Contractor agrees to provide before _____, 2009 and maintain at all times during the course of this Agreement an irrevocable letter of credit or a guarantee either of which shall be in the amount of \$3,000,000. The performance guarantee shall be a guarantee executed by a parent corporation or another entity acceptable to Customer. Either document shall be in a form substantially similar to the specimen attached to this Agreement or such other form acceptable to Customer. During the term of this Agreement, if the senior unsecured debt of the performance guarantor is rated lower than BBB- by Standard & Poor's Rating Group or its successor, or lower than Baa3 by Moody's Investor Services, Inc., or its successor, the Contractor shall notify Customer in writing of such downgrade within three business days. Upon receipt of such notification, or if Customer otherwise learns of the downgrade, Customer may request from the Contractor Adequate Assurance acceptable to Customer in like amount. Any bank or financial institution issuing a letter of credit must have the following: (a) a branch in Illinois to effectuate a draw or permit a draw by fax; (b) maintain a credit rating no lower than BBB- by Standard & Poor's Rating Group or its successor, or lower than Baa3 by Moody's Investor Services or its successor; and (c) have capital and surplus of at least \$500,000,000.

13. Financial Obligation

Each Party agrees to provide financial information reasonably requested by the other Party to facilitate credit review at any time during the course of this Agreement.

If the Contactor has senior unsecured debt that is rated, and during the term of this Agreement, the senior unsecured debt of the Contractor is rated lower than BBB-by Standard & Poor's Rating Group or its successor, or lower than Baa3 by Moody's Investor Services, Inc., or its successor, the Contractor shall notify Customer in writing of such downgrade within ~~48-hour~~two (2) business days. Upon receipt of such notification, Customer may request from the Contractor Adequate Assurance of performance, which Adequate Assurance shall be in the form of the Guarantee or Letter of Credit referenced in paragraph 12. Such Adequate Assurance must be delivered within five (5) business days of request. Upon 10 days notice, Customer may require and Contractor shall provide a new irrevocable letter of credit to be issued from a bank or financial institution that is acceptable to Customer and meets the rating standards set forth in paragraph 12 should the issuing bank's or institution's rating standard fall below such requirements.

14. Facility Openings and Closings

Customer shall be entitled to close individual Listed Facilities prior to the end of the term set forth herein without penalty, provided it replaces said Listed Facilities with other locations having a similar demand, energy and load profile (the "Replacement Facility"). Unless otherwise agreed upon in writing by both Parties, such Replacement Facility will be added to the Agreement at the same Contract Rate for the Listed Facility scheduled to be closed, provided the start date for the Replacement Facility is on or before the date such Listed Facility closes. Customer may add additional facilities (not replacing closed facilities) to the Agreement at the current market price as proposed by Contractor and agreed to by the Parties and as set forth in a new or revised price for said facility. Customer and Contractor shall execute new or revised schedules as necessary for any changes to the facilities served under this Agreement.

15. Default/Cure Periods

Upon the occurrence of an Event of Default and at any time thereafter so long as such Event of Default continues, the Non-Defaulting Party may by written notice to the Defaulting Party declare this Agreement to be in default. ~~Except with respect to a payment default, the~~ The Defaulting Party must remedy such Event of Default within five (5) ~~business calendar~~ business days after receiving notice from the Non-Defaulting Party. If the Defaulting Party fails to cure its default within the applicable cure period, the Non-Defaulting Party may upon five (5) business days written notice thereafter terminate this Agreement and exercise, at its election, any rights or remedies it may have under this Agreement, or as provided under law (unless otherwise limited by this Agreement).

Notwithstanding the foregoing, if Contractor: (i) has any senior unsecured debt rated lower than BBB-by the Standard & Poor's Rating group or its successor, or lower than Baa3 by the Moody's Investor Services, Inc., or its successor, and Contractor fails to provide the Guarantee or Letter of Credit required by paragraphs 12 and 13; (ii) declares bankruptcy or makes an assignment for the benefit of creditors, or (iii) fails to provide Adequate Assurance to Customer within 5 business days of Customer's demand, when such demand is based upon Customer's good faith belief that the ability of the Defaulting Party to perform its obligations under this Agreement is materially impaired, then Customer has the right, with five (5) business days written notice, to terminate this Agreement at any time. Customer shall pay for Electric Energy already provided and Customer will have no further liability to Contractor.

Any Event of Default that occurs with respect to the guarantor or bank or financial institution issuing a Letter of Credit shall be deemed an Event of Default with respect to the Contractor -unless Contractor and a substitute guarantor or bank or financial institution promptly (within 5 business days) satisfy all breaches of the requirements of this Contract which are Events of Default.

16. Remedy and Liquidated Damages

It is understood that Customer is a public transit agency providing vital services to the public and time is of the essence. Notwithstanding anything herein to the contrary, in the event that the Contractor fails to timely deliver the requested Electric Energy to Customer due to no fault of Customer, or otherwise commits an Event of Default as defined herein, Customer may immediately purchase the Electric Energy required by the Listed Facilities from the provider of last resort or from another ARES or RES and Customer may terminate this Agreement by written notice to the Contractor (subject to the notice requirements of Section 15) and unless such failure is attributable to Force Majeure, in which case the termination rights in paragraph 11 shall apply, Customer shall have no further obligation to the Contractor hereunder, other than the obligation to pay for Electric Energy provided by Contractor prior to the termination date. In the event and to the extent the Contractor commits an Event of Default, Customer will have the right to obtain Replacement Energy from other providers, selected at Customer's sole discretion. In such event, if Customer purchases Replacement Energy at prices in excess of the Contract Rate prices under this Agreement, Contractor shall pay to Customer an amount equal to the difference between the Contract Rate and the price at which Customer purchases Replacement Energy for the remainder of the contract term plus 10%5% of such difference for administrative costs. For illustrative purposes only, if Customer was required to obtain 1,000,000 kWh of Replacement Energy at a total cost of \$50,000 and the cost of power at the Contract Rate would have totaled \$30,000, Customer would be entitled to the difference (\$20,000) plus 10%5% (\$2,000\$1,000) for a total of \$21,000.\$22,000. **IN THE EVENT OF CONTRACTOR'S DEFAULT, THE RIGHT TO TERMINATE THIS AGREEMENT AND CONTRACTOR'S OBLIGATION TO PAY FOR CUSTOMER'S EXCESS COSTS FOR PROCURING REPLACEMENT ENERGY, PLUS 10%5% OF THE DIFFERENCE FOR ADMINISTRATIVE COSTS AS DESCRIBED ABOVE, SHALL BE CUSTOMER'S EXCLUSIVE REMEDY, AND CONTRACTOR'S SOLE OBLIGATION FOR CONTRACTOR'S EVENT OF DEFAULT PURSUANT TO THE TERMS OF THIS AGREEMENT. THE CONTRACTOR'S INDEMNITY OBLIGATIONS SHALL SURVIVE PURSUANT TO THE TERMS OF THIS AGREEMENT AS TO EVENTS THAT OCCURRED BEFORE SUCH CANCELLATION OR TERMINATION AND FOR WHICH WRITTEN DEMAND IS RECEIVED BY THE INDEMNIFYING PARTY BEFORE THE ~~THIRD~~SECOND ANNIVERSARY OF SUCH TERMINATION OR CANCELLATION.**

If Customer commits an Event of Default as defined herein, Contractor may terminate this Agreement by written notice to Customer and Contractor shall have no further obligation to Customer hereunder. In such event, Contractor shall use best reasonable efforts to re-sell the electric Energy that would have been sold to Customer hereunder. However, if Contractor is unable to sell such Electric Energy, at a price per kWh that is equal to or greater than the Contract Rate, then Customer shall pay the Contractor an amount equal to the difference between the Contract Rate and the price at which Contractor sells such Electric Energy for the actual quantity which Customer purchased from other sources for the remainder of the contract term plus 10%5% of such difference for administrative costs. For illustrative purposes only, if Customer obtained 1,000,000 kWh of electric energy from another source and the difference between the cost of power at Contractor's Contract Rate and the cost at the mitigated price was \$30,000, Customer would be obligated to pay the \$30,000 difference plus 10%5% (\$3,000\$1,500)

for a total of ~~\$33,000~~\$31,500. **CUSTOMER'S OBLIGATION TO PAY SUCH AMOUNT TO CONTRACTOR AND CONTRACTOR'S RIGHT TO TERMINATE THIS AGREEMENT, SHALL BE CONTRACTOR'S EXCLUSIVE REMEDY, AND CUSTOMER'S SOLE OBLIGATION TO CONTRACTOR IN THE EVENT OF CUSTOMER'S EVENT OF DEFAULT PURSUANT TO THE TERMS OF THIS AGREEMENT.**

Contractor shall use commercially reasonable efforts to mitigate any losses. Customer shall use commercially reasonable efforts to mitigate any losses subject to compliance with Customer's purchasing regulations. **TO THE EXTENT DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.**

If either party defaults under this Agreement, without limiting its rights herein, a non-defaulting party may set off any and all amounts that the defaulting Party owes to it against any or all amounts it owes the defaulting Party (whether or not then due).

17. Insurance Requirements

Contractor, at its sole expense, shall procure, maintain and keep in force during the entire term of this Agreement the insurance types and amounts listed in Appendix N, Insurance Requirements, of CTA's RFP No. B09OP03436.

18. Records and Audits

A. Records

- (i) The Contractor must deliver or cause to be delivered to Customer promptly, at a mutually agreeable place and time, all documents prepared for Customer under the terms of this Agreement, or reasonably required by Customer to verify the accuracy of any bill or charge, in accordance with the time limits prescribed in this Agreement, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the Electric Energy services under this Agreement.

Contractor must maintain any such records not delivered to Customer or demanded by Customer for a period of 3 years after the final payment made in connection with this Agreement. ~~Contractor must not dispose of such documents following the expiration of this period without notification of and written approval from Customer.~~

- B.** (i) Contractor and any of its Subcontractors must furnish Customer with all information that may be reasonably requested pertaining to all costs and charges that the Contractor is authorized to pass-through to the Customer under this Agreement which relate to the delivery of the Electric Energy. Contractor must keep books, documents, paper, records and accounts in connection with the services open to audit, inspection, copying, abstracting and transcription and must make these records available (in paper and

electronic form) to Customer, its auditors at reasonable and mutually convenient times and places during the performance of the Electric Energy services.

- (ii) Contractor must maintain its books, records, documents and other evidence and adopt accounting procedures and practices sufficient to reflect properly all pass-through costs and charges of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the performance of this Agreement. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.
- (iii) No provision in this Agreement granting Customer a right of access to records and documents is intended to impair, limit or affect any right of access to such records and documents that Customer would have had in the absence of such provisions.
- (iv) Customer may in its sole discretion audit the records of Contracts or its Subcontractors relating to all pass-through costs and charges, at a mutually agreeable place and time during the term of this Agreement or within three years after the Agreement ends, in connection with the goods, work, or services provided under this Agreement. Each calendar year or partial calendar year is considered an "audited period." If, as a result of such an audit, it is determined that Contractor or any of its Subcontractors has overcharged Customer in the audited period, Customer will notify Contractor. Contractor must then promptly reimburse Customer for any amounts Customer has paid Contractor due to the overcharges, plus interest at the Interest Rate of 18% per annum from the date of payment of the overcharge. Contractor will not be responsible for any interest on overcharges that result, through no fault of Contractor, from incorrect meter readings or meter readings supplied by the Delivery Company to the Contractor.

19. INTENTIONALLY OMITTED.

20. Confidentiality

Customer is a body corporate and politic and a unit of local government. Customer is subject to the Freedom of Information Act, 5 ILCS 140/1, *et seq.*, which declares, among other things, that it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government. It is Customer's intent to make this entire Agreement and the prices paid available to the public.

However, in the event either Party considers any information in this Agreement confidential or proprietary, such information shall be identified at the time of submittal. Such information shall be held in confidence by the recipient and shall be disclosed only to those of its employees or authorized representative(s) who require access in the performance of their duties to the recipient. The recipient will exercise reasonable care in the safeguarding of such confidential information. The Parties agree that only information they have a good faith belief to be confidential or proprietary, and which they have a good faith basis to designate confidential or proprietary will be so designated.

Exceptions: Neither Party shall be liable for the disclosure or use of any information designated as confidential that: (a) is, or becomes, publicly known, other than by breach of this Agreement; (b) is obtained by the recipient from another person without restriction; (c) is previously known by the recipient without restrictions; (d) is, at any time, developed by the recipient independently of any

disclosures hereunder; (e) is disclosed pursuant to the consent of the party that considers such information confidential; or (f) is required to be disclosed by law, including, but not limited to the Freedom of Information Act, 5 ILCS 140/1, *et seq.*, provided that prior to disclosing such information the recipient shall notify the other party of the demand to disclose or provide the information and the recipient agrees to reasonably cooperate if the other party deems it necessary to seek a protective arrangement.

21. Compliance with all Laws

Contractor must observe and comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later and whether or not they appear in this Agreement, and Contractor must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Contractor must require all Subcontractors to do so, also.

Notwithstanding anything in this Agreement to the contrary, references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

22. Severability

If any provision(s) of this Agreement is held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein; the remaining provisions will remain in full force and will not be affected by the invalid, illegal or unenforceable provision or by its severance.

23. Non-waiver

Either Party's failure at any time to require strict performance by the other Party of any provision of this Agreement will not waive a party's right to demand strict compliance with any other provision of this Agreement or such provision at any other time. Any waiver of any terms of this Agreement must be in writing and shall not diminish the future enforceability of this Agreement.

24. Necessary Documents

Each Party agrees to execute and deliver all further documents, and take all further action reasonably necessary to effectuate the purpose of this Agreement, including any prerequisites required by Delivery Company.

25. Deemed Inclusion

Provisions required (as of the Effective Date) by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement.

-The following additional attachments are deemed included:

Attachments:

- Special Conditions
 - Block Pricing
 - Bandwidth Restriction
- Sample Guarantee/Letter of Credit
- Listed Facilities
- __/__/2009 Proposal/BAFO
- CTA RFP No. B09OP03436 and Addenda

26. Independent Contractor

This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Contractor and Customer. The rights and the obligations of the parties are only those set forth in this Agreement. Contractor must perform under this Agreement as an independent contractor and not as a representative, employee, agent, or partner of Customer.

27. Representations

Contractor represents that it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Electric Energy required; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and Contractor warrants it can and will provide, or cause to be provided, the Electric Energy services in strict accordance with the provisions and requirements of this Agreement. Customer represents that it has the capacity and authority to enter into an agreement for the purchase of electric energy; to authorize a third party to make all necessary arrangements for the purchase and delivery of such Electric Energy to the Listed Facilities.

28. No Consequential Damages

In no event will either Party be liable to the other or to any third-party, for any special, incidental, consequential, punitive or exemplary damages arising out of or in connection with this Agreement, whether such damage claim is a result of breach of contract, tort liability (including negligence), strict liability, or otherwise. The limitation of liability in this paragraph does not apply to: (i.) Contractor's liability for Contractor's or its Subcontractors fraud or gross negligence, including, but not limited to misrepresentations made by Contractor in any submission to Customer at any time during the RFP process; (ii) any claims covered by and for which proceeds are provided by any insurance, bond, letter of credit or other guarantee provided for herein; and (iii.) Contractor's unlawful refusal to perform its obligations pursuant to this Agreement; ~~and (iv.) Contractor's indemnification obligations pursuant to this Agreement.~~

29. Miscellaneous

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois. The forum of choice for the parties to resolve any dispute which may arise out of this Agreement is the appropriate state court of competent jurisdiction located in Cook County, Illinois. This Agreement shall not be construed against a Party by reason of who prepared it. Each Party

represents and warrants that the person signing this Agreement is authorized to do so and that this Agreement is a valid and binding obligation of such Party. The parties agree that fax copies of executed original copies of this Agreement shall be sufficient and admissible evidence of the content and existence of this Agreement to the same extent as the originally executed copy or copies (if executed in counterpart).

30. Notices

Any and all notices given in connection with this Agreement shall be deemed adequately given only if in writing and addressed to the party for whom such notices are intended at the address set forth below. All notices shall be sent by personal delivery, Fed Ex or other overnight messenger service, first class registered or certified mail, postage prepaid, return receipt requested, or by facsimile. A written notice shall be deemed to have been given to the recipient party on the earlier of (a) the date it is delivered to the address required by this Agreement; (b) the date delivery is refused as the address required by this Agreement; (c) with respect to notices sent by mail, the date as of which the postal service indicates such notices to be undeliverable at the address required by this Contract; or (d) on the date sent, if delivered by facsimile at the number(s) set forth below and upon proof of delivery as evidenced by the sending fax machine. The Agreement number must be prominently featured in the heading of all notices sent hereunder.

Any and all notices referred to in this Agreement, or that either party desires to give to the other, shall be addressed as follows:

Contractor: Notices, Correspondence and Parcel Deliveries, Contractor Fax Number	Customer: Chicago Transit Authority Notices and parcel Deliveries 567 W. Lake Street Chicago IL 60661 Attn: Emily Ziring Phone number: 312 681-3527
Payments (as indicated on invoice)	

31. Choice of Law; Venue; Attorney Fees and Expenses

The validity, performance, and construction of this Agreement will be governed and interpreted in accordance with the laws of the State of Illinois, without giving effect to conflict of law principles. Any controversy or claim arising from or relating to this Agreement will be settled in accordance with the express terms of this Agreement by a court located in the State of Illinois (and each Party hereto waives any right to object to venue in this regard). EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY OR TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION CLAIMS IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. If either Party pursues court action to enforce its rights under this Agreement, the non-prevailing Party shall promptly reimburse the prevailing Party for all its reasonable attorney fees, expenses and costs. [The preceding sentence applies unless the Contractor, at its option, inserts its initials next to the following alternative sentence.]

Each Party shall be responsible for all of its attorney fees, expenses and costs regardless of whether or not it prevails in any court action to enforce its rights under this Agreement. Contractor must initial here if this sentence is preferred: _____

32. Change in LawsINTENTIONALLY OMITTED

If there is a change in applicable federal or state law, in applicable tariffs or the regulatory interpretation, ordinances, rules, executive orders or applicable regulations (collectively, "Changes in Law") after the date of this Agreement that materially and adversely affects a party's (the "Affected Party") ability to perform its obligations hereunder or which makes performing such obligations economically burdensome, then the Affected Party will send written notice to the other party. The written notice will identify the costs (and the method by which those costs were determined) that would-be incurred by the Affected Party if it continues to perform its obligations under this Agreement in accordance with the Change in Law. If the party receiving the notice of the Change in Law does not within 30 calendar days of receiving the Affected Party's notice agree to pay the additional costs associated with the Affected Party's complying with the Change in Law, then the Affected Party has the right to cancel this Agreement upon 30 calendar days advance written notice to the other party. The cancellation notice will detail the specific changes relied upon. No Change in Law which is enacted prior to the effective date of this Agreement shall be considered a material and adverse Change in Law under this Section.

33. Forward Contract; Inapplicability of Commodities Exchange Act

The Parties acknowledge and agree that this Agreement is a "forward contract" and that Contractor is a "forward contract merchant" for purposes of the U.S. Bankruptcy Code, as amended. Further, Contractor is not providing advice regarding the value or advisability of trading in "commodity interests" as defined in the Commodity Exchange Act, 7 U.S.C. §§ 1-25, et seq., as amended (the "CEA"), including futures contracts and commodity options or any other activity which would cause Contractor or any of its affiliates to be considered a commodity trading advisor under the CEA.

34. Contract Changes

Any change, modification, change order, or amendment (hereinafter "Contract Change") to this Agreement must be in writing and approved and signed by CTA and Contractor. Contract Changes can include, but are not limited to, changes to scope, time extensions, cost, contract terms, or any combination thereof. Contractor shall be liable for satisfactorily correcting, and/or all costs resulting from, any change not ordered in writing and signed by the CTA.

35. Substance Abuse

To the extent the Contractor, Subcontractor, or any party contracted for work as a result of this Agreement performs a safety sensitive function, Contractor agrees to comply with, and assures their employees comply with all applicable drug and alcohol abuse testing requirements that may be found under state and federal law as they apply to public contracting.

36. No Third Party Beneficiaries

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

37. Independent Contractor

The Contractor will perform the Scope of Services under this Agreement as an independent Contractor, and nothing herein is intended or will be construed to create any partnership, agency, or joint venture relationship between the Authority and the Contractor or any Subcontractor. Neither the Contractor nor its Subcontractors, or the employees or agents of any of them, will be deemed for any purpose to be employees of the Authority. The Contractor will be solely responsible for the withholding or payment of all applicable Federal, State, and local personal income taxes, social security taxes, unemployment and sickness disability insurance, and other payroll taxes with respect to the Contractor's employees.

38. Obligation to Comply with the Authority's Inspector General Ordinance

The Contractor agrees to comply with all of the requirements of Authority Ordinance No. 99-173, as it may be amended from time to time, the provisions of which are incorporated into this Agreement to the same force and effect as if set forth in full herein. As required by Ordinance No. 99-173, as amended, the Contractor agrees to cooperate fully and expeditiously with the Authority's Inspector General in all investigations or audits. This obligation applies to all officers, directors, agents, partners, employees, and Subcontractors of the Contractor.

39. Limitation of Liability

In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there will be no liability upon the board members, officials, agents or employees of the Authority, including without limitation the General Manager, Purchasing, and the Project Manager, either personally or as officials of the Authority, it being understood that in such matters they act as representatives of the Authority.

In carrying out any provisions of this Agreement there will be no liability upon the board members, officers, agents or employees of the Contractor, it being understood that such persons act as representatives of the Contractor.

40. Advertising and Publicity

Contractor must not disclose, use or refer to this Agreement or any of its terms, or the name of the Authority in any advertising, publicity releases, promotional materials or materials distributed to existing or prospective customers, without the prior written consent of the Project Manager. Notwithstanding the above, Contractor may identify the Authority as a customer or client in a general customer reference list.

41. Representations of Contractor

In connection with the execution of this Agreement, the Contractor represents and warrants:

1. That it, each of its joint venture members if a joint venture, and its Subcontractors, are not in default at the time of the execution of this Agreement, or deemed by the General Manager, Purchasing to have, within 3 years immediately preceding the date of this Contract, been found to be in default, in connection with any contract awarded by the Authority.
2. That this Agreement is feasible of performance in accordance with all of its provisions and requirements and that the Contractor can and will perform, or cause to be

performed, the Scope of Services in accordance with the provisions and requirements of this Agreement.

3. The parties acknowledge that, except only for those representations, statements, or promises expressly contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, neither Party has relied upon any other representation, statement or promise of the other Party, either made orally or in writing.
4. That, Contractor acknowledges that the Authority, in its selection of the Contractor to perform the Scope of Services hereunder, materially relied upon the Contractor's response(s) to the Authority's solicitation

42. Compliance with All Laws

The Contractor will at all times observe and comply with all laws, ordinances, regulations, and codes of the Federal, State, City, Authority and other local government agencies that may in any manner affect the contents of the RFP or the performance of the Agreement.

43. Permits and Licenses

Unless otherwise expressly provided, the Contractor is fully responsible for identifying, requiring and obtaining, at its own expense, all permits and licenses necessary to provide the Scope of Services described in this Agreement.

44. Civil Rights

1. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 USC § 12132, and Federal Transit Law at 49 USC § 5332, the Contractor agrees that it will not discriminate against any employee or applicant on the basis of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Agreement:
 - a. **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e, and Federal Transit Laws at 49 USC § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect Services provided under this Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action will include, but not be limited to, the following: employment,

- b. **Age.** In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623 and Federal Transit Law at 49 USC § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - c. **Disabilities.** In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC § 12112, the Contractor agrees that it will comply with the requirements of US Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. During the performance of this Agreement, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action will include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
 - c. The Contractor will send to each labor union or representative of workers with whom the representative has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Authority's General Manager, Purchasing, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No, 11246 of September 24, 1965, and will post copies of the notice in conspicuous places available to employees and applicants for employment.
 - d. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - e. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and

orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Authority and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.

- f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies applied as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - g. The Contractor must include the provisions of the above Paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Authority may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Federal Government contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
4. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

45. Illinois Human Rights Act

During the term of this Agreement, the Contractor must:

- 1. Refrain from unlawful discrimination and discrimination based on citizenship status in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination.
- 2. Comply with the procedures and requirements of the Illinois Department of Human Rights' regulations concerning equal employment opportunities and affirmative action.
- 3. Provide such information, with respect to its employees and applicants for employment, and assistance as the Department may reasonably request from time to time.
- 4. Have written sexual harassment policies that must include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) Contractor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human

Rights and the Illinois Human Rights Commission; (vi) directions on how to contact the Illinois Department of Human Rights and the Illinois Human Rights Commission; and (vii) protection against retaliation as provided in Section 6-101 of the Illinois Human Rights Act (775 ILCS 5/2-105). A copy of the policies must be provided to the Illinois Department of Human Rights upon request.

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

46. Disclosure of Ownership

Any person, business entity, or agency that submits a proposal for the purpose of contracting with the Authority is required to complete all certifications, forms and statements contained in the Authority's RFP.

47. Ethics Ordinance

Contractor agrees to comply with the CTA Ethics Ordinance, CTA Ordinance No. 004-76, as amended from time to time, the provisions of which are hereby incorporated into this Agreement. The Contractor agrees that, as provided by Section 5.3 of the CTA Ethics Ordinance, any contract negotiated, entered into, or performed in violation of any of the provisions of the Ethics Ordinance shall be voidable as to the Authority at the election of the Authority.

48. Conflict of Interest

1. No Board member, officer or employee of the Authority or other unit of local government, who exercises any functions or responsibilities in connection with the carrying out of the Scope of Services or the carrying out of the Scope of Services to which this Agreement pertains, may have any personal interest, direct or indirect, in this Agreement or the proceeds thereof.
2. In accordance with 41 USC § 22, the Contractor agrees that no member of or Delegate to the Congress of the United States, or the Illinois General Assembly and no members of the Chicago Transit Board or Authority employees, may be admitted to any share or part of this Agreement or to any private financial interest, profit, or benefit arising herefrom.
3. The Contractor covenants that it, its officers, directors and employees, and the officers, directors, and employees of such of its members if a joint venture, and Subcontractors presently have no interest and will not acquire any interest, direct or indirect, in the Scope of Services to which this Agreement pertains, which would conflict in any manner or degree with the performance of the Services hereunder. The Contractor

further covenants that, in the performance of this Agreement, no person having any such interest will be employed by the Contractor.

4. An organizational conflict of interest exists when the nature of work to be performed under a proposed third party contract or subcontract may, without some restriction on future activities, result in an unfair competitive advantage to the third party contractor or Subcontractor or impair its objectivity in performing the Agreement. The Contractor is prohibited from performing any work or services for the Authority that conflict with work or services that the Contractor performs under any other contract with the Authority. The restrictions in this paragraph are applicable to all Subcontractors. The Contractor has sole responsibility for compliance with this provision. Any violation of this provision is a material breach of the Agreement, which is cause for termination.

49. Assignment

- A. This Agreement is binding upon the Parties' respective successors and permitted assignees.
- B. The Contractor may not assign this Agreement in whole or in part without the written approval of the Purchasing Agent. In no case will such written approval relieve the Contractor from its obligations or change the terms of the Agreement.
- C. The Customer agrees that it shall only assign this Agreement to a person or entity whose creditworthiness is the same as or better than Customer's as of the effective date of this Agreement. ~~The Contractor must not transfer or assign any Agreement funds or claims due, or to become due, without first obtaining the written approval of the Purchasing Agent. Such approval will not be unreasonably withheld.~~

Decision to Switch Suppliers; Authorization to Obtain Information

CUSTOMER HEREBY CONFIRMS ITS DECISION TO SWITCH SUPPLIERS TO CONTRACTOR subject to the conditions in this Agreement. Unless otherwise specified in this Agreement or in an amendment hereto executed by both Parties, all Electric Energy required by Listed Facilities associated with the Account Number(s) specified in the attachments will be switched to Contractor as of the commencement of service date(s) specified herein. Customer hereby authorizes Contractor to receive Customer's historical and ongoing usage information from the ComEd.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below their respective signatures.

THIS AGREEMENT SHALL BECOME EFFECTIVE UPON THE EXECUTION OF THIS DOCUMENT BY BOTH PARTIES AND CUSTOMER'S WRITTEN ACCEPTANCE OF CONTRACTOR'S BEST AND FINAL OFFER

SIGNATORY PAGE

IN WITNESS WHEREOF, on the ___ day of _____, 2009, the parties have executed this Agreement.

_____[Name of Company]

By: _____

Its: _____

President

Attest:

_____(Seal)
Secretary*

| NOTE If the contract is executed by other than the President **or a Vice President** and Secretary, a corporate resolution must be attached in duplicate authorizing execution by the designated parties.

To be completed by CTA

| By: _____ **Entity: Chicago Transit Authority**

Its: _____

SPECIAL CONDITIONS

These special conditions take precedence over any inconsistent provisions in the Agreement.

SPECIAL CONDITIONS -- BLOCK PRICING

[Applicable if CTA purchases pursuant to a Block Pricing Proposal]

Forward Block Purchase: During the Term of this Agreement, Customer may purchase any amount of the energy component of its electricity requirements from Contractor as a Fixed Contract Quantity. Customer shall request a forward purchase at least five (5) business days prior to Customer's desired start date for such purchase. Such notification shall: (i) set forth the incremental forward purchase amount in whole MW increments, (ii) designate the time period as expressed in NERC wholesale periods 5X16 (On Peak), 2X16 (Weekends) or 7X8 (Off Peak), and (iii) designate the month or months to which the forward purchase will apply.

The On Peak and Off Peak charges quoted shall be as follows: The On Peak period, as defined by NERC, are the hours between 7 am and 11 pm prevailing Eastern Time, Monday through Friday, except for NERC-defined holidays. The NERC-defined holidays are: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. The Off Peak period shall be all other hours. This definition of On Peak and Off Peak charges shall apply to all usage and price related components.

Index Energy Purchase: Customer will pay the Day Ahead Charge, which equals the product of the hourly Day Ahead Locational Marginal Price for the ComEd Zone ("ComEd Day Ahead LMP") and the quantity equal to the forecasted usage minus the Fixed Contract Quantity. If the Day Ahead Charge is negative, Contractor will credit the amount to Customer.

In addition, Customer will pay the Real Time Charge, which equals the product of the hourly Real Time Locational Marginal Price for the ComEd Zone and the quantity equal to Customer's total actual usage for that hour minus the forecasted usage for that same hour. If the Real Time Charge is negative, Contractor will credit the amount to Customer.

Fixed Retail Adder: The Fixed Retail Adder is intended to reimburse Contractor for necessary costs not included in the energy price and shall be billed to the Customer as a separate line item in \$/kWh applied to each kWh actually consumed by Customer. Retail Energy Costs consist of: capacity, ancillary services, network integrated transmission service or NITS, congestion, transmission losses, distribution losses, ISO/PJM Administration costs, and Contractor margin.

Price Formula: The price formula defining what CTA will pay under the Block Pricing structure in any month during the term of the Agreement is as follows:

Forward Block Purchase, plus

Index Energy Purchase for energy consumed by Customer above the Forward Block Purchase, plus
Fixed Retail Adder (\$/kWh) times the kWh actually consumed by Customer.

SPECIAL CONDITIONS – BANDWIDTH RESTRICTION

[Applicable only if CTA purchases subject to bandwidth restrictions]

Customer agrees to buy Contract Quantity (CQ) kWh, plus or minus _____%, of aggregate load per month as set forth in Schedule 2. The Contractor shall provide a monthly kWh band of ____% (plus or minus) at the Agreement rate. To the extent that Customer uses the Electric Energy outside the bandwidth, all charges associated with Transmission Losses, Distribution Losses, Congestion Charges, Ancillary Charges, Transmission Charges, Distribution Charges, and Miscellaneous Charges incurred or avoided shall be passed through without any mark up.

If during any month of delivery Customer uses energy above _____% of the monthly CQ kWh, the additional energy will be charged at the market price using ComEd Zone average **monthly prices**. ***The average monthly prices are defined as the simple average of all real time hourly prices at the PJM ComEd Zone, for the actual days of the billing cycle.***

If during any month of delivery Customer's metered usage is less than ____% of the monthly CQ kWh, Contractor shall invoice Customer an amount equal to ____% of the monthly CQ kWh multiplied by the Contract Price, and shall credit Customer by an amount equal to the metered usage below the bandwidth multiplied by the market price using ComEd Zone average monthly prices.

There will be a monthly reconciliation of the incremental purchased or sold power for Customer. Only monthly total kWh usage shall be used in the calculation of the CQ utilization. Half-hourly, hourly, daily or weekly reconciliation will not be accepted. In rare situations, however, there may be minor additional charges in transmission charges if the Contractor's overall portfolio falls outside the allowed band with their suppliers, provided this occurs solely due to Customer's unexpected usage. Customer shall, in no event, be required to reimburse the Contractor for ComEd charges or PJM charges to the extent that the Contractor could have avoided or reduced such charges unless the Contractor can substantiate the assessed charges and establish to Customer's reasonable satisfaction why such charges were consistent with the prudent management of Customer's accounts.

CHICAGO TRANSIT AUTHORITY
Advertisement for Professional Services

NOTICE OF TIME EXTENSION WITH ADDENDUM TO FOLLOW

Notice is hereby given that the proposed due date heretofore advertised as Monday, November 9, 2009 has been extended to Monday, November 16, 2009 no later than **12:00p.m.**, in the Bid Office - 2nd Floor, 567 W. Lake, Chicago, Illinois 60661-1498 for the following item:

Req. B090P03436

Request For Proposals (RFP) for the Purchase of Electricity for Exclusive Use by the Chicago Transit Authority for a Period of up to Thirty-Six Months Beginning with the Next Meter Read Date after January 1, 2010.

*There are no other changes at this time.

For additional information, please contact James Kozicki, Procurement Administrator at 312-681-2671.

The contractor will be required to furnish certified copies of any and all Insurance Policies required in relation to this contract prior to CTA's execution.

Chicago Transit Authority hereby gives notice that it will affirmatively ensure that in regard to any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprise will be afforded full opportunity to submit responses to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

PLEASE NOTE: Where proposals are sent by mail, delivery service or delivered in-person to the CTA Bid Office, the bidders shall be responsible for their delivery only to the Bid Office before the advertised due date and hour for the proposals. The Bid Office hours are Monday through Friday from 8:00 a.m. to 4:30 p.m. Chicago time, except holidays.

The right is reserved to accept any proposal or to reject any and all proposals.

All inquiries should be directed to and copies of the documents obtained from the Bid Office - 2nd Floor, 567 W. Lake, Chicago, Illinois 60661-1498.

CHICAGO TRANSIT AUTHORITY

By: Robert Conlin
General Manager, Purchasing

November 6, 2009



CHICAGO TRANSIT AUTHORITY

567 West Lake Street
Chicago, Illinois 60661-1498
TEL 312 664-7200
www.transitchicago.com

November 4, 2009

Subject: Requisition No. B09OP03436 – Request for Proposals (RFP) for the Purchase of Electricity for Exclusive Use by the Chicago Transit Authority for a Period of up to Thirty-Six Months Beginning with the Next Meter Read Date after January 1, 2010.

Re: Time Extension with Addendum to Follow

Dear Proposer:

The due date for proposals has changed. Proposals are now due no later than Noon, Chicago time, on Monday, November 16, 2009. Also, an addendum with answers to questions received, and other modifications to the solicitation documents, will follow this time extension.

The Chicago Transit Authority is seeking proposals for the subject procurement. Proposal packages are to be delivered to:

By Mail

Chicago Transit Authority
Bid Office
P.O. Box 7554
Chicago, IL 60680-7554

Delivery Service or In Person Drop-off

Chicago Transit Authority
Bid Office – 2nd Floor
567 W. Lake Street
Chicago, IL 60661-1498

Previous Proposal Due Date: Monday, November 9, 2009

New Proposal Due Date: Monday, November 16, 2009

Proposals must be received no later than Noon, Chicago time, on Monday, November 16, 2009
Proposals received after that time will be returned unopened.

Where proposals are sent by delivery service or delivered in-person to the CTA Bid Office, the bidders shall be responsible for their delivery to the Bid Office before the advertised date and hour for the opening of bids. If the delivery of the proposal is delayed beyond the date and hour set for the bid opening, proposals thus delayed will not be considered and will be returned unopened. The Bid Office hours are Monday through Friday from 8:00 am to 4:30 pm Chicago time, except holidays.

**Ten copies of the Technical section, and
Ten copies of the Price section are to be provided**

Your response should identify the requisition (RFP) number, the name of the project, the name and address of your firm, a contact person and phone number in each section.

There are no other changes at this time.

Sincerely,

Robert Conlin
General Manager, Purchasing

cc: File B09OP03436



CHICAGO TRANSIT AUTHORITY

567 West Lake Street
Chicago, Illinois 60661-1498
TEL 312 664-7200
www.transitchicago.com

October 22, 2009

Subject: Requisition No. B09OP03436 – Request for Proposals (RFP) for the Purchase of Electricity for Exclusive Use by the Chicago Transit Authority for a Period of up to Thirty-Six Months Beginning with the Next Meter Read Date after January 1, 2010.

Re: Appendices O and P

Dear Proposer:

Attached are appendices O and P. These appendices were discussed in Addendum No. 2, but erroneously omitted. They are included for your use.

The Chicago Transit Authority is seeking proposals for the subject procurement. Proposal packages are to be delivered to:

By Mail
Chicago Transit Authority
Bid Office
P.O. Box 7554
Chicago, IL 60680-7554

Delivery Service or In Person Drop-off
Chicago Transit Authority
Bid Office – 2nd Floor
567 W. Lake Street
Chicago, IL 60661-1498

New Question Due Date: Friday, October 23, 2009

New Proposal Due Date: Monday, November 9, 2009

Proposals must be received no later than Noon, Chicago time, on Monday, November 9, 2009
Proposals received after that time will be returned unopened.

Where proposals are sent by delivery service or delivered in-person to the CTA Bid Office, the bidders shall be responsible for their delivery to the Bid Office before the advertised date and hour for the opening of bids. If the delivery of the proposal is delayed beyond the date and hour set for the bid opening, proposals thus delayed will not be considered and will be returned unopened. The Bid Office hours are Monday through Friday from 8:00 am to 4:30 pm Chicago time, except holidays.

**Ten copies of the Technical section,
Four copies of the DBE section, and
Ten copies of the Price section are to be provided**

Your response should identify the requisition (RFP) number, the name of the project, the name and address of your firm, a contact person and phone number in each section.

There are no other changes at this time.

Sincerely,

Robert Conlin
General Manager, Purchasing

cc: File B09OP03436

EXHIBIT O

SAMPLE GUARANTEE AGREEMENT

This Guarantee Agreement (the "Guarantee") is made by _____ Corporation ("Guarantor"), an _____ corporation, in favor of the Chicago Transit Authority _____ ("CTA"), a body corporate and politic and unit of local government.

RECITALS:

WHEREAS, _____ ("Contractor") an _____ corporation and CTA are parties to a certain Electricity Sales Agreement dated _____, 200__, (the "Agreement");

WHEREAS, Guarantor is the direct or indirect parent of Contractor, will receive substantial and direct benefits from the extensions of credit contemplated by the Agreement and has agreed to enter into this Guarantee to provide assurance for the performance of Contractor's obligations in connection with the Agreement and to induce CTA to enter into the Agreement; and

WHEREAS, the execution and delivery of this Guarantee is a condition to CTA's further performance of its obligations under the terms of the Agreement.

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

1. Guarantee. Guarantor hereby unconditionally and absolutely guarantees to CTA (a) the full and prompt payment and, to the extent permitted by law the performance of, all obligations, accrued and executory, which Contractor presently or hereafter may have to CTA under the Agreement, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to CTA, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Agreement, and Guarantor further agrees to indemnify CTA against any losses CTA may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by CTA of any of its rights and remedies under the Agreement, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by CTA of any of its rights against Guarantor hereunder. Guarantor's performance (but not payment) obligations to deliver, supply and/or transport electricity is limited to the extent Guarantor is prohibited or not licensed by applicable state and federal law from engaging in such activities.

2. Modifications. Guarantor has read and consents to the signing of the Agreement. Guarantor further agrees that Contractor shall have the full right, from Guarantor, its successors and assigns to: (a) modify any of the terms, provisions, conditions, obligations, and agreements of the above-referenced Agreement; (b) modify or change the above-referenced Agreement; (c) give consent to an assignment or make any assignment of the above-referenced Agreement; or (d) grant extensions of time to Contractor, its successors and assigns. Such changes or consents may be given, and such

modifications and assignments may be made without notice to or the consent of Guarantor and without affecting, changing, releasing or in any way impairing the obligations of this guarantee.

3. Merger. Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by CTA against Contractor of any of CTA's rights and remedies provided for under the Agreement, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in CTA's favor in law, equity, or bankruptcy.
4. Primary. Guarantor further agrees that its liability under this Guarantee Agreement shall be continuing, several, absolute, primary, and direct, and that CTA shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Agreement, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. There are no conditions precedent to the enforcement of this guarantee. Specifically, Guarantor affirms that CTA shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay CTA any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Agreement or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.
5. Defense. The liability of Guarantor under this Guarantee shall be absolute and unconditional irrespective of any lack of validity or enforceability of or defect or deficiency applicable to Contractor in any Agreement or any other documents executed in connection with any Agreement; provided, however, that Guarantor shall be entitled to assert any defense of Contractor based upon CTA's nonperformance or other default under the Agreement or any defense based on CTA's lack of power or authority to execute the Agreement and/or perform its obligations thereunder.
6. Transfer. This guarantee remains in full force and effect notwithstanding the sale or transfer of Contractor.
7. Successors. Guarantor agrees to assure that it shall cause this Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.
8. Out-of-Pocket Expense. Guarantor agrees to pay on demand any and all out-of-pocket costs, including reasonable legal fees and expenses, and other expenses incurred by CTA in enforcing Guarantor's payment obligations under this Guarantee; provided, however, that Guarantor shall not be liable for any expenses of CTA if it is not successful in such enforcement action and Guarantor shall

not be liable hereunder for special, consequential, exemplary, tort or other damages, beyond that which Contractor is liable for under the Agreement.

9. Representations. Guarantor further warrants and represents to CTA that the execution and delivery of this Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

10. No express or implied provision, warranty, representation or term of this Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Guarantee Agreement.

11. Notices. All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, (a) be in writing addressed to the party receiving the notice at the address set forth below or at such other address as may be designated by written notice, from time to time, to the other party, and (b) be effective upon receipt, when mailed by U.S. mail, registered or certified, return receipt requested, postage prepaid, facsimile, overnight courier or personally delivered. Notices shall be sent to the following addresses:

If to CTA:

If to Guarantor:

With a copy to:

12. Demand and Payment. Any demand by CTA for payment hereunder shall be in writing, signed by a duly authorized representative of CTA and delivered to the Guarantor pursuant to Section 11 hereof and shall (a) reference this Guarantee, (b) specifically identify Contractor, the nature of the default, the obligations to be paid and the amount of such obligations and (c) set forth payment instructions,

including bank name, routing number and bank account number. There are no other requirements of notice, presentment or demand. Guarantor shall pay, or cause to be paid, such obligations within ten (10) business days of receipt of such demand.

13. No Waiver: Remedies. Except as to applicable statutes of limitation, no failure on the part of CTA to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

14. Term: Termination. The Guarantee shall be a continuing guarantee of payment and not of collection. The Guarantee shall remain in full force and effect until 120 days after expiration of the Agreement.

15. Miscellaneous:

(a) This guarantee has been delivered at Chicago, Illinois, and shall be construed according to the laws of the State of Illinois, in which State it shall be performed by the undersigned. All actions arising directly or indirectly as a result or in consequence of this guarantee shall be instituted and litigated only in the courts situated in the City of Chicago Illinois, and the undersigned hereby consents to the jurisdiction of any State or Federal Court located and having its situs in said city.

(b) Wherever possible, each provision of this guarantee shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this guarantee shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this guarantee.

(c) THE UNDERSIGNED HEREBY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (i) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS GUARANTEE OR ANY AMENDMENT, INSTRUMENT, DOCUMENT, OR AGREEMENT DELIVERED IN CONNECTION HERewith, OR (ii) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS GUARANTEE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

In witness thereof, Guarantor has caused this Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on (date) _____.

NAME OF CORPORATION

NAME AND POSITION OF OFFICIAL
EXECUTING
GUARANTEE AGREEMENT ON
BEHALF OF GUARANTOR

ATTESTATION INCLUDING
APPLICATION OF SEAL BY AN OFFICIAL
OF GUARANTOR AUTHORIZED TO
AFFIX CORPORATE SEAL

WITNESSED BY: _____
Name: _____
Title: _____
(Duly Authorized Officer of Guarantor)

EXHIBIT P
SAMPLE IRREVOCABLE LETTER OF CREDIT

<On Bank Letter Head>

No. ()

Maximum Stated Amount: \$ _____

Date of Issuance: _____, 2009

To: Chicago Transit Authority
 567 W. Lake Street
 Chicago, Illinois 60661-1498

Re: [Electricity Supplier]

Ladies and Gentlemen:

1. We hereby establish our Irrevocable Letter of Credit No. () in your favor for the account of [Electricity Supplier] ("Vendor") in the Amount of \$ _____ ("Stated Amount"), in connection with Contract No. _____ made between you and the Company and dated _____.
2. Subject to the terms and conditions set forth below, payment will be made available to CTA up to the Stated Amount against presentation to us of a Drawing Certificate in the form attached as Annex A. Partial drawings are permitted. Payment will be made by wire transfer to the ABA number and account number set forth in the Drawing Certificate.
3. Presentation may be made on any Business Day prior to expiration as defined below either in person at _____ Chicago Branch (Address) or by facsimile to -(_____) in care of _____. Presentation of documents to effect a draw by facsimile must be confirmed by telephone to us at the following number: (______). In the event of a presentation by facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.
4. When any such demand is made at or before 11:30 a.m., and provided that such demand conforms to the requirements of this Letter of Credit, payment will be made in the amount specified, in immediately available funds, on the same day. When any such demand is made after 11:30 a.m., and provided that such demand conforms to the requirements of this Letter of Credit, payment will be made in the amount specified, in immediately available funds, by 10:00 a.m. on the next Business Day. Notice of discrepancy will be given to the attention of the Chief Financial Officer of CTA within the time payment is otherwise to be made.
5. No payment will be made of any amount that exceeds the Stated Amount. No notice from CTA shall be effective unless made in writing. This Letter of Credit is not transferable.
6. This Letter of Credit (and any amendments) will expire at the close of business at our Chicago Branch, on the earliest to occur of the following: (I) _____, 20__ ("the Stated Expiration Date"), or (II) your surrender of this Letter of Credit to us for cancellation by providing a Certificate of

Cancellation (either by mail or facsimile to the fax number stated in paragraph 3 above) in a form attached as Annex B. Whenever the Stated Expiration Date occurs while a *force majeure* event is preventing payment from being made, this Letter of Credit will remain in force until the close of business on the twenty-first calendar day after our resumption of business and notice to CTA.

7. We hereby agree with you that a demand made in compliance with the terms of this Letter of Credit will be duly honored on presentation to the Bank. All payments made by us hereunder will be made from our own funds. Partial drawings are permitted hereunder and multiple drawings are permitted. The amount available for drawing by you under this Letter of Credit shall be automatically reduced to the extent of the amount of any drawings referencing this Letter of Credit paid by us. Presentation of demands for drawings in amounts that exceed the amount available to be drawn hereunder shall not be deemed a failure to comply with this paragraph, provided that the amounts payable on any such demand shall thus be limited to the amount then available to be drawn under this Letter of Credit.
8. Except as otherwise expressly stated herein, this Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (1993 Revision), International Chamber of Commerce, Publication No. 500 (the "UCP"). As to matters not covered by the UCP, and to the extent not inconsistent with the UCP, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of Illinois. For all purposes of this Letter of Credit, references to a time of day should be understood as references to that time in the city of Chicago, Illinois, and "Business Day" means any day which is not a Saturday or Sunday and which is not a day on which banking institutions in the city of Chicago, Illinois, are authorized or required by law or executive order to close.
9. This Letter of Credit sets forth our undertaking in full, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement except the Drawing Certificate and any amendment in writing signed by a duly authorized officer of Bank of _____, but we may not make any amendment to this Letter of Credit, except for those expressly authorized above, without CTA's prior written consent in each case.

Bank of _____
Chicago Branch

By: _____
Name:
Title:

EXHIBIT P
CONT'D
ANNEX A

Form of DRAWING CERTIFICATE

Bank of _____
(ADDRESS)

Date: _____

Fax # : 312 – (number)

Re: Irrevocable Letter of Credit No. ()

Issued by

Bank of _____, Chicago Branch

In favor of

Chicago Transit Authority

567 W. Lake Street

Chicago, Illinois 60661-1498

Ladies and Gentlemen:

The undersigned, a duly authorized officer of CTA, hereby states to Bank of _____ (the "Bank") with reference to Contract No. _____ ("the Contract") dated _____, and made between CTA and with _____ ("Vendor") that:

- (I) Vendor has failed timely to perform material obligations, or is in default, under the Contract; *or*
- (II) Vendor has failed to timely deliver electricity as required by the Contract; *or*
- (III) Vendor is winding up, insolvent, bankrupt, or undergoing reorganization or rearrangement for the benefit of creditors, has admitted in writing its inability to pay its obligations as they become due, or generally has failed to pay its obligations as they become due, has commenced or consented to or acquiesced in the commencement of any bankruptcy case or other insolvency proceeding, or acquiesced in or suffered the appointment of a receiver, custodian, trustee or liquidator for itself or a material part of its business, or has admitted the material allegations of a petition filed against it in a bankruptcy or insolvency proceeding, has ceased to conduct its business in the ordinary course, or has taken any action to effectuate the foregoing; *or*
- (IV) The time remaining before the Stated Expiration Date of the captioned Letter of Credit is less than sixty days and CTA has not received an extension thereof or a replacement letter of credit satisfactory to it; *or*
- (V) Vendor has failed timely to pay an amount owed to CTA under the Contract.

CTA hereby demands payment under the captioned Letter of Credit in the amount of
\$_____.

Payment should be remitted to CTA at ABA Number _____, and Account Number
_____.

A true copy of the three-page Letter of Credit as originally issued is attached and the original is
in the possession of CTA.

By: _____

Name: _____

Title: _____

Chicago Transit Authority
An Illinois Municipal Corporation

EXHIBIT P
CONT'D
ANNEX B

Form of CERTIFICATE OF CANCELLATION

TO:: Bank of _____
(ADDRESS) Fax # : 312 – (number)

Date: _____

Re: Irrevocable Letter of Credit No. ()

Issued by

Bank of _____, Chicago Branch

In favor of

Chicago Transit Authority
567 W. Lake Street
Chicago, Illinois 60661-1498

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above-referenced Letter of Credit may be cancelled without further payment. Attached hereto is a copy of the original Letter of Credit and any subsequent amendments, if any, marked cancelled. The original documents will be mailed to the above address if this notice is being provided by facsimile.

Chicago Transit Authority
an Illinois Municipal Corporation

By: _____

Name: _____

Title: _____

Date: _____

CHICAGO TRANSIT AUTHORITY
Advertisement for Bids

NOTICE OF TIME EXTENSION

Notice is hereby given that the bid opening date heretofore advertised as Wednesday, October 28, 2009 has been extended to Monday, November 9, 2009 no later than **Noon**, in the Bid Office - 2nd Floor, 567 W. Lake Street, Chicago, Illinois 60661-1498, for the following item:

Req. B090P03436, with Addendum No. 2
Request for Proposals (RFP) for the Purchase of
Electricity for Exclusive Use by the Chicago Transit
Authority for a Period of up to thirty-six months
beginning with the next meter read date after January
1, 2010.

**Written Questions are now due no later than 4:30 p.m.,
Chicago Time, on Friday, October 23, 2009**

For additional information, please contact James
Kozicki at 312/681-2671.

The contractor will be required to furnish certified copies of
any and all Insurance Policies required in relation to this
contract prior to CTA's execution.

PLEASE NOTE: Where bids are sent by mail, delivery service or
delivered in-person to the CTA Bid Office, the bidders shall be
responsible for their delivery only to the Bid Office before the
advertised date and hour for the opening of the bids. The Bid
Office hours are Monday through Friday from 8:00 a.m. to 4:30
p.m. Chicago time, except holidays.

The right is reserved to accept any bid or any part or parts
thereof or to reject any and all bids.

All inquiries should be directed to and copies of bid documents
obtained from the Bid Office - 2nd Floor, 567 W. Lake, Chicago,
Illinois 60661-1498.

CHICAGO TRANSIT AUTHORITY

By: Robert F. Conlin
General Manager, Purchasing

October 19, 2009



CHICAGO TRANSIT AUTHORITY

567 West Lake Street
Chicago, Illinois 60661-1498
TEL 312 664-7200
www.transitchicago.com

October 19, 2009

Subject: Requisition No. B09OP03436 – Request for Proposals (RFP) for the Purchase of Electricity for Exclusive Use by the Chicago Transit Authority for a Period of up to Thirty-Six Months Beginning with the Next Meter Read Date after January 1, 2010.

Re: Addendum No. 2 and a Time Extension

Dear Proposer:

Attached is Addendum No. 2 modifying the RFP. Please take this information into account when preparing your proposal. Also, the due date for questions and proposals has changed. Questions are now due no later than 4:30p.m., Chicago time, on October 23, 2009. Proposals are now due no later than Noon, Chicago time, on Monday, November 9, 2009.

The Chicago Transit Authority is seeking proposals for the subject procurement. Proposal packages are to be delivered to:

By Mail
Chicago Transit Authority
Bid Office
P.O. Box 7554
Chicago, IL 60680-7554

Delivery Service or In Person Drop-off
Chicago Transit Authority
Bid Office – 2nd Floor
567 W. Lake Street
Chicago, IL 60661-1498

New Question Due Date: Friday, October 23, 2009

New Proposal Due Date: Monday, November 9, 2009

Proposals must be received no later than Noon, Chicago time, on Monday, November 9, 2009
Proposals received after that time will be returned unopened.

Where proposals are sent by delivery service or delivered in-person to the CTA Bid Office, the bidders shall be responsible for their delivery to the Bid Office before the advertised date and hour for the opening of bids. If the delivery of the proposal is delayed beyond the date and hour set for the bid opening, proposals thus delayed will not be considered and will be returned unopened. The Bid Office hours are Monday through Friday from 8:00 am to 4:30 pm Chicago time, except holidays.

**Ten copies of the Technical section,
Four copies of the DBE section, and
Ten copies of the Price section are to be provided**

Your response should identify the requisition (RFP) number, the name of the project, the name and address of your firm, a contact person and phone number in each section.

There are no other changes at this time.

Sincerely,

Robert Conlin
General Manager, Purchasing

cc: File B09OP03436

ADDENDUM NO. 2

All proposals are to materially comply with this RFP, including the contract forms.

THE FOLLOWING PROCESS APPLIES REGARDING REQUESTED MODIFICATIONS TO THE CONTRACT FORMS, RFP, AND OTHER EXHIBITS AND APPENDICES.

Proposers may submit a detailed list of questions or requested modifications to the RFP, including the contract forms and other exhibits and appendices. **THE LIST MUST BE SUBMITTED NO LATER THAN NOON ON THE DUE DATE FOR QUESTIONS IDENTIFIED ON THE COVER LETTER.** Any such list should be in table form, and should identify the page, section number, provision, and the specific exception, non-conformance, and/or substitute language proposed.

CTA will issue an addendum prior to the proposal due date which will include CTA's responses to all questions and requested modifications submitted by the deadline date and time for questions. The addendum will include any accepted changes to the contract forms and other documents. The addendum will be sent to all firms that were sent a copy of the RFP or are registered holders of the RFP.

Suppliers should note that the contract included in this RFP was already modified by CTA when CTA last awarded a power contract to serve its facilities.

Included in this addendum are Exhibit O, Sample Guarantee Agreement, and Exhibit P, Sample Irrevocable Letter of Credit.

The following are written questions received from interested parties and CTA's response. Questions received, but not yet answered, will be addressed in Addendum No. 3.

Q1. Will the CTA provide a redlined [Word] version of the contract that is included[?]

A1. No. However, you may submit questions or requested modifications per the process detailed at the beginning of this document.

Q2. Will the CTA consider [an alternate contract form]?

A2. No. However, you may submit questions or requested modifications per the process detailed at the beginning of this document.

Q3. Will the CTA accept any mark-up to certification[s] that may result from our review of contracts for [the No Debarment or Suspension certification, Drug Free Workplace certification, Lobbying certification, and the Disclosure of Ownership and Interest Affidavit]?

A3. No. However, you may submit questions or requested modifications per the process detailed at the beginning of this document.

Q4. Will the CTA accept any mark-up as it relates to [Appendix N – Insurance Requirements]?

A4. No. However, you may submit questions or requested modifications per the process detailed at the beginning of this document.

ADDENDUM NO. 2

Q5. Will negotiations include [a] review of redline comments to the contract?

A5. Questions or requested modifications should be submitted per the process detailed at the beginning of this document. CTA's response will be issued to all registered vendors.

Q6. Does the CTA have a pricing addendum that defines its parameters? Will the CTA review our parameter since it may relate to a final contract?

A6. Section III.4 Pricing and Appendix M of the RFP as well as Section 5 of the Electricity Contract describes in detail what CTA is looking for.

Q7. Will the CTA review a supplier['s] pricing addendum [defining the six pricing components, energy, ancillary, capacity, transmission/distribution losses, congestion, and PJM administration fee]?

A7. The RFP requires that Proposers submit pricing in accordance with the instructions and definitions contained in Section III.4 and Appendix M, as well as Section 5 of the Electricity Contract. A Proposer who does otherwise runs the risk of submitting a non-confirming offer which cannot be evaluated alongside conforming offers submitted by other Proposers.

Q8. Will the CTA review a supplier's pricing addendum that defines [the Green Power Option]?

A8. See answer A7, but please note Green Power is also addressed in Answer A12 herein.

Q9. Will the CTA review a supplier's pricing addendum [pertaining to 20 mW ATC Blocks] that defines [the seven components to be priced, transmission, ancillary, capacity, transmission/distribution losses, PJM administration fee, and margin]?

A9. The supplier may break the pricing out, however only one final price will be considered that includes all of the charge components.

Q10. The IDR data provided indicates many hours of negative consumption. Is this indicative of cogeneration or is this related to subtractive metering not related to cogen?

- a. If cogeneration what type of cogeneration is this (solar, wind, etc...)?
- b. Is the cogeneration separately metered or is it net metered with general service load?
- c. Is the cogeneration intermittent or is it run at predictable patterns?
- d. If subtractive metering please explain the function.

A10. There is no cogeneration at this time and very little if any expected in near future. Negative values for individual meters occur due to the two-line looped or feed-through configuration of CTA substations (the Traction accounts). Power can and often does enter a CTA substation on one line, pass through the station, and exit on the other utility line, causing one of two meters to read positive and the other meter to read negative values. The two meters taken together will always add to a positive usage number over any interval; for every outflow there is an equal or greater inflow. Note that most traction accounts contain multiple facilities and that meters are not paired-up on the account. Therefore, when analyzing the interval data,

ADDENDUM NO. 2

sum all meters in an account over any given interval to obtain the correct (positive) energy usage for the account.

Q11. Will meter level EDI usage data for billing purposes always be received via one channel, or can meters have multiple channels of billable usage per cycle?

A11. To the best of our knowledge, ComEd transmits the information as one combined (or net) reading per meter (e.g. one channel).

Q12. The CTA requests pricing for 35,000,000 kWh of "green" power. [Our firm] plans to meet this requirement by providing 35,000,000 kWh of Green RECs, not green power. As such [we] will provide Green-e certified products in compliance with Green-e vintage rules and will bill the CTA for RECs separately from the electric commodity on an annual basis. Is this acceptable to the CTA?

A12. CTA will consider Green-e certified REC's as an acceptable alternative to Green Power as defined in the RFP.

Q13. The sample contract included as attachment A makes no mention of RECs. As such, [we] request the inclusion of the following language as part of the contract:

*****Include standard REC Block Pricing Schedule with our submission and noting that it is our intention that such document govern the purchase/sale of the RECs.*****

A13. See answer A12 herein.

Q14. [We] requests using our standard Parental Guarantee. Is this acceptable to the CTA?

A14. This addendum includes an acceptable form of parental guarantee. Submit any comments regarding this form per the process described at the beginning of this addendum.

Q15. Due to the volume of data we do not normally send paper copies to customers. Does electronic access to electricity reports work for CTA or do you require receiving mailed copies?

A15. Section III.3. of the RFP and Section 6 of the Electricity Contract deal with billing. If the winning Proposer emails bills containing the detail specified to CTA's designated recipient address(s) in conformance with the terms listed, then the winning Proposer need not submit the same bills in paper form.

Q16. [Regarding invoices,] is CTA requesting single or dual billing?

A16. Dual billing. CTA intends to receive one invoice from ComEd for distribution service and one invoice from the RES for energy services.

Q17. "All inclusive" price ie: Energy, capacity, AS, Trans, Congestion, Trans & Dist losses, PJM fees and margin. Will CTA consider the benefits of passing thru Capacity and Transmission?

ADDENDUM NO. 2

- A17. See answer A7. CTA requires Proposers to include the cost of Capacity and Transmission in their fixed price quotes. Section 5 of the Electricity Contract defines the situations under which changes to Transmission costs subsequent to the execution date of the Electricity Contract will be passed along to CTA.
- Q18. Is your intention to include or pass thru RPS (Renewable Portfolio Standards) cost as known today in the pricing offers? If CTA's intention is to pass thru the RPS costs, we propose to bill RPS as a separate line item at our best estimate of the ACP (which is what default customers will pay) until such time as the ACP is known with certainty, then [we] will bill at the published rate.**
- A18. CTA's intent is that the fixed price offers it receives should incorporate all known and reasonably expected charges incurred by the winning Proposer in serving CTA. Therefore, Proposer's best estimate of RPS charges at the time prices are submitted should be included in the fixed price offers. At a later date when the RPS costs are known with greater certainty, CTA will allow an adjustment to the fixed price to reflect any added (or decreased) RPS costs not reasonably knowable at the time offers were made, as described in Section 5 of the Electricity Contract. Fixed Retail Adder component of the Block / Index pricing alternative should similarly reflect a reasonable estimate of RPS costs. CTA will modify the list of components contained in Sections III.4.a, Section III.4.c.ii., Appendix M, Schedules A-1, A2, A-3 and Schedule B, to the description of the Fixed Generation Charge in Section 5 of the Electricity Contract, and also to the Fixed Retail Adder description contained in the Special Conditions - Block Pricing Section of the Electricity Contract.
- Q19. Does the statement "CTA will not accept any additional charges that proposer requests CTA to pay" as defined in Section III, 4(a) 2nd paragraph last sentence of page 3 [of the RFP] suggest that Change in Law is *not* applicable? In the Transmission and RPS sections of the contract, it states charges can be passed thru as a result of a regulatory change. Please clarify.**
- A19. See A17 and A18. Changes in Transmission and RPS costs as described in this addendum and in the Electricity Contract are exceptions to the statement quoted in this question. Please note that there is no Change in Law provision in the contract.
- Q20. [Section III, 4(b), regarding the Green Power Option, states] "The additional optional costs for certified green power should be expressed as an add-on to the quoted kwh price..." We can show the price for comparative purposes in \$/kwh, however [our] standard billing for this product is applied to one account in a \$ amount/month basis. Does CTA want this billed in \$/kwh?**
- A20. Per the instructions in the RFP, CTA requires that this optional charge be expressed and billed in \$/kwh.
- Q21. [Regarding Actively Managed Blocks,] Section III, 4(c) 1st paragraph last sentence, page 4- Electricity consumed +/- Day Ahead (DA) scheduled must settle at Real Time (RT) ComEd LMP? Note: this allows the contractor/supplier to self report instances on settling variances between forecasted and actual usage against COMED RT LMP and possibly produce inaccurate settlements as this is difficult to audit. To comply with the RFP, we propose to schedule in DA and charge all KWhs at DA prices without settlement to RT. This will give the CTA more transparency and avoid paying the higher RT Operating Reserve Charges from PJM on any consumption. Is this acceptable?**

ADDENDUM NO. 2

- A21. CTA will accept Proposals that settle differences between scheduled and consumed power at the Day Ahead LMP as opposed to the Real Time LMP as conforming to the CTA's requirements. Proposers submitting Proposals for the Actively Managed Block structure should specify if their intent is to settle differences at the Day Ahead instead of the Real Time LMP.
- Q22. [Regarding the sample electricity contract, t]here are several sections that are "intentionally omitted" what is in these sections?**
- A22. Nothing.
- Q23. [Regarding the sample electricity contract, under "Scheduling Services," does] CTA own any back-up self generation?**
- A23. CTA has emergency backup generation capability used in the event of utility outage only.
- Q24. [Regarding the sample electricity contract, under "Transmission Charges," is] CTA open to passing this thru, considering the reduction in costs associated with risks premiums?**
- A24. See A17.
- Q25. [Regarding Section 14, Facility Openings and closings, is] CTA willing to allow contractor/supplier to define what is of "similar demand, energy and load profile?**
- A25. Proposers should note that there is a possibility of the CTA's Archer garage closing. The garage is located at 2600 West Pershing Road, Chicago, IL 60632. The account number is 935423000, for an estimated demand of 800 kW. The 2008 usage at the location was 2,951,489 Kwh. Section 14 will not apply to this facility.
- Q26. Will the CTA accept any mark-up to certification[s] that may result from our review of contracts for [the No Debarment or Suspension certification, Drug Free Workplace certification, Lobbying certification, and the Disclosure of Ownership and Interest Affidavit]?**
- A26. No. However, you may submit questions or requested modifications per the process detailed at the beginning of this document.
- Q27. [What] is this the most updated language for [the ethics] ordinance?**
- A27. A copy of the CTA's Ethics Ordinance, number 004-99, can be found at <http://www.transitchicago.com/assets/1/procurement/or004-99.pdf>.
- Q28. What exactly does [the inspector general] ordinance obligate the contractor to comply with? [What] is this the most updated language for [the inspector general] ordinance?**
- A28. A copy of the CTA's Inspector General Ordinance, number 99-173, can be found at <http://www.transitchicago.com/assets/1/procurement/orIG99-173.pdf>.

ADDENDUM NO. 2

Q29. Could the CTA please identify which Traction Accounts will be affected by the expected 7 MW increase in usage that will occur in 2010?

A29. The 7 MW increase is not expected to occur until late 2010 or 2011. This would mainly show up on account number 2771018003 and partially on account number 6537023006.

There are no other changes at this time.

CHICAGO TRANSIT AUTHORITY
Advertisement for Professional Services

NOTICE OF TIME EXTENSION AND ADDENDUM NO. 1

Notice is hereby given that the proposed due date heretofore advertised as Wednesday, October 21, 2009 has been extended to Wednesday, October 28, 2009 no later than 3:30 p.m. in the Bid Office - 2nd Floor, 567 W. Lake, Chicago, Illinois 60661-1498 for the following item:

Req. B09OP03436

Request For Proposals (RFP) for the Purchase of Electricity for Exclusive Use by the Chicago Transit Authority for a period of up to thirty- six months beginning with the next meter read date after January 1, 2010.

Written Questions are now due no later than 4:30 p.m., Chicago Time, on October 16, 2009.

For additional information, please contact James Kozicki at 312-681-2671.

The contractor will be required to furnish certified copies of any and all Insurance Policies required in relation to this contract prior to CTA's execution.

Chicago Transit Authority hereby gives notice that it will affirmatively ensure that in regard to any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprise will be afforded full opportunity to submit responses to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

PLEASE NOTE: Where proposals are sent by mail, delivery service or delivered in-person to the CTA Bid Office, the bidders shall be responsible for their delivery only to the Bid Office before the advertised due date and hour for the proposals. The Bid Office hours are Monday through Friday from 8:00 a.m. to 4:30 p.m. Chicago time, except holidays.

The right is reserved to accept any proposal or to reject any and all proposals.

All inquiries should be directed to and copies of the documents obtained from the Bid Office - 2nd Floor, 567 W. Lake, Chicago, Illinois 60661-1498.

CHICAGO TRANSIT AUTHORITY
By: Robert Conlin
General Manager, Purchasing

October 12, 2009



CHICAGO TRANSIT AUTHORITY

567 West Lake Street
Chicago, Illinois 60661-1498
TEL 312 664-7200
www.transitchicago.com

October 12, 2009

Subject: Requisition No. B09OP03436 – Request for Proposals (RFP) for the Purchase of Electricity for Exclusive Use by the Chicago Transit Authority for a Period of up to Thirty-Six Months Beginning with the Next Meter Read Date after January 1, 2010.

Re: Addendum No. 1 and a Time Extension

Dear Proposer:

Attached is Addendum No. 1 modifying the RFP. Please take this information into account when preparing your proposal. Also, the due date for questions and proposals has changed. Questions are now due no later than 4:30p.m., Chicago time, on October 16, 2009. Proposals are now due no later than Noon, Chicago time, on Wednesday, October 28, 2009.

The Chicago Transit Authority is seeking proposals for the subject procurement. Proposal packages are to be delivered to:

By Mail
Chicago Transit Authority
Bid Office
P.O. Box 7554
Chicago, IL 60680-7554

Delivery Service or In Person Drop-off
Chicago Transit Authority
Bid Office – 2nd Floor
567 W. Lake Street
Chicago, IL 60661-1498

New Question Due Date: Friday, October 16, 2009

New Proposal Due Date: Wednesday, October 28, 2009

Proposals must be received no later than Noon, Chicago time, on Wednesday, October 28, 2009
Proposals received after that time will be returned unopened.

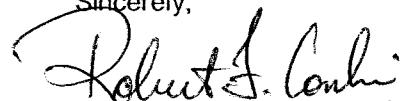
Where proposals are sent by delivery service or delivered in-person to the CTA Bid Office, the bidders shall be responsible for their delivery to the Bid Office before the advertised date and hour for the opening of bids. If the delivery of the proposal is delayed beyond the date and hour set for the bid opening, proposals thus delayed will not be considered and will be returned unopened. The Bid Office hours are Monday through Friday from 8:00 am to 4:30 pm Chicago time, except holidays.

**Ten copies of the Technical section,
Four copies of the DBE section, and
Ten copies of the Price section are to be provided**

Your response should identify the requisition (RFP) number, the name of the project, the name and address of your firm, a contact person and phone number in each section.

There are no other changes at this time.

Sincerely,


Robert Conlin
General Manager, Purchasing

cc: File B09OP03436

ADDENDUM NO. 1

The CTA's intent is to receive proposals which may create a thirty-six month contract term. All references in the RFP to "a period of up to twenty-four months" are hereby modified to "a period of up to thirty-six months."

The RFP states that all prices must be held for a minimum of four hours. In the event the markets close within this four hour period, the CTA understands that all pricing will need to be refreshed the following business day.

Attached is an account information release form. This form allows interested parties access to CTA's usage history. This information is provided by Commonwealth Edison (ComEd). ComEd assesses fees associated with the release of this information. **The CTA will not pay any fees associated with a request for information from ComEd. Each party is responsible for all fees incurred in obtaining this information.**

Information pertaining to meter numbers and the corresponding account numbers is available electronically in Excel format. If you are interested in obtaining a copy of this file, you must send a written request to jkozicki@transitchicago.com.

The following CTA substations utilize two ComEd 12KV lines tied together through a closed bus tie. There are inflow and outflow registers that can result in negative interval readings for an individual meter. All meters in each interval must be added together to obtain the correct (positive) interval reading for each account(s).

Account Number	Address	City
261625003	200 CHICAGO	EVANSTON
261626000	3711 OAKTON	SKOKIE
681204008	9570 W GAGE	ROSEMONT
681205005	328 GARFIELD	OAK PARK
681206002	2134 S 54TH AVE	CICERO
681207009	711 DES PLAINES AVE	FOREST PARK
2771018003	125 DES PLAINES AVE	CHICAGO
6537023006	862 E 63RD	CHICAGO

In order to increase the efficiency of the evaluation process, the CTA will receive electronic price proposals. If you are interested in submitting an electronic price proposal, you must send the electronic version, in the format provided by the CTA, to jkozicki@transitchicago.com no later than the time and date proposals are due. Submitting an electronic price proposal does not relieve the requirement of submitting a hardcopy price proposal, as detailed in Section V, Proposal Submittal Requirements of the RFP. **A hardcopy submittal of the price proposal is mandatory, and an electronic copy optional.**

There are no other changes at this time.

ACCOUNT INFORMATION RELEASE AUTHORIZATION FORM (Rev. 06/12/08)

This document authorizes Commonwealth Edison Company ("ComEd") to release to you or your agent, available billing and usage data, Peak Load Contribution (PLC) values and/or Post 2006 Supply Group data.

The following types of data are available:

Summary Data – Kilowatt-hour, kilowatt and dollar amount billed summarized by account per billing period. There is no charge for summary data with the exception of written requests for data exceeding 10 accounts. A \$5.00 postage and handling fee will be charged for each account in excess of the first 10 accounts on a single request.

Interval Data – Half-hour demand data for non-residential accounts having recording-type meters. A \$22.00 fee per meter on the account will be charged for all interval data requests.

Meter-Level Summary Data – Kilowatt-hour, kilowatt and Peak kilowatt demand data, where applicable, summarized by individual meter for each active meter on the account per billing period. A \$5.00 fee per meter on the account will be charged.

PLC Value – A customer's contribution to a zone's normalized summer peak load, as estimated by the zone's Electric Distribution Company (EDC). PLC is used to determine a Load Serving Entity's (LSE's) Obligation peak load.

Post 2006 Supply Group – Each customer has been assigned to a supply group per Rider CPP- Competitive Procurement Process.

1. Customer Information: (Required)

Account Name: Chicago Transit Authority *Account Number: _____
Contact Name: James Kozicki * Meter Number: _____
Telephone Number: 312-681-2671
Usage Data Type: ☐ Summary ☐ Interval ☐ Meter-level Summary ☐ PLC Value ☐ Supply Group
Delivery Method: ☐ CD Rom ☐ Email ☐ US Mail – (Not available for Interval Data)

Mailing Address: 567 West Lake Street City: Chicago State: IL ZIP: 60661

Email Address: jkozicki@transitchicago.com

*For multiple accounts, please list all account and meter numbers on a separate sheet and attach with this form.

Emily Ziring Financial Business Analyst III
Customer Name Title
Emily Ziring 10/05/09
Customer Signature Date

2. General Account Agents/Suppliers: (Required only if data is to be delivered to an Agent or Supplier)

Agent/Supplier Name: _____
Mailing Address: _____ City: _____ State: _____ ZIP: _____
Contact Name: _____ Telephone Number: _____
Email Address: _____

3. Billing Information: (Required for all interval & meter summary, summary data requests in excess of 10 accounts.)

☐ Charge Separate Invoice (Complete information below only for Separate Invoice)

Mailing Address: _____ City: _____ State: _____ ZIP: _____

Fax to (630) 684-3990, email datarequest@comed.com, or mail to ComEd, ESSD/Data Request Team, 1919 Swift Drive, Oak Brook, IL 60523

CHICAGO TRANSIT AUTHORITY
Advertisement for Professional Services

Proposals will be received for the following by Chicago Transit Authority at the Bid Office - 2nd Floor, 567 W. Lake, Chicago, Illinois, 60661-1498, until 3:30 P.M. on Wednesday, October 21, 2009:

Req. B090P03436

Request for Proposals (RFP) for the Purchase of Electricity for Exclusive Use by the Chicago Transit Authority for a Period of up to Twenty-Four Months Beginning with the Next Meter Read Date after January 1, 2010.

Written questions regarding this RFP will be accepted no later than 4:30 p.m., Friday, October 9, 2009. You may send written questions to James Kozicki via fax at 312-681-2497 or e-mail at jkozicki@transitchicago.com.

The contractor will be required to furnish certified copies of any and all Insurance Policies required in relation to this contract prior to CTA's execution.

Chicago Transit Authority hereby gives notice that it will affirmatively ensure that in regard to any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprise will be afforded full opportunity to submit responses to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

PLEASE NOTE: Where proposals are sent by mail, delivery service or delivered in-person to the CTA Bid Office, the bidders shall be responsible for their delivery only to the Bid Office before the advertised due date and hour for the proposals. The Bid Office hours are Monday through Friday from 8:00 a.m. to 4:30 p.m. Chicago time, except holidays.

The right is reserved to accept any proposal or to reject any and all proposals.

All inquiries should be directed to and copies of the documents obtained from the Bid Office - 2nd Floor, 567 W. Lake, Chicago, Illinois 60661-1498.

CHICAGO TRANSIT AUTHORITY

By: Robert Conlin
General Manager, Purchasing

September 23, 2009



**Chicago Transit Authority
Requisition No. B09OP03436
Request for Proposal (RFP)**

For

**Purchase of Electricity for Exclusive Use
by the Chicago Transit Authority
for a Period of up to Twenty-Four Months
Beginning with the Next Meter Read Date after January 1, 2010**

Confidentiality and Non-Disclosure: Firms requiring additional assistance shall only contact James Kozicki, Procurement Administrator, at (312) 681 – 2671 or Robert Conlin, General Manager, at (312) 681-2420. Firms, including all team sub-consultants, who contact any CTA personnel, either verbally or in writing, concerning this solicitation package, are in violation of the procedures for this procurement and any submitted proposals may be disqualified. Prime consultants are required to sign and submit the "Non-Disclosure Statement Consultant" (Appendix L) with the proposal and to require all sub-consultants to submit signed copies of the "Non-Disclosure Statement Sub-Consultant" (Appendix L) with the proposal.

ISSUED BY

**Purchasing Department, Chicago Transit Authority
P.O. Box 7560, Chicago, IL 60680-7560
Marina Popovic, Acting Vice President, Purchasing & Warehousing
Richard L. Rodriguez, President
Carole L. Brown, Chairman**

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I. CTA BACKGROUND INFORMATION

The Chicago Transit Authority (CTA or Authority) operates the nation's second largest public transportation system serving the City of Chicago and 40 surrounding suburbs. On an average weekday, nearly 1.7 million rides are taken on the CTA. CTA has approximately 2,000 buses that operate over 153 routes and 2,517 route miles. Buses provide about 1 million customer trips a day and serve approximately 12,000 posted bus stops. CTA's 1,190 rapid transit cars operate over eight routes and 224.1 miles of track. CTA trains provide about 700,000 customer trips each day and serve 144 stations.

Chicago is one of the few cities in the world that provides rapid transit service to two major airports. From the downtown area, the CTA's Blue Line takes customers to O'Hare International Airport, and the Orange Line takes customers to Midway Airport.

Additional information about the CTA and its services are available at www.transitchicago.com.

II. INTRODUCTION

The Authority requires the purchase and use of electricity in its day-to-day operations.

The Authority is seeking qualified Retail Electric Suppliers (RES) to supply its full electric load. The Authority currently utilizes approximately 561 million kilowatt-hours (kWh) of electricity per year. For the purpose of this RFP, the CTA's electric load is partitioned into 3 account groups: Traction Power, Non-Traction Power A and Non-Traction Power B. The table which follows describes each group.

CTA Account Group	# Accounts	Current Supply Status	Annual kWh (Million)	% kWh
Traction	8	RES	424	76%
Non Traction Group A	53	RES	103	18%
Non Traction Group B	171	ComEd Supply	34	6%
	232		561	100%

Accounts in the Traction and Non Traction Group A have billing demands in excess of 100 million kW and currently are contracted for electric supply via an RES. Non Traction B consists of accounts with less than 100 million kW billing demand and currently are served by Commonwealth Edison under utility default rate supply.

The Authority will consider Proposals from firms that have proven experience in supplying, daily electricity in Chicago for end use customers, and who have the staff and capabilities sufficient to service a large agency such as CTA.

Firms are invited to submit proposals to perform the work as described in Section III, Scope of Services, and Section IV, Contract and General Requirements. Issuance of this RFP does not commit the CTA to pay any costs incurred in the preparation of this proposal. All proposals are to be valid for a period of at least 60 days from the due date of the proposal. The CTA reserves the right to reject any or all proposals, to negotiate with any or all firms, and to award a contract to the Proposer whose initial proposal is most advantageous to the CTA, without further discussion or negotiations.

III. SCOPE OF SERVICES

The purpose and objective of this RFP is to procure the Authority's full electric load for its exclusive use from a single Contractor. The Contractor must be eligible to do business in Illinois and must be a RES, as defined in the Definitions section of ComEd's General Terms and Conditions. The Contractor should, at a minimum, perform the following functions:

1. Provide Full Electric Load

Contractor must provide for the full electric requirements of the Authority's electricity utility accounts listed in this RFP.

2. Electricity Reporting

Contractor should provide a report to CTA on a monthly basis showing electricity usage. The report should be prepared and delivered to CTA within a reasonable period of days following the conclusion of each month's business.

3. Invoice Delivery

The Contractor must be willing and able to submit invoices to CTA for its electricity usage in compliance with the provisions of the electricity contract and to deliver such invoices to email address(es) specified by the Authority.

4. Pricing

a. Fixed Price (Appendix M, Attachments A-1, A-2, and A-3)

An executable Price proposal must be submitted for any or all of Attachments A-1, A-2, and/or A-3. The Price proposal must be in the form presented in Appendix M. Bidders have the option of presenting a price with no bandwidth restrictions, 10% bandwidth or both, and for terms of 12 months, 24 months, and 36 months. The applicable portion of Appendix M for each contract between CTA and bidder will be incorporated into the contract as Schedule 2 if the proposal is accepted. The Price proposal must include executable prices and must be valid for a minimum of 4 hours from the time and date that is established for submitting proposals.

Proposer's Price proposal must be inclusive of all costs, surcharges, fees listed in the Pricing Component section of Appendix M, Attachment A-1, A-2, and A-3, except Commonwealth Edison delivery charges. Such charges to be included in the price include, but are not limited to energy, capacity, ancillary services, transmission, congestion, transmission and distribution losses, ISO/PJM Administration costs and supplier margin. CTA will be responsible only for the price stated in Appendix M, Attachments A-1, A-2, and A-3 and only for the costs expressly stated in the specimen contract. CTA will not accept any additional charges that proposer requests CTA to pay.

b. Green Power (Option)

Proposers are requested to include the cost for CTA to purchase 35,000,000 kWh annually of certified "green" power ¹ as part of the electric power provided under the contract. This option, if exercised, would not increase the total annual quantity of electric power purchased. The additional optional cost for certified green power

¹Wind, solar etc. Certification by a nationally recognized third party such as the Center for Resource Solutions (CRS) Green-e product certification, by the City of Chicago Department of Environment or by a Federal or state certification agency designated by law is acceptable. Green Power available under an approved tariff is also acceptable.

should be expressed as an add-on to the quoted kWh price for electric power and energy using Appendix M, Attachment A-1.

c. **Actively Managed Block Purchase Product (Appendix M, Attachment B)**

As an alternative to fixed pricing for full requirements, CTA is interested in working closely with a qualified supplier to purchase block wholesale power for its base load electricity supply requirements. Under this approach, CTA would require the flexibility from the supplier to make incremental block power purchases in the On Peak, Off Peak or Around The Clock hours for time periods as short as one month. CTA's supplier would be responsible for scheduling with the PJM Interconnection its entire forecasted usage into the Day Ahead market. Forward block power purchased would reduce the amount of energy subject to Day-Ahead ComEd Locational Marginal Pricing ("LMP"). Electricity consumed above or below the Day Ahead scheduled quantity would be settled at the Real-Time ComEd LMP to serve the complete electricity requirements of CTA.

In order to evaluate each Bidder's product offering, CTA is interested in receiving wholesale block energy prices and Bidder's Fixed Retail Adder per unit as outlined in Attachment B. The pricing matrix in Attachment B is also provided as an Excel spreadsheet. Please respond by completing the attached Excel spreadsheet with the following:

- i. Provide wholesale energy pricing for On Peak and Off Peak block purchases of 20 MWs into the ComEd Zone. Separate On Peak and Off Peak prices must be shown for each term requested. Spaces are provided in Attachment B to show your firm's prices by month for the calendar months of January 2010 through December 2010. In addition, separate On Peak and Off Peak prices should be provided for each term of 12, 24 & 36 months.
- ii. Provide your firm's proposed Fixed Retail Adder per MWh that would be charged to recover Bidder's Retail Energy Costs. Retail Energy Costs include, but are not limited to: capacity, ancillary services, network integrated transmission service, congestion, transmission & distribution losses, ISO/PJM Administration costs, and Proposer's margin. CTA will maintain its rights to request and obtain any QSE records (transaction confirmation, etc.) to ensure that the cost of the purchase complies with this standard and requires that such language be included in the contract.
- iii. Attachment B includes a list of CTA's accounts that would be included in active management of electricity costs. All of the meters behind these accounts have the capability of recording electricity usage at 30-minute intervals. The list of accounts shown corresponds to the Traction and Non-Traction Power A account lists. Non-Traction Power B accounts are excluded from Appendix M, Attachment B.

Proposers that do not complete the attached Price Proposal (Appendix M) may be deemed non-responsive.

Proposers interested in obtaining an electronic version of the Price Proposal in an Excel file should send a request to jkozicki@transitchicago.com.

5. Transition Plan

The Authority is currently obtaining electricity through two sources. A RES supplies all electricity under the Traction Power and Non-Traction A accounts. ComEd directly supplies all electricity under the Non-Traction Power B accounts. The Contractor shall be responsible for ensuring a seamless transition of electricity supply from both the current RES and ComEd for all account groups upon the effective date of this contract.

6. Online Access

Though not a requirement of this RFP, the Authority would like to know if Contractor will provide CTA with access to a password protected website where CTA can review reports showing its electricity usage and cost, historical invoices, and/or other reports or information pertinent to CTA's purchase and use of electricity from the Contractor. A sample of reports available online, if any, may be submitted as part of Contractor's Comprehensive Plan.

IV. CONTRACT AND GENERAL REQUIREMENTS

This RFP is intended to provide the Authority with a means to purchase its full electric load for its exclusive use. The Authority has provided the contract document it intends to use, attached hereto, as Appendix A. The CTA's prime objective is to obtain a qualified Contractor that has the experience, stability, and infrastructure to meet the Authority's needs for electricity in its day-to-day operations. The Authority's strong preference is to contract with only one Bidder as a result of this RFP; however, the Authority retains the right to contract with different Bidders to serve different account groups.

Bidders are requested to submit proposals to serve the needs of one or more account groups. Bidders are requested to submit pricing by group in accordance with the instructions listed in Section III.4(a) & Section III.4(c). In the event CTA selects to be served under a bidder's proposal involving a block / index pricing structure, then throughout the term of the contract the Authority's Treasurer, or designee, will be authorized to purchase blocks of power per the terms of the executed contract.

V. PROPOSAL SUBMITTAL REQUIREMENTS - A complete proposal must consist of the following:

Responses shall be submitted with material printed on one side only on standard 8 1/2" x 11" letter-size paper with removable binding on the left hand side. The use of expensive papers and binding and elaborate submittals is discouraged. All proposals submitted become the property of the CTA and no materials will be returned. The Technical Proposal and Price Proposal must each be submitted under separate cover. Documents with original signatures should be clearly labeled as such. Proposers are advised to adhere to the submittal requirements. The proposal must contain sufficient detail to enable the CTA to evaluate it according to the criteria outlined in Section VI, Evaluation Process and Criteria. **Failure to comply may be cause for rejection of the submission.** The Chicago Transit Authority reserves the right to accept or reject any or all submittals or parts thereof.

Part I. TECHNICAL PROPOSAL
(Ten copies – 8 1/2" x 11" paper)

A. Cover Letter

The cover letter must contain a commitment to provide the services described in this RFP. Each cover letter must include the name and signature of a representative of the Contractor who is authorized to negotiate and enter into a binding contract with the Authority.

B. Comprehensive Plan

The Proposer shall submit a comprehensive plan on how the CTA's goals will be accomplished as described in Section III, Scope of Services, of this RFP. This plan must explain how the firm will utilize its experience, products, skills, and resources to meet the CTA's schedule and provide all services as specified.

The comprehensive plan should detail all information the Proposer deems necessary in fulfilling the Scope of Work, including the procedure utilized by the Authority in establishing a fixed price for some or all of its natural gas supply requirements, as described in Section III of this document.

C. Qualifications of Firm

The Proposer should provide the names and contact information for at least three customers of similar size to the Authority. Customers should have full electric load requirements comparable to the Authority's requirements listed in this RFP. The Authority may contact the customers in order to confirm such customers' satisfaction with Proposer's service.

The Proposer must be a registered supplier of electricity with ComEd, and licensed to do business in Illinois.

The ideal Proposer will hold a credit rating of **at least BBB-** by Standard and Poor's Rating Group, or **Baa3** by Moody's Investor Services, Inc., or provide an irrevocable letter of credit or a parental guarantee.

D. Table of Exceptions

Proposers must submit a Table of Exceptions which shall clearly identify a detailed list of exceptions to the Scope of Work, or any other part of this RFP, including the attached Sample Contract – NOT FOR EXECUTION (Appendix A). The list shall be in table format and must identify the page, section number, provision, and the specific exception, non-conformance and/or substitute language proposed. Failure to identify any specific items of non-compliance will result in the Authority assuming compliance. Identification of an exception does not commit the Authority to comply with the exception. The Authority, at its sole discretion, may reject any exception listed within the proposal.

Part II. PRICE PROPOSAL
(Ten copies – 8 1/2" x 11" paper)

A fully completed **Price Proposal** must include the following items:

1. The completed Price Proposal form found in Appendix M;
2. Completed copies of Appendices F through L; and
3. Any proposed subcontractors should complete Appendices G, K, and L.

VI. EVALUATION PROCESS AND CRITERIA

All proposals will be evaluated by the CTA, which reserves the right to make an award or choose not to award to any Proposer, on the basis of greatest benefit to the CTA. The evaluation will be based primarily on the Technical Proposal and the Price Proposal. However, the CTA may also require oral presentations by those Proposers deemed by the Authority to be competitive. All responses will be evaluated by one or more evaluation committee(s). Following the evaluation process the CTA may select Proposers in the competitive range for negotiations.

The CTA reserves the right to reject any or all proposals or parts thereof as it deems necessary for any reason. In addition, the CTA reserves the right to make an award to **multiple** responsible Proposers whose offers best conform to the requirements of this solicitation and are most advantageous to the CTA.

In reviewing and evaluating the responses to this RFP, the CTA will engage in a two-tier evaluation. The first-tier will consider the following criteria, and will be evaluated on a pass/fail basis:

1. **Proposer demonstrates it has a credit rating equal to or greater than BBB- by Standard & Poor's Rating Group or Baa3 by Moody's Investor Services, or that it is willing to provide an irrevocable letter of credit or a parental guarantee.**

Firms that pass the first-tier evaluation will be evaluated against the second-tier criteria. The second-tier will consider the following factors, in order of relative importance:

2. **Price Proposal (Section V, Part II); and**
3. **Comprehensive Plan (Section V, Part I, B).**

The CTA retains the right to require additional information, including revised pricing information, from any Proposer, and to determine the veracity of the information in the proposal. A proposal found to be based on inaccurate or misrepresented information may be dismissed from further consideration.

Firms in the competitive range, in contention for negotiations or award of the contract, may be required to make oral presentations. Failure of a firm to report for an oral presentation will be cause for dismissal of that firm's proposal from further consideration, provided that the CTA has given adequate notice for the Proposer to prepare the oral presentation. **However, the CTA is not required to hear a presentation from any Proposer and reserves the right to issue a contract based on the initial proposal submitted without providing any firm an opportunity for oral presentations or negotiations.**

After determining which Proposers are in the competitive range, the CTA may conduct negotiations with those Proposers to discuss any deficiencies in their proposal and to ensure that the Proposers fully understand all the requirements of this RFP and have, or can obtain, the required equipment, personnel, materials, software, hardware, or services. Should negotiations occur, the CTA may issue to those Proposers remaining in the competitive range an invitation to submit a **Best and Final Offer (BAFO)**. The BAFO will reflect the Proposer's final cost/price proposal to the CTA based on all the clarifications to the proposed Scope of Work included in the oral presentation and/or negotiations.

Appendix A

Sample Contract – NOT FOR EXECUTION

ELECTRICITY CONTRACT

Electricity Sales Agreement between Customer and _____

This Agreement is between the Chicago Transit Authority ("Customer" or "CTA"), a body corporate and politic and unit of local government, and _____ ("Contractor"), who are collectively identified as the "Parties." This Agreement is the culmination of a process that started with the CTA Request for Proposal ("RFP") entitled "Request for Electricity for Railroads and Certain Large Facilities Used by CTA Commencing January 1, 2010" (CTA RFP No. B09OP03436). This Agreement, including the attached Exhibits shall constitute the entire understanding between the Parties. However, any representations made by the Contractor in its response to the RFP shall survive the execution of this Agreement and be incorporated herein by reference. If there is any conflict between the presentations made by the Contractor in his response to the RFP and the terms of this Agreement, the terms and conditions in this Agreement shall prevail. No modifications or supplements to this Agreement will be effective unless agreed to and signed by both parties. Nothing contained in this Agreement creates any rights or benefits in or for any third party. This Agreement applies to the account numbers and meters identified for the facilities listed in the attachments hereto ("Listed Facilities"). The Parties agree as follows:

DEFINITIONS: The following definitions and any additional terms defined within this Agreement and/or applicable attachments shall apply hereunder and under all notices and communications made pursuant to this Agreement:

"Adequate Assurance": Any financial security in a form and amount satisfactory to Customer, including, but not limited to, a cash deposit, bond, letter of credit or parental guarantee.

"Agreement": This contract entered into between Customer and Contractor including any and all Exhibits attached hereto, as well as all written representations and warranties made by Contractor in response to CTA RFP No. B09OP03436.

"Bankruptcy Event": Means, with respect to a Party, that such Party will (i) make a general assignment for the benefit of creditors; (ii) become bankrupt or insolvent, however evidenced, or be unable to pay its debts as they fall due; (iii) be the subject of a voluntary or involuntary proceeding under any bankruptcy, insolvency or similar law; or (iv) have a trustee, receiver or similar official appointed with respect to it or any substantial portion of its assets.

"Contract Rate": The price set forth in the Agreement as Fixed Generation Charges at which Customer agrees to purchase and Contractor agrees to sell Electric Energy.

"Defaulting Party": A Party to whom one or more Events of Default applies, including, if applicable, an Event of Default affecting a Party's Guarantor.

"Delivery Charges": Any and all costs and charges approved by the Illinois Commerce Commission for inclusion in Delivery Company's tariff applicable to the delivery of Electric Energy to Customer by the Delivery Company.

"Delivery Company": Customer's local delivery company providing service to Listed Facilities Commonwealth Edison Company ("ComEd") is serving Customer under this agreement. The Delivery Company is not to be considered a Subcontractor under this Agreement.

“Delivery Point”: means existing and future points of interconnection between the RTO controlled grid or a third-party transmission system and/or distribution system, as applicable, and the Delivery Company’s transmission system and/or distribution system.

“Delivery Services”: Transmission, delivery and other related ancillary services provided by the Delivery Company and necessary to permit Customer to receive the Electric Energy at its Listed Facilities.

“Electric Energy: Full requirements electric energy supply purchased by Customer for its consumption.

“Event of Default”: The occurrence of any of the following for reasons other than Force Majeure with respect to a party: (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) business days after receipt of written notice; (b) any written representation or warranty made by a Party in any of its submissions to the other Party is false or misleading in any material respect when made or when deemed made or repeated; (c) the failure to perform any material covenant or obligation set forth in this Agreement; (d) a party is subject to a Bankruptcy Event; (e) a Party consolidates or merges into or transfers all or substantially all of its assets to another entity and that the resulting entity fails to assume all obligations of such party under this Agreement, or (f) the failure of the Contractor to timely supply the Electric Energy .

An **Event of Default** with respect to a Party’s Guarantor shall include: (i) if any written representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated; (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guarantee made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice; (iii) a Guarantor is subject to a Bankruptcy Event; (iv) the failure of a Guarantor’s guarantee to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party without the written consent of the other Party; or (v) a Guarantor shall attempt to repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guarantee; or (vi) failure to maintain at all times senior unsecured debt rated BBB- or greater by Standard & Poor’s Rating Group or its successor, or Baa3 or greater by Moody’s Investor Services, Inc.

“Non-Defaulting Party”: Means when there is a Defaulting Party, the Party that is not the Defaulting Party.

“Party”: Contractor and Customer are individually referred to as a “Party” within this Agreement.

“Parties”: Contractor and Customer are collectively referred to as “Parties” as the context of this Agreement requires.

“Replacement Energy”: Electric Energy that Customer purchases from a supplier of last resort or another ARES or RES as a result of Contractor’s Event of Default in the performance of its obligations hereunder.

“Listed Facilities”: The collective properties, including the associated accounts and meter numbers governed by this Agreement and identified on an Attachment.

“Subcontractors”: Any person or entity with whom Contractor contracts to provide any part of the Electric Energy, including subcontractors and subconsultants of any tier, suppliers and materials providers.

“Summer & Nonsummer months: To the extent seasonal prices are requested, the summer and nonsummer months will be as defined by the Delivery Company consistent with Illinois regulations.

“Transmission Tariff”: All applicable transmission tariffs, as amended from time to time, on file with the Federal Energy Regulatory Commission.

1. Service Provided by Contractor

This is a full requirements contract for the supply of Electric Energy to Customer’s Listed Facilities. “Full Requirements” means all necessary electric energy, capacity, ancillary services and other products or services necessary to serve electric retail load. Contractor agrees to sell and provide to Customer, on a firm basis, 100 percent of Customer’s Electric Energy needs to instantaneously meet its electric power and energy requirements at the Listed Facilities during the term and at the prices set forth in this Agreement. Contractor shall assume responsibility for the purchase, transmission, and delivery of the Electric Energy. Contractor shall be authorized to (i) execute on behalf of Customer all authorizations required to switch electricity suppliers as may be necessary to carry out the provisions of this Agreement, and (ii) make all necessary arrangements for the purchase and delivery to the Delivery Point(s) of such Electric Energy for the Listed Facilities, including providing or procuring all services related to the sale and delivery to the Delivery Point(s) of Electric Energy for the Listed Facilities, including, without limitation the following services as applicable: ancillary transmission services, transmission, generation, balancing, forecasting, scheduling, and nominating. Title to Electric Energy sold will pass to the Customer at the Delivery Point(s).

SCHEDULING SERVICES

Contractor will be responsible for scheduling services in accordance with ComEd’s Rate Rates RDS. Contractor assumes liability for any scheduling, imbalance or similar penalties, fees or charges imposed by ComEd.

2. Customer’s Obligations

Subject to the terms of this Agreement, Customer shall purchase 100 percent of Customer’s Electric Energy required by the Listed Facilities, excluding any Electric Energy that may be provided by Customer’s own back-up self-generation. Customer will execute any and all reasonable agreement(s) required by the Delivery Company (i) for the purpose of providing distribution services to Customer; (ii) to enable Customer to take service from an Alternative Retail Energy Supplier; and (iii) as may be required for Contractor to fulfill its obligations under this Agreement.

3. Service Commencement; Terms

The term of this Agreement shall commence with respect to each of the Listed Facilities on the first meter read date after December 31, 2009, and expire on _____, 200__ (the “Expiration Date”). Service to each of the Listed Accounts will continue until the first meter read date after the Expiration Date.

4. Meter Readings; Transition

Contractor understands that not all of the Listed Facilities have the same meter reading dates. The Contractor agrees to commence service for the Listed Facilities as necessary to accommodate the transition from service with the current contractor. During this transition period, Customer will not be obligated to accept and pay for any Electrical Energy that it is unable to receive and use due to Delivery Company's failure to provide meter readings.

Customer requires a seamless transition from its current electrical supplier to Contractor. It is agreed that Contractor will assist Customer in its transition from Customer's current supplier to Contractor. It is understood and agreed that in no event shall Customer be obligated to pay two suppliers for electric power supply in respect to the same facility and the same hours. Furthermore, Customer will be under no obligation to pay any penalties if the Contractor fails to deliver electric power to the ComEd system, fails to provide any documentation, and complete any processes required by ComEd, PJM, or other similar organization.

At the conclusion of this Agreement, including any extensions agreed to by the Parties, the Contractor will use reasonable efforts to assist Customer in the transition to the new service provider. Prior to the expiration of the contract term the parties will, in good faith, cooperate in planning a transition, if necessary, to a new contractor.

5. Price

The price or price formula (as described in the Special Conditions section of this Agreement) for Electric Energy sold hereunder for the Listed Facilities in this Agreement shall be the accepted price or price formula as stated in Contractor's _____, 2009 [Proposal or BAFO] for separate pricing for "CTA Traction Power Facilities", "CTA Non-Traction Group A Facilities" and "CTA Non-Traction Group B Facilities" for ___ months. The price or price formula set forth is the offer or Best and Final Offer (cumulatively referred to as "BAFO") accepted and confirmed in writing by Customer. The method for submitting Proposals or BAFOs shall be as set forth in the RFP. Unless expressly stated otherwise in this Agreement, all charges, including but not limited to electric energy supply costs, capacity costs, transmission costs, transmission losses, distribution losses, congestion charges, ancillary charges, must be included in the fixed price or price formula.

The Contractor shall provide Electrical Energy to the facilities for the duration of the contract per the terms of CTA RFP No. B09OP03436 and this Electricity Sales Agreement.

CONTRACT QUANTITIES

This is a full requirements contract to meet the instantaneous needs of Customer's electric power and energy requirements at the Listed Facilities shown on the attachments. Contractor shall provide all electricity needed for the Listed Facilities. Quantities required may vary depending upon weather conditions, season, and other factors. While Customer has provided Contractor with certain historical profile data showing its prior electrical use, Customer is not making any material representation to Contractor as to how much electricity Customer will consume during the contract term or any financial results to be anticipated by entering into this Agreement. The parties acknowledge that any electrical needs or related data that may have been discussed or provided to Contractor by Customer were, in part, from third party sources. While Customer has no knowledge of any material misrepresentation of such third party sources, Customer does not warrant such information. Contractor has made all decisions regarding this Agreement based upon its own judgment and any advice from such advisors as

it has deemed necessary and not in reliance upon any view expressed by Customer. Contractor has entered into this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks.

FIXED PRICING

Fixed Generation Charges shall be fixed for the entire term of the Agreement except as otherwise provided for herein. The Proposal/BAFO price shall include all items identified herein as Fixed Generation Charges and shall not change during the entire term of this Agreement, except as provided in the Transmission Charges section herein. Fixed Generation Charges shall include all of the following costs and charges:

- Electric Energy Supply Costs
- Capacity Costs
- Transmission Costs (Network Integrated Transmission Service or NITS)
- Transmission Losses
- Distribution Losses
- Congestion Charges
- Ancillary Charges

The Ancillary Charges shall include the charges for all ancillary services required to serve Customer. Such services, as prescribed by the Open Access Transmission Tariffs (OATT's) current tariff, shall include, but not be limited to:

- Schedule 1 – Scheduling, System Control and Dispatch Service
- Schedule 1A- Transmission Owner Scheduling, System Control and Dispatch Service
- Schedule 2 – Reactive Supply and Voltage Control from Generation Sources
- Schedule 3 – Regulation and Frequency Response Service
- Schedule 4 – Energy Imbalance Service
- Schedule 5 - Operating Reserve – Spinning Reserve Service
- Schedule 6 – Operating Reserve – Supplemental Reserve Service
- Schedule 6A – Black Start Service.

In the event that the tariff of the Delivery Company based portion of Transmission Losses, or Distribution Losses changes (increases or decreases) during the term of this Agreement as authorized by state and federal regulatory bodies, such change in prices may be passed through to Customer without any mark-up by a corresponding change in the applicable portion of its bill. Documentation regarding any change in tariff charges, including new charges, shall be provided when such changes occur. Such change will take effect on the first available bill after the effective date of the change and may be pro-rated to accommodate an effective date that does not coincide with Customer's billing cycle. In no event shall the Electric Energy Supply Costs and Congestion Charges change during the entire term of this Agreement.

TRANSMISSION CHARGES

Any changes (increases or decreases) to RTO-billed Network Integrated Transmission Service or NITS charges, subsequent to the execution date of this Agreement and not already included in the Proposal or BAFO accepted by Customer shall be directly passed through to Customer without any mark-up by a corresponding change in the applicable portion of its bill. In the event the RTO's reconciliation with the Contractor results in a credit back to the Contractor, the Contractor will pass through to Customer

its share of the credit. The Contractor shall not pass through any RTO, ComEd or miscellaneous charges not provided for under this Agreement. Contractor will only pass through those charges necessary to deliver the Electric Energy to Customer. Contractor shall use its best efforts to minimize the number of pass through charges and the amount of such pass through charges.

RENEWABLE PORTFOLIO STANDARD COMPLIANCE COSTS

Starting June 1, 2009, Alternative Retail Electric Suppliers are required to comply with the Renewables Portfolio Standard (RPS) for the State of Illinois. Any RPS compliance costs incurred subsequent to the execution date of this Agreement and not already included in the Proposal or BAFO accepted by Customer shall be directly passed through to Customer without any mark-up by a corresponding change in the applicable portion of its bill. Contractor shall use its best efforts to minimize the number of pass through charges and the amount of such pass through charges.

6. Billing

Contractor shall promptly provide a summary bill for the Listed Facilities using a format mutually acceptable to the parties. Unless otherwise agreed to, the monthly bill format shall consist of a summary page and detail for each Listed Facility that include the following:

- kWh usage during the billing period
- cost charged

In the case of a Block Pricing structure as described in the Special Conditions section of this Agreement, the bill shall clearly state for the billing period:

- the quantity and price of On Peak Forward Block power purchased
- the quantity and price of Off Peak Forward Block power purchased
- the quantity and price of any Index Energy purchased, by hour
- the price and cost of the Fixed Retail Adder charge.

7. INTENTIONALLY OMITTED

8. Payment

Customer will pay Contractor's bill within 21 days from Customer's actual date of receipt of both an accurate invoice and all supporting documentation reasonably necessary for Customer to verify all services provided under this Agreement. In the event that Customer disputes the charges on its invoice, Customer shall notify the Contractor in writing of the charges disputed and the basis of the dispute. While Customer will use its reasonable efforts to promptly notify the Contractor of any such disputed charges, the time in which to do so shall be governed by the time limits set forth in paragraph 15. The Contractor shall use its reasonable efforts to timely investigate and resolve any such disputes. Upon reconciliation of any such dispute, any resulting adjustments shall be applied to the next monthly invoice. Customer is not obligated to pay for any Electric Energy that Contractor fails to provide pursuant to and in accordance with this Agreement.

Contractor shall submit all invoices to:

Chicago Transit Authority
Attn: Emily Ziring

9. Warranties

Contractor warrants that it has the right to sell Electric Energy and provide (either directly or through purchase from others) all ancillary related services required herein, and that such Electric Energy shall be delivered hereunder and will be free from all liens of any kind. Contractor warrants that all Electric Energy it delivers or causes to be delivered to the Delivery Company's system shall comply with all applicable requirements of the Delivery Company's federal and state tariffs.

10. Indemnity

To the extent permitted by law, Contractor covenants and agrees that it shall defend, indemnify and hold harmless Customer, its directors, officers, agents and employees from any and all suits, claims, expenses (including, but not limited to attorney's fees) or losses which may be imposed for any bodily injury, including death resulting therefrom, or property damage, including the loss of use thereof, arising out of, or in connection with, the Electric Energy to be furnished by Contractors, its employees, subcontractors or agents under the Agreement, and caused by any error, omission or negligent act of Contractor, its employees, subcontractors or agents. Contractor and all independent subcontractors expressly understand and agree that any insurance protection furnished by Contractor or subcontractors, as required hereunder, shall in no way limit Contractor's responsibility under the provisions of this Agreement to indemnify, save and hold harmless Customer. This provision shall survive cancellation or expiration of this Agreement as to events that occurred before such cancellation or termination and for which written demand is received by the indemnifying Party before the second anniversary of such termination or cancellation.

11. Force Majeure

If either Party is unable, wholly or in part, by Force Majeure (as defined below) to carry out its obligations under this Agreement, and upon such Party giving written notice and full particulars of such Force Majeure to the other Party as soon as practicable after the occurrence of the cause, the obligations of the Party giving notice, so far as its obligations are affected by the Force Majeure, will be suspended during the continuance of the Force Majeure. Oral notice of the Force Majeure event is also acceptable if given to the Customer's contact person to be identified in writing by the parties, but only if such oral notice is followed by written notice as soon as practicable. The suspension will last no longer than the Force Majeure. Each party shall seek to remedy the Force Majeure with all reasonable dispatch. The requirement that an event of Force Majeure will be remedied with all reasonable dispatch does not require either Party to settle strikes or lockouts by acceding to the demands of the striker. If an event of Force Majeure lasts for 7 continuous days, the Party not subject to the Force Majeure has the option of terminating this Agreement at any time after the 7th day, so long as the event of Force Majeure is continuing, without further liability by providing the other Party written notice of such intent. During such period of Force Majeure, Customer will continue to be obligated to make payments for all Electric Energy delivered to and consumed at its facilities in accordance with the terms of this Agreement.

Force Majeure means any of the following causes to the extent not reasonably within the control, and without fault or negligence, of the Party affected thereby and which by the exercise of due diligence by the affected Party could not have been prevented: acts of God, civil disturbances, interruptions caused by governmental or court orders, unwillingness or inability of the transmission operator to provide

transmission service or the curtailment of Contractor's transmission service through no fault of Contractor that prevents Contractor from delivering the Electric Energy to the Delivery Company. **Neither labor strikes, economic hardship, nor economic conditions, nor a change in economic conditions or in the price paid by Contractor for Electric Energy or the price at which Contractor is able to sell Electric Energy other than pursuant to this Agreement will constitute a Force Majeure under this Agreement.**

12. Guarantee/Letter of Credit

If at the time of execution of this Agreement, the senior unsecured debt of the Contractor is rated lower than BBB- by Standard & Poor's Rating Group or its successor, or lower than Baa3 by Moody's Investor Services, Inc., or its successor, or if the Contractor has no such Standard & Poor's or Moody's debt rating, then, in order to ensure the faithful performance of this Agreement, the Contractor agrees to provide before _____, 2009 and maintain at all times during the course of this Agreement an irrevocable letter of credit or a guarantee either of which shall be in the amount of \$3,000,000. The performance guarantee shall be a guarantee executed by a parent corporation or another entity acceptable to Customer. Either document shall be in a form substantially similar to the specimen attached to this Agreement or such other form acceptable to Customer. During the term of this Agreement, if the senior unsecured debt of the performance guarantor is rated lower than BBB- by Standard & Poor's Rating Group or its successor, or lower than Baa3 by Moody's Investor Services, Inc., or its successor, the Contractor shall notify Customer in writing of such downgrade within three business days. Upon receipt of such notification, or if Customer otherwise learns of the downgrade, Customer may request from the Contractor Adequate Assurance acceptable to Customer in like amount. Any bank or financial institution issuing a letter of credit must have the following: (a) a branch in Illinois to effectuate a draw or permit a draw by fax; (b) maintain a credit rating no lower than BBB- by Standard & Poor's Rating Group or its successor, or lower than Baa3 by Moody's Investor Services or its successor; and (c) have capital and surplus of at least \$500,000,000.

13. Financial Obligation

Each Party agrees to provide financial information reasonably requested by the other Party to facilitate credit review at any time during the course of this Agreement.

If the Contractor has senior unsecured debt that is rated, and during the term of this Agreement, the senior unsecured debt of the Contractor is rated lower than BBB- by Standard & Poor's Rating Group or its successor, or lower than Baa3 by Moody's Investor Services, Inc., or its successor, the Contractor shall notify Customer in writing of such downgrade within 48 hours. Upon receipt of such notification, Customer may request from the Contractor Adequate Assurance of performance, which Adequate Assurance shall be in the form of the Guarantee or Letter of Credit referenced in paragraph 12. Such Adequate Assurance must be delivered within five (5) business days of request. Upon 10 days notice, Customer may require and Contractor shall provide a new irrevocable letter of credit to be issued from a bank or financial institution that is acceptable to Customer and meets the rating standards set forth in paragraph 12 should the issuing bank's or institution's rating standard fall below such requirements.

14. Facility Openings and Closings

Customer shall be entitled to close individual Listed Facilities prior to the end of the term set forth herein without penalty, provided it replaces said Listed Facilities with other locations having a similar demand, energy and load profile (the "Replacement Facility"). Unless otherwise agreed upon in writing by both Parties, such Replacement Facility will be added to the Agreement at the same

Contract Rate for the Listed Facility scheduled to be closed, provided the start date for the Replacement Facility is on or before the date such Listed Facility closes. Customer may add additional facilities (not replacing closed facilities) to the Agreement at the current market price as proposed by Contractor and agreed to by the Parties and as set forth in a new or revised price for said facility. Customer and Contractor shall execute new or revised schedules as necessary for any changes to the facilities served under this Agreement.

15. Default/Cure Periods

Upon the occurrence of an Event of Default and at any time thereafter so long as such Event of Default continues, the Non-Defaulting Party may by written notice to the Defaulting Party declare this Agreement to be in default. Except with respect to a payment default, the Defaulting Party must remedy such Event of Default within five (5) calendar days after receiving notice from the Non-Defaulting Party. If the Defaulting Party fails to cure its default within the applicable cure period, the Non-Defaulting Party may upon five (5) days written notice thereafter terminate this Agreement and exercise, at its election, any rights or remedies it may have under this Agreement, or as provided under law (unless otherwise limited by this Agreement).

Notwithstanding the foregoing, if Contractor: (i) has any senior unsecured debt rated lower than BBB- by the Standard & Poor's Rating group or its successor, or lower than Baa3 by the Moody's Investor Services, Inc., or its successor; (ii) declares bankruptcy or makes an assignment for the benefit of creditors, or (iii) fails to provide Adequate Assurance to Customer within 5 business days of Customer's demand, when such demand is based upon Customer's good faith belief that the ability of the Defaulting Party to perform its obligations under this Agreement is materially impaired, then Customer has the right, with five (5) days written notice, to terminate this Agreement at any time. Customer shall pay for Electric Energy already provided and Customer will have no further liability to Contractor.

Any Event of Default that occurs with respect to the guarantor or bank or financial institution issuing a Letter of Credit shall be deemed an Event of Default with respect to the Contractor.

16. Remedy and Liquidated Damages

It is understood that Customer is a public transit agency providing vital services to the public and time is of the essence. Notwithstanding anything herein to the contrary, in the event that the Contractor fails to timely deliver the requested Electric Energy to Customer due to no fault of Customer, or otherwise commits an Event of Default as defined herein, Customer may immediately purchase the Electric Energy required by the Listed Facilities from the provider of last resort or from another ARES or RES and Customer may terminate this Agreement by written notice to the Contractor and unless such failure is attributable to Force Majeure, in which case the termination rights in paragraph 11 shall apply, Customer shall have no further obligation to the Contractor hereunder, other than the obligation to pay for Electric Energy provided by Contractor prior to the termination date. In the event and to the extent the Contractor commits an Event of Default, Customer will have the right to obtain Replacement Energy from other providers, selected at Customer's sole discretion. In such event, if Customer purchases Replacement Energy at prices in excess of the Contract Rate prices under this Agreement, Contractor shall pay to Customer an amount equal to the difference between the Contract Rate and the price at which Customer purchases Replacement Energy for the remainder of the contract term plus 10% of such difference for administrative costs. For illustrative purposes only, if Customer was required to obtain 1,000,000 kWh of Replacement Energy at a total cost of \$50,000 and the cost of power at the Contract Rate would have totaled \$30,000, Customer would be entitled to the difference (\$20,000) plus 10% (\$2,000) for a total of \$22,000. **IN THE EVENT OF CONTRACTOR'S**

DEFAULT, THE RIGHT TO TERMINATE THIS AGREEMENT AND CONTRACTOR'S OBLIGATION TO PAY FOR CUSTOMER'S EXCESS COSTS FOR PROCURING REPLACEMENT ENERGY, PLUS 10% OF THE DIFFERENCE FOR ADMINISTRATIVE COSTS AS DESCRIBED ABOVE, SHALL BE CUSTOMER'S EXCLUSIVE REMEDY, AND CONTRACTOR'S SOLE OBLIGATION FOR CONTRACTOR'S EVENT OF DEFAULT PURSUANT TO THE TERMS OF THIS AGREEMENT. THE CONTRACTOR'S INDEMNITY OBLIGATIONS SHALL SURVIVE PURSUANT TO THE TERMS OF THIS AGREEMENT AS TO EVENTS THAT OCCURRED BEFORE SUCH CANCELLATION OR TERMINATION AND FOR WHICH WRITTEN DEMAND IS RECEIVED BY THE INDEMNIFYING PARTY BEFORE THE THIRD ANNIVERSARY OF SUCH TERMINATION OR CANCELLATION.

If Customer commits an Event of Default as defined herein, Contractor may terminate this Agreement by written notice to Customer and Contractor shall have no further obligation to Customer hereunder. In such event, Contractor shall use best reasonable efforts to re-sell the electric Energy that would have been sold to Customer hereunder. However, if Contractor is unable to sell such Electric Energy, at a price per kWh that is equal to or greater than the Contract Rate, then Customer shall pay the Contractor an amount equal to the difference between the Contract Rate and the price at which Contractor sells such Electric Energy for the actual quantity which Customer purchased from other sources for the remainder of the contract term plus 10% of such difference for administrative costs. For illustrative purposes only, if Customer obtained 1,000,000 kWh of electric energy from another source and the difference between the cost of power at Contractor's Contract Rate and the cost at the mitigated price was \$30,000, Customer would be obligated to pay the \$30,000 difference plus 10% (\$3,000) for a total of \$33,000. **CUSTOMER'S OBLIGATION TO PAY SUCH AMOUNT TO CONTRACTOR AND CONTRACTOR'S RIGHT TO TERMINATE THIS AGREEMENT, SHALL BE CONTRACTOR'S EXCLUSIVE REMEDY, AND CUSTOMER'S SOLE OBLIGATION TO CONTRACTOR IN THE EVENT OF CUSTOMER'S EVENT OF DEFAULT PURSUANT TO THE TERMS OF THIS AGREEMENT.**

Contractor shall use commercially reasonable efforts to mitigate any losses. Customer shall use commercially reasonable efforts to mitigate any losses subject to compliance with Customer's purchasing regulations. **TO THE EXTENT DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.**

If either party defaults under this Agreement, without limiting its rights herein, a non-defaulting party may set off any and all amounts that the defaulting Party owes to it against any or all amounts it owes the defaulting Party (whether or not then due).

17. Insurance Requirements

Contractor, at its sole expense, shall procure, maintain and keep in force during the entire term of this Agreement the insurance types and amounts listed in Appendix N, Insurance Requirements, of CTA's RFP No. B09OP03436.

18. Records and Audits

A. Records

- (i) The Contractor must deliver or cause to be delivered to Customer promptly, at a mutually agreeable place and time, all documents prepared for Customer under the terms of this Agreement, or reasonably required by Customer to verify the accuracy of any bill or charge, in accordance with the time limits prescribed in this Agreement, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the Electric Energy services under this Agreement.

Contractor must maintain any such records not delivered to Customer or demanded by Customer for a period of 3 years after the final payment made in connection with this Agreement. Contractor must not dispose of such documents following the expiration of this period without notification of and written approval from Customer.

- B.** (i) Contractor and any of its Subcontractors must furnish Customer with all information that may be reasonably requested pertaining to all costs and charges that the Contractor is authorized to pass-through to the Customer under this Agreement which relate to the delivery of the Electric Energy. Contractor must keep books, documents, paper, records and accounts in connection with the services open to audit, inspection, copying, abstracting and transcription and must make these records available (in paper and electronic form) to Customer, its auditors at reasonable and mutually convenient times and places during the performance of the Electric Energy services.
- (ii) Contractor must maintain its books, records, documents and other evidence and adopt accounting procedures and practices sufficient to reflect properly all pass-through costs and charges of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the performance of this Agreement. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.
- (iii) No provision in this Agreement granting Customer a right of access to records and documents is intended to impair, limit or affect any right of access to such records and documents that Customer would have had in the absence of such provisions.
- (iv) Customer may in its sole discretion audit the records of Contracts or its Subcontractors relating to all pass-through costs and charges, at a mutually agreeable place and time during the term of this Agreement or within three years after the Agreement ends, in connection with the goods, work, or services provided under this Agreement. Each calendar year or partial calendar year is considered an "audited period." If, as a result of such an audit, it is determined that Contractor or any of its Subcontractors has overcharged Customer in the audited period, Customer will notify Contractor. Contractor must then promptly reimburse Customer for any amounts Customer has paid Contractor due to the overcharges, plus interest at the rate of 18% per annum from the date of payment of the overcharge.

19. INTENTIONALLY OMITTED.

20. Confidentiality

Customer is a body corporate and politic and a unit of local government. Customer is subject to the Freedom of Information Act, 5 ILCS 140/1, *et seq.*, which declares, among other things, that it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government. It is Customer's intent to make this entire Agreement and the prices paid available to the public.

However, in the event either Party considers any information in this Agreement confidential or proprietary, such information shall be identified at the time of submittal. Such information shall be held in confidence by the recipient and shall be disclosed only to those of its employees or authorized representative(s) who require access in the performance of their duties to the recipient. The recipient will exercise reasonable care in the safeguarding of such confidential information. The Parties agree that only information they have a good faith belief to be confidential or proprietary, and which they have a good faith basis to designate confidential or proprietary will be so designated.

Exceptions: Neither Party shall be liable for the disclosure or use of any information designated as confidential that: (a) is, or becomes, publicly known, other than by breach of this Agreement; (b) is obtained by the recipient from another person without restriction; (c) is previously known by the recipient without restrictions; (d) is, at any time, developed by the recipient independently of any disclosures hereunder; (e) is disclosed pursuant to the consent of the party that considers such information confidential; or (f) is required to be disclosed by law, including, but not limited to the Freedom of Information Act, 5 ILCS 140/1, *et seq.*, provided that prior to disclosing such information the recipient shall notify the other party of the demand to disclose or provide the information and the recipient agrees to reasonably cooperate if the other party deems it necessary to seek a protective arrangement.

21. Compliance with all Laws

Contractor must observe and comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later and whether or not they appear in this Agreement, and Contractor must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Contractor must require all Subcontractors to do so, also.

Notwithstanding anything in this Agreement to the contrary, references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

22. Severability

If any provision(s) of this Agreement is held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein; the remaining provisions will remain in full force and will not be affected by the invalid, illegal or unenforceable provision or by its severance.

23. Non-waiver

Either Party's failure at any time to require strict performance by the other Party of any provision of this Agreement will not waive a party's right to demand strict compliance with any other provision of

this Agreement or such provision at any other time. Any waiver of any terms of this Agreement must be in writing and shall not diminish the future enforceability of this Agreement.

24. Necessary Documents

Each Party agrees to execute and deliver all further documents, and take all further action reasonably necessary to effectuate the purpose of this Agreement, including any prerequisites required by Delivery Company.

25. Deemed Inclusion

Provisions required (as of the Effective Date) by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this

Agreement is signed prevent its enforcement. The following additional attachments are deemed included:

Attachments:

- Special Conditions
 - Block Pricing
 - Bandwidth Restriction
- Sample Guarantee/Letter of Credit
- Listed Facilities
- ___/___/2009 Proposal/BAFO
- CTA RFP No. B09OP03436 and Addenda

26. Independent Contractor

This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Contractor and Customer. The rights and the obligations of the parties are only those set forth in this Agreement. Contractor must perform under this Agreement as an independent contractor and not as a representative, employee, agent, or partner of Customer.

27. Representations

Contractor represents that it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Electric Energy required; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and Contractor warrants it can and will provide, or cause to be provided, the Electric Energy services in strict accordance with the provisions and requirements of this Agreement. Customer represents that it has the capacity and authority to enter into an agreement for the purchase of electric energy; to authorize a third party to make all necessary arrangements for the purchase and delivery of such Electric Energy to the Listed Facilities.

28. No Consequential Damages

In no event will either Party be liable to the other or to any third-party, for any special, incidental, consequential, punitive or exemplary damages arising out of or in connection with this Agreement, whether such damage claim is a result of breach of contract, tort liability (including negligence), strict liability, or otherwise. The limitation of liability in this paragraph does not apply to: (i.) Contractor's liability for Contractor's or its Subcontractors fraud or gross negligence, including, but not limited to misrepresentations made by Contractor in any submission to Customer at any time during the RFP process; (ii) any claims covered by and for which proceeds are provided by any insurance, bond, letter of credit or other guarantee provided for herein; (iii.) Contractor's unlawful refusal to perform its obligations pursuant to this Agreement; and (iv.) Contractor's indemnification obligations pursuant to this Agreement.

29. Miscellaneous

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois. The forum of choice for the parties to resolve any dispute which may arise out of this Agreement is the appropriate state court of competent jurisdiction located in Cook County, Illinois. This Agreement shall not be construed against a Party by reason of who prepared it. Each Party represents and warrants that the person signing this Agreement is authorized to do so and that this Agreement is a valid and binding obligation of such Party. The parties agree that fax copies of executed original copies of this Agreement shall be sufficient and admissible evidence of the content and existence of this Agreement to the same extent as the originally executed copy or copies (if executed in counterpart).

30. Notices

Any and all notices given in connection with this Agreement shall be deemed adequately given only if in writing and addressed to the party for whom such notices are intended at the address set forth below. All notices shall be sent by personal delivery, Fed Ex or other overnight messenger service, first class registered or certified mail, postage prepaid, return receipt requested, or by facsimile. A written notice shall be deemed to have been given to the recipient party on the earlier of (a) the date it is delivered to the address required by this Agreement; (b) the date delivery is refused at the address required by this Agreement; (c) with respect to notices sent by mail, the date as of which the postal service indicates such notices to be undeliverable at the address required by this Contract; or (d) on the date sent, if delivered by facsimile at the number(s) set forth below and upon proof of delivery as evidenced by the sending fax machine. The Agreement number must be prominently featured in the heading of all notices sent hereunder.

Any and all notices referred to in this Agreement, or that either party desires to give to the other, shall be addressed as follows:

Contractor: Notices, Correspondence and Parcel Deliveries, Contractor Fax Number	Customer: Chicago Transit Authority Notices and parcel Deliveries 567 W. Lake Street Chicago IL 60661 Attn: Emily Ziring Phone number: 312 681-3527
Payments (as indicated on invoice)	

31. Choice of Law; Venue; Attorney Fees and Expenses

The validity, performance, and construction of this Agreement will be governed and interpreted in accordance with the laws of the State of Illinois, without giving effect to conflict of law principles. Any controversy or claim arising from or relating to this Agreement will be settled in accordance with the express terms of this Agreement by a court located in the State of Illinois (and each Party hereto waives any right to object to venue in this regard). EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY OR TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION CLAIMS IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. If either Party pursues court action to enforce its rights under this Agreement, the non-prevailing Party shall promptly reimburse the prevailing Party for all its reasonable attorney fees, expenses and costs.

32. INTENTIONALLY OMITTED

33. Forward Contract; Inapplicability of Commodities Exchange Act

The Parties acknowledge and agree that this Agreement is a "forward contract" and that Contractor is a "forward contract merchant" for purposes of the U.S. Bankruptcy Code, as amended. Further, Contractor is not providing advice regarding the value or advisability of trading in "commodity interests" as defined in the Commodity Exchange Act, 7 U.S.C. §§ 1-25, et seq., as amended (the "CEA"), including futures contracts and commodity options or any other activity which would cause Contractor or any of its affiliates to be considered a commodity trading advisor under the CEA.

34. Contract Changes

Any change, modification, change order, or amendment (hereinafter "Contract Change") to this Agreement must be in writing and approved and signed by CTA and Contractor. Contract Changes can include, but are not limited to, changes to scope, time extensions, cost, contract terms, or any combination thereof. Contractor shall be liable for satisfactorily correcting, and/or all costs resulting from, any change not ordered in writing and signed by the CTA.

35. Substance Abuse

To the extent the Contractor, Subcontractor, or any party contracted for work as a result of this Agreement performs a safety sensitive function, Contractor agrees to comply with, and assures their employees comply with all applicable drug and alcohol abuse testing requirements that may be found under state and federal law as they apply to public contracting.

36. No Third Party Beneficiaries

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

37. Independent Contractor

The Contractor will perform the Scope of Services under this Agreement as an independent Contractor, and nothing herein is intended or will be construed to create any partnership, agency, or joint venture relationship between the Authority and the Contractor or any Subcontractor. Neither the Contractor nor its Subcontractors, or the employees or agents of any of them, will be deemed for any purpose to be employees of the Authority. The Contractor will be solely responsible for the withholding or payment of all applicable Federal, State, and local personal income taxes, social security taxes, unemployment and sickness disability insurance, and other payroll taxes with respect to the Contractor's employees.

38. Obligation to Comply with the Authority's Inspector General Ordinance

The Contractor agrees to comply with all of the requirements of Authority Ordinance No. 99-173, as it may be amended from time to time, the provisions of which are incorporated into this Agreement to the same force and effect as if set forth in full herein. As required by Ordinance No. 99-173, as amended, the Contractor agrees to cooperate fully and expeditiously with the Authority's Inspector General in all investigations or audits. This obligation applies to all officers, directors, agents, partners, employees, and Subcontractors of the Contractor.

39. Limitation of Liability

In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there will be no liability upon the board members, officials, agents or employees of the Authority, including without limitation the General Manager, Purchasing, and the Project Manager, either personally or as officials of the Authority, it being understood that in such matters they act as representatives of the Authority.

In carrying out any provisions of this Agreement there will be no liability upon the board members, officers, agents or employees of the Contractor, it being understood that such persons act as representatives of the Contractor.

40. Advertising and Publicity

Contractor must not disclose, use or refer to this Agreement or any of its terms, or the name of the Authority in any advertising, publicity releases, promotional materials or materials distributed to existing or prospective customers, without the prior written consent of the Project Manager. Notwithstanding the above, Contractor may identify the Authority as a customer or client in a general customer reference list.

41. Representations of Contractor

In connection with the execution of this Agreement, the Contractor represents and warrants:

1. That it, each of its joint venture members if a joint venture, and its Subcontractors, are not in default at the time of the execution of this Agreement, or deemed by the General Manager, Purchasing to have, within 3 years immediately preceding the date of this Contract, been found to be in default, in connection with any contract awarded by the Authority.
2. That this Agreement is feasible of performance in accordance with all of its provisions and requirements and that the Contractor can and will perform, or cause to be

performed, the Scope of Services in accordance with the provisions and requirements of this Agreement.

3. The parties acknowledge that, except only for those representations, statements, or promises expressly contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, neither Party has relied upon any other representation, statement or promise of the other Party, either made orally or in writing.
4. That, Contractor acknowledges that the Authority, in its selection of the Contractor to perform the Scope of Services hereunder, materially relied upon the Contractor's response(s) to the Authority's solicitation

42. Compliance with All Laws

The Contractor will at all times observe and comply with all laws, ordinances, regulations, and codes of the Federal, State, City, Authority and other local government agencies that may in any manner affect the contents of the RFP or the performance of the Agreement.

43. Permits and Licenses

Unless otherwise expressly provided, the Contractor is fully responsible for identifying, requiring and obtaining, at its own expense, all permits and licenses necessary to provide the Scope of Services described in this Agreement.

44. Civil Rights

1. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 USC § 12132, and Federal Transit Law at 49 USC § 5332, the Contractor agrees that it will not discriminate against any employee or applicant on the basis of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Agreement:
 - a. **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e, and Federal Transit Laws at 49 USC § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect Services provided under this Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action will include, but not be limited to, the following: employment,

upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with all implementing requirements FTA may issue.

- b. **Age.** In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623 and Federal Transit Law at 49 USC § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - c. **Disabilities.** In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC § 12112, the Contractor agrees that it will comply with the requirements of US Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 3. During the performance of this Agreement, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action will include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
 - c. The Contractor will send to each labor union or representative of workers with whom the representative has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Authority's General Manager, Purchasing, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and will post copies of the notice in conspicuous places available to employees and applicants for employment.
 - d. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - e. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and

orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Authority and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.

- f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies applied as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - g. The Contractor must include the provisions of the above Paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Authority may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Federal Government contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
4. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

45. Illinois Human Rights Act

During the term of this Agreement, the Contractor must:

- 1. Refrain from unlawful discrimination and discrimination based on citizenship status in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination.
- 2. Comply with the procedures and requirements of the Illinois Department of Human Rights' regulations concerning equal employment opportunities and affirmative action.
- 3. Provide such information, with respect to its employees and applicants for employment, and assistance as the Department may reasonably request from time to time.
- 4. Have written sexual harassment policies that must include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) Contractor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human

Rights and the Illinois Human Rights Commission; (vi) directions on how to contact the Illinois Department of Human Rights and the Illinois Human Rights Commission; and (vii) protection against retaliation as provided in Section 6-101 of the Illinois Human Rights Act (775 ILCS 5/2-105). A copy of the policies must be provided to the Illinois Department of Human Rights upon request.

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

46. Disclosure of Ownership

Any person, business entity, or agency that submits a proposal for the purpose of contracting with the Authority is required to complete all certifications, forms and statements contained in the Authority's RFP.

47. Ethics Ordinance

Contractor agrees to comply with the CTA Ethics Ordinance, CTA Ordinance No. 004-76, as amended from time to time, the provisions of which are hereby incorporated into this Agreement. The Contractor agrees that, as provided by Section 5.3 of the CTA Ethics Ordinance, any contract negotiated, entered into, or performed in violation of any of the provisions of the Ethics Ordinance shall be voidable as to the Authority at the election of the Authority.

48. Conflict of Interest

1. No Board member, officer or employee of the Authority or other unit of local government, who exercises any functions or responsibilities in connection with the carrying out of the Scope of Services or the carrying out of the Scope of Services to which this Agreement pertains, may have any personal interest, direct or indirect, in this Agreement or the proceeds thereof.
2. In accordance with 41 USC § 22, the Contractor agrees that no member of or Delegate to the Congress of the United States, or the Illinois General Assembly and no members of the Chicago Transit Board or Authority employees, may be admitted to any share or part of this Agreement or to any private financial interest, profit, or benefit arising herefrom.
3. The Contractor covenants that it, its officers, directors and employees, and the officers, directors, and employees of such of its members if a joint venture, and Subcontractors presently have no interest and will not acquire any interest, direct or indirect, in the Scope of Services to which this Agreement pertains, which would conflict in any manner or degree with the performance of the Services hereunder. The Contractor

further covenants that, in the performance of this Agreement, no person having any such interest will be employed by the Contractor.

4. An organizational conflict of interest exists when the nature of work to be performed under a proposed third party contract or subcontract may, without some restriction on future activities, result in an unfair competitive advantage to the third party contractor or Subcontractor or impair its objectivity in performing the Agreement. The Contractor is prohibited from performing any work or services for the Authority that conflict with work or services that the Contractor performs under any other contract with the Authority. The restrictions in this paragraph are applicable to all Subcontractors. The Contractor has sole responsibility for compliance with this provision. Any violation of this provision is a material breach of the Agreement, which is cause for termination.

49. Assignment

- A. This Agreement is binding upon the Parties' respective successors and permitted assignees.
- B. The Contractor may not assign this Agreement in whole or in part without the written approval of the Purchasing Agent. In no case will such written approval relieve the Contractor from its obligations or change the terms of the Agreement.
- C. The Contractor must not transfer or assign any Agreement funds or claims due, or to become due, without first obtaining the written approval of the Purchasing Agent. Such approval will not be unreasonably withheld.

Decision to Switch Suppliers; Authorization to Obtain Information

CUSTOMER HEREBY CONFIRMS ITS DECISION TO SWITCH SUPPLIERS TO CONTRACTOR subject to the conditions in this Agreement. Unless otherwise specified in this Agreement or in an amendment hereto executed by both Parties, all Electric Energy required by Listed Facilities associated with the Account Number(s) specified in the attachments will be switched to Contractor as of the commencement of service date(s) specified herein. Customer hereby authorizes Contractor to receive Customer's historical and ongoing usage information from the ComEd.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below their respective signatures.

THIS AGREEMENT SHALL BECOME EFFECTIVE UPON THE EXECUTION OF THIS DOCUMENT BY BOTH PARTIES AND CUSTOMER'S WRITTEN ACCEPTANCE OF CONTRACTOR'S BEST AND FINAL OFFER

SIGNATORY PAGE

IN WITNESS WHEREOF, on the __ day of _____, 2009, the parties have executed this Agreement.

_____ [Name of Company]

By: _____

Its: _____
President

Attest:

_____ (Seal)
Secretary*

NOTE If the contract is executed by other than the President and Secretary, a corporate resolution must be attached in duplicate authorizing execution by the designated parties.

To be completed by CTA

By: _____ Entity: **_Chicago Transit Authority**

Its: _____

SPECIAL CONDITIONS

These special conditions take precedence over any inconsistent provisions in the Agreement.

SPECIAL CONDITIONS -- BLOCK PRICING

[Applicable if CTA purchases pursuant to a Block Pricing Proposal]

Forward Block Purchase: During the Term of this Agreement, Customer may purchase any amount of the energy component of its electricity requirements from Contractor as a Fixed Contract Quantity. Customer shall request a forward purchase at least five (5) business days prior to Customer's desired start date for such purchase. Such notification shall: (i) set forth the incremental forward purchase amount in whole MW increments, (ii) designate the time period as expressed in NERC wholesale periods 5X16 (On Peak), 2X16 (Weekends) or 7X8 (Off Peak), and (iii) designate the month or months to which the forward purchase will apply.

The On Peak and Off Peak charges quoted shall be as follows: The On Peak period, as defined by NERC, are the hours between 7 am and 11 pm prevailing Eastern Time, Monday through Friday, except for NERC-defined holidays. The NERC-defined holidays are: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. The Off Peak period shall be all other hours. This definition of On Peak and Off Peak charges shall apply to all usage and price related components.

Index Energy Purchase: Customer will pay the Day Ahead Charge, which equals the product of the hourly Day Ahead Locational Marginal Price for the ComEd Zone ("ComEd Day Ahead LMP") and the quantity equal to the forecasted usage minus the Fixed Contract Quantity. If the Day Ahead Charge is negative, Contractor will credit the amount to Customer.

In addition, Customer will pay the Real Time Charge, which equals the product of the hourly Real Time Locational Marginal Price for the ComEd Zone and the quantity equal to Customer's total actual usage for that hour minus the forecasted usage for that same hour. If the Real Time Charge is negative, Contractor will credit the amount to Customer.

Fixed Retail Adder: The Fixed Retail Adder is intended to reimburse Contractor for necessary costs not included in the energy price and shall be billed to the Customer as a separate line item in \$/kWh applied to each kWh actually consumed by Customer. Retail Energy Costs consist of: capacity, ancillary services, network integrated transmission service or NITS, congestion, transmission losses, distribution losses, ISO/PJM Administration costs, and Contractor margin.

Price Formula: The price formula defining what CTA will pay under the Block Pricing structure in any month during the term of the Agreement is as follows:

Forward Block Purchase, plus

Index Energy Purchase for energy consumed by Customer above the Forward Block Purchase, plus
Fixed Retail Adder (\$/kWh) times the kWh actually consumed by Customer.

SPECIAL CONDITIONS -- BANDWIDTH RESTRICTION

[Applicable only if CTA purchases subject to bandwidth restrictions]

Customer agrees to buy Contract Quantity (CQ) kWh, plus or minus _____%, of aggregate load per month as set forth in Schedule 2. The Contractor shall provide a monthly kWh band of ____% (plus or minus) at the Agreement rate. To the extent that Customer uses the Electric Energy outside the bandwidth, all charges associated with Transmission Losses, Distribution Losses, Congestion Charges, Ancillary Charges, Transmission Charges, Distribution Charges, and Miscellaneous Charges incurred or avoided shall be passed through without any mark up.

If during any month of delivery Customer uses energy above _____% of the monthly CQ kWh, the additional energy will be charged at the market price using ComEd Zone average **monthly prices**. ***The average monthly prices are defined as the simple average of all real time hourly prices at the PJM ComEd Zone, for the actual days of the billing cycle.***

If during any month of delivery Customer's metered usage is less than _____% of the monthly CQ kWh, Contractor shall invoice Customer an amount equal to _____% of the monthly CQ kWh multiplied by the Contract Price, and shall credit Customer by an amount equal to the metered usage below the bandwidth multiplied by the market price using ComEd Zone average monthly prices.

There will be a monthly reconciliation of the incremental purchased or sold power for Customer. Only monthly total kWh usage shall be used in the calculation of the CQ utilization. Half-hourly, hourly, daily or weekly reconciliation will not be accepted. In rare situations, however, there may be minor additional charges in transmission charges if the Contractor's overall portfolio falls outside the allowed band with their suppliers, provided this occurs solely due to Customer's unexpected usage. Customer shall, in no event, be required to reimburse the Contractor for ComEd charges or PJM charges to the extent that the Contractor could have avoided or reduced such charges unless the Contractor can substantiate the assessed charges and establish to Customer's reasonable satisfaction why such charges were consistent with the prudent management of Customer's accounts.

Appendix B

Traction Power Information

The CTA uses electricity to power its rapid transit cars. This electricity, which is also sometimes referred to as "Traction Power", totals more than 428,000,000-kilowatt hours (kWh)² annually with a monthly coincident peak demand that ranges between 81 MW and 115MW³. A compact disc is attached that includes spreadsheets [Exhibit C] that show CTA power use. The compact disc includes interval data for 2005 along with historical usage from January 2003 to July 2006.⁴

Parties interested in obtaining this information electronically should send a request to jkozicki@transitchicago.com. Also included in the data on the compact disc is CTA's forecast electric usage through June 2009. The forecasted energy usage is based on information presently available to the CTA and is subject to change as more information becomes available. Proposers are encouraged to access the ComEd Power Path website to obtain additional information regarding CTA energy use.⁵

CTA railroad power is served from 61 CTA-operated substations. The power used to energize the CTA system requires DC power. CTA railroad electric power demand peaks and total power consumption at the 61 substations varies from day-to-day, month-to-month and from year-to-year due to factors such as the following:

1. Schedule changes (headway between trains).
2. Slow zones on routes caused by CTA and third party construction projects.
3. Retirement of old traction power substations from service.
4. Construction of additional substations.
5. Reconstruction of existing train routes.
6. Construction of new train routes.
7. Changes in rolling stock equipment.
8. Number of transit cars in train.
9. Reconfiguration of existing train lines
10. Holidays and special events
11. Severe Weather
12. Non-scheduled events
13. Changes in train operating speed limits.
14. Other unforeseeable events, such as fires, emergencies and evacuations.

CTA may increase the number of railcars on some lines as CTA completes reconstruction projects. The Brown Line expansion project began adding rail cars in early 2009. By 2010, it is expected that there will be an additional 7 MW Railroad load resulting in 7.8 million kwh of additional on peak usage annually. CTA may also reconfigure routes from time-to-time. For example, CTA may join two routes that are now independent in order to achieve operational and scheduling efficiencies. CTA may also disconnect existing routes and reconnect segments of the routes with other lines or segments. Also, the CTA's daily usage is highly dependent on holidays and special events. The pre-heating of rail cars in the rail yards on cold days and pre-cooling on hot days is another factor that affects power use.

Because of the variable factors described above, proposers must allow and provide for variation in CTA power requirements from historical levels when producing or procuring power, scheduling transmission and scheduling power delivery as CTA's RES.

² Between 409,000,000 (2005) and 410,000,000 (2007 projected)

³ For the period between January 1, 2005 and December 31, 2005.

⁴ The information in the attached chart and in the attached CD is based on information obtained from ComEd. CTA is not responsible for the accuracy of the ComEd information

⁵ The Power Path web address is <http://www.comedpowerpath.com>

Appendix C

Non-Traction Group A Information

The CTA also has Non-Railroad electric power requirements. CTA's Non-Railroad electricity requirements for 53 of its largest facilities are included as Non-Traction Group A in this RFP.

Included in the 53 facilities are seventeen elevated passenger stations, eight bus garage/repair facilities, ten rail car inspection and repair shops, five underground subway stations, five rail terminals, four office facilities, one storage facility and one maintenance shop. Together these facilities used 104,000,000 KWH with a coincident demand of 21.5 MW.

Appendix D

Non-Traction Group B Information

Non-Traction Group B consists of accounts with less than 100 kW billing demand and currently are served by Commonwealth Edison under utility default rate supply. This group includes 171 accounts used 38,000,000 KWH with a coincident demand of 9.4 MW.

Appendix E

Bid Protest Procedure

BID PROTEST PROCEDURES

SECTION I – AUTHORITY BID PROTEST PROCEDURE

- A. The Chicago Transit Authority (CTA/ Authority)** will hear and consider a bona fide bid protest regarding its procurement actions. It is anticipated that the majority of protests will be evaluated and finally decided by the Authority. Accordingly, the Authority intends to provide a thorough review of all bona fide bid protests. The Authority's primary concern, however, is the timely procurement of needed capital equipment, supplies or services. It does not intend to allow the filing of bid protests to unnecessarily delay the procurement process, especially if the protest involved is vexatious or frivolous in nature.

Notwithstanding the availability of these protest procedures, any interested party is encouraged to exhaust all methods described in the Contract Documents of resolving a procurement issue before filing a formal protest with the Authority. In its consideration of a bid protest, the Authority reserves the right to give due consideration to the good faith efforts of the protestor to resolve the issue involved through informal methods.

Note – The Federal Transit Administration (FTA) will be notified by the Authority of all formal, written protests, when FTA funds are involved.

B. Definitions for purposes of this section -

1. The term "days" refers to working days of the Authority.
2. The term "interested party" means any person (a) who is an actual bidder or prospective bidder in the procurement involved, and (b) whose direct economic interest would be affected by the award of the contract or by a failure to award the contract.

C. Submission of Protest

Any interested party may file a bid protest with the Authority on the basis that the Authority has failed to comply with applicable Federal or State law or with the Authority's Procurement Regulations. The protest must be filed in accordance with the timing requirements set forth in subsection D. "*Types of Protests and Timing*" of this section, and must include:

1. The name and address of the protestor.
2. The number of the contract solicitation.
3. A statement of the grounds for the protest, and in particular the Federal or State law or Authority Regulation alleged to have been violated. This statement should be accompanied by any supporting documentation the protesting party desires the Authority to consider in making its decision.

Protest should be submitted to: **General Manager Purchasing
Chicago Transit Authority
P.O. Box 7560
Chicago, IL 60680-7560**

D. Types of Protests and Timing

The requirement for timely filing of a bid protest with the Authority will depend upon the type of protests involved. The Authority will consider the following three types of protest by interested parties:

1. Protest regarding solicitation

Any bid protest regarding the solicitation by the Authority must be filed **no later than five (5) days before the opening of bids**. Any protest filed after that date which raises issues regarding the solicitation will not be considered by the Authority.

This type of protest would include any claim that the bid solicitation contained exclusionary or discriminatory specifications, any challenge to the basis of award, or any claim that the solicitation documents or the solicitation process violated applicable Federal or State law, or that the Authority failed to follow its Procurement Regulations in the solicitation of bids.

2. Protests regarding bid evaluation

Any bid protest regarding the evaluation of bids by the Authority must be filed with the Authority **no later than twenty (20) days after the opening of bids**. Any protest filed after such date which raises issues regarding the bid evaluation will not be considered by the Authority.

This type of protest would include any challenge to determinations by the Authority of the responsiveness of a bid or the responsibility of a bidder, or any claim that the evaluation of bids violated federal or State law or the Authority's Procurement Regulations.

3. Protests Regarding Award of Contract

Any protest regarding the award of the contract must be filed **no later than ten (10) days after the date of award**. Any protest regarding the award of the contract filed after that date will not be considered by the Authority.

This type of protest will only be entertained by the Authority if the protestor is able to demonstrate that the party awarded the contract fraudulently represented itself as a responsible bidder or that the Authority violated Federal or State law or its Procurement Regulations in the award of the contract.

E. Authority Response

1. Types of Protests

The Authority will notify the protestor upon timely receipt of a bid protest and may, where appropriate, request additional information from the protestor. The Authority may, at its discretion, meet with the protestor to review the matters raised by the protest. The Authority's consideration of the particular types of protests will, except as otherwise provided in subsection 2. "*Decisions by Authority*" of this section, be in accordance with the following provisions:

a. Protest regarding solicitation

Upon receipt of a timely filed protest regarding the solicitation, the Authority will postpone the opening of bids until resolution of the protest. No additional bids will be accepted during the period of postponement.

If the protest regarding the solicitation involves a claim of unduly restrictive or exclusionary specifications, the Authority will, in evaluation of the protest, consider both the specific need of the Authority for the feature or item challenged and any effects on competition of including the specification regarding that feature or item. If the Authority determines that such feature or item was included in the specification in order to meet justified and valid transit needs of the Authority, and was not unduly restrictive of competition or designed to exclude a particular competitor, then the Authority will have grounds to deny the protest.

b. Protests regarding bid evaluation

Upon receipt of a timely filed protest regarding the evaluation of bids, the Authority will suspend its evaluation of all bids submitted until resolution of the protest if the Authority determines that the protestor has established that there are reasonable doubts regarding the responsiveness of a bid or the responsibility of a bidder or regarding the Authority's compliance with Federal or State law or its Procurement Regulations.

c. Protests after award

Upon receipt of a timely filed protest regarding the award of a contract, the Authority will issue a stop work order, if necessary, until the resolution of the protest if the Authority determines that the protestor has established a prima facie case that the contract was awarded fraudulently or in violation of that Federal or State law or the Authority's Procurement Regulations.

2. Decisions by Authority

As indicated above, in most instances the Authority will suspend the procurement process upon receipt of a bona fide bid protest. However, the Authority reserves the right, notwithstanding the pendency of a protest, to proceed with the appropriate action in the procurement process or under the contract in the following cases:

- a. where the item to be procured is urgently required;
- b. where the Authority determines that the protest was vexatious or frivolous; and
- c. where delivery or performance will be unduly delayed, or other undue harm will occur, by failure to make the award promptly.

After review of a bid protest submitted under this section, the Authority will issue a written decision of the basis of the information provided by the protestor, the results of any meetings with the protestor, and the Authority's own investigation. If the protest is upheld, the Authority will take appropriate action to correct the procurement process and protect the rights of the protestor, including resolicitation of bids, revised evaluation of bids or Authority determinations, or termination of the contract. If the protest is denied, the Authority will lift any suspension imposed and proceed with the procurement process or the contract, as the case may be.

The availability of review of bid protest by FTA is described in Section II. As noted in that section, under FTA's revised procurement guidelines the role of the Federal government in bid protest review is quite limited.

SECTION II – FTA BID PROTEST PROCEDURE

Reviews of protests by FTA will be limited to claims that the CTA failed to have or follow protest procedures, or claims that CTA failed to review a complaint or protest. A protestor must exhaust all administrative remedies with the CTA before pursuing a protest with FTA. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

Appendix F

CERTIFICATION – Debarment –
Primary Participant

**CERTIFICATION OF PRIMARY PARTICIPANT
REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS**

_____, certifies to the best of our knowledge and belief that it and
(Company's name)

its principles:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicated for or otherwise criminally or civilly charged by charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

THE PRIMARY PARTICIPANT (APPLICANT OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD PARTY CONTRACT) _____ CERTIFIES OR
(Company name)
AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 *ET SEQ.* ARE APPLICABLE THERETO.

(Signature and Title of Authorized Official)

If you are unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.

Appendix G

CERTIFICATION – Debarment –
Lower-Tier Participant

**CERTIFICATION OF LOWER TIER PARTICIPANT
REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS**

_____, certifies to the best of our knowledge and belief that it and
(Company's name)

its principles:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of frauds or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicated for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/ proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

THE LOWER TIER PARTICIPANT (APPLICANT OR POTENTIAL CONTRACTOR FOR A MAJOR
THIRD PARTY CONTRACT) _____ CERTIFIES
(Company name)
OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS
SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF
31 U.S.C. SECTIONS 3801 *ET SEQ.* ARE APPLICABLE THERETO.

(Signature and Title of Authorized Official)

If you are unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.

Appendix H

CERTIFICATION – Drug-free Workplace

CERTIFICATION REGARDING A DRUG FREE WORKPLACE

Pursuant to the definitions regarding a Drug Free Workplace provided in the Drug-Free Workplace Act of 1988, the Illinois Drug Free Workplace Act, 30 ILCS 580/1 *et seq.*, the Federal Acquisition Regulation System ("FAR"), Procedures for Transportation Workplace Drug & Alcohol Testing Programs, 49 CFR 40, and Prevention of Alcohol Misuse & Prohibited Drug Use in Transit Operation, 49 CFR 655, _____ ("Contractor") certifies to the best of its knowledge and belief that it and its principals:

1. Maintain a workplace(s) (i.e. the site(s) for the performance of work done by the Contractor in connection with this contract) safe and free from "controlled substances" as described in the Controlled Substances Act (21 U.S.C. 812) and as further described in regulations 21 CFR 1308.11 – 1308.15.
2. Have neither been convicted, including entering a plea of 'nolo contendere,' nor had sentence imposed by any judicial body charged with the responsibility to determine violations of Federal or State criminal drug statutes.
3. Publish and give notice to its employees and sub-contractors that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace, and also that actions will be taken against any and all employees and sub-contractors found to be in violation of same.
4. Provide that all employees engaged in the performance of the contract receive a copy of the above statement, that the employee will abide by the terms of this statement, and that the employee will notify the employer in writing of the employee's conviction no later than five (5) calendar days after such conviction.
5. Provide for appropriate action against an employee for violation of any and all of these rules and that an employee convicted of drug abuse must satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health or law enforcement or other appropriate agency.
6. Comply with all drug and alcohol policies, testing programs and reporting requirements set forth in 49 CFR 40 and 49 CFR 655 whenever the Contractor, its employees, or sub-contractor(s) perform one or more of the following functions considered "safety-sensitive", as defined in 49 CFR 655:
 - (1) Operating a revenue service vehicle, including when not in revenue service;
 - (2) Operating a non-revenue service vehicle, when required to be operated by a holder of a commercial Driver's License;
 - (3) Controlling dispatch or movement of a revenue service vehicle;
 - (4) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service; or
 - (5) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service; or
 - (6) Carrying a firearm for security purposes.
7. Will otherwise comply with all drug and alcohol policies set forth in applicable Federal, State and local laws and regulations, including, but not limited to the Drug-Free Workplace Act of 1988, FAR, Illinois Drug Free Workplace Act, 49 CFR 40 and 49 CFR 655 in such version, prior or subsequent to amendment or revision, as is currently enforced or enforceable at and during the execution and performance of this Contract.

In addition to other remedies, the Contractor's failure to comply with any part of the requirements of the Drug-Free Workplace Act of 1988, FAR, Illinois Drug Free Workplace Act, 49 CFR 40 or 49 CFR 655, may render the Contractor subject to any or all of the following: suspension of payments, termination of contract for default, suspension or debarment.

(Signature and Title of Authorized Official)

(Date)

Appendix I

CERTIFICATION – Lobbying

LOBBYING CERTIFICATION

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 20_____.

By: _____
(Type or print name of contractor)

(Signature of authorized officer)

(Title of authorized officer)

Appendix J

Brief History of Your Company

BRIEF HISTORY OF YOUR COMPANY

Tell us about your company:

Company Name: _____

Address: _____

City: _____ **State:** _____ **Zip:** _____

Local Contact Person: _____

Title: _____

Phone Number: () _____ - _____ **Fax Number:** () _____ - _____

How many years has your company been in business? _____

How many employees? _____ **Annual Sales?** _____

Is your business a (an): (check one)

Manufacturer _____ **Supplier** _____ **Distributor** _____ **Other (explain)** _____

Have you provided goods or services to city government, state, county, Board of Education, municipality, etc.?

Please provide a list of references including the three (3) largest companies your firm has done business with in the past two (2) years, and a person and a telephone at that firm which CTA may contact.

Firm Name

Contact Person

Telephone[illegible]

Appendix K

Disclosure of Ownership
(Prime Consultant & Sub-Consultant)

DISCLOSURE OF OWNERSHIP AND INTERESTS AFFIDAVIT

Every Bidder or Proposer (referred to as "Bidder") submitting a Bid or Proposal to the Authority for a Contract shall submit this Disclosure of Ownership and Interests Affidavit (hereafter Disclosure Affidavit or "Affidavit"). If the Bidder is a joint venture, the joint venture and each of the joint venture partners shall complete a Disclosure Affidavit.

Please print or type all responses clearly and legibly. If you need additional space for a response, attach extra pages. Please indicate the question to which you are responding on any extra pages you attach.

For purposes of this Disclosure Affidavit, the term "Contract" refers to the Contract, concession, agreement, modification, amendment, extension, or other section in connection with which you are submitting the Disclosure Affidavit.

Please note that this Disclosure Affidavit requires Bidders to obtain various certifications from their subcontractors before the subcontractors may perform any work under the Contract. The terms of the required subcontractor certifications are set forth below.

After reviewing your completed Disclosure Affidavit, the Authority's General Counsel or GM, Purchasing may require additional information to achieve full disclosure relevant to the Bid, or other applications.

Requisition Number: _____ Bidder Name: _____

Bidder Business Address: _____

Authority departments to which you are submitting this form (check one):

☐ Purchasing ☐ Other: _____

The undersigned _____, as _____, and on behalf
(Name) (Title)
of _____ ("Bidder" or "Contractor"), having been duly sworn
(Business Address)
under oath certifies as follows:

DISCLOSURE OF OWNERSHIP INTERESTS

Indicate below whether the Bidder is an individual or a legal entity and, if a legal entity, indicate the type of entity. Then complete Part (A), (B), (C), or (D) below as applicable. All Bidders shall complete Part (E). For Bidders that are sole proprietorships, Part (E) is the only section of Part I that shall be completed. For Bidders that are joint venturers, the joint venture and each member must complete a separate form. Identify all layers of ownership if the firm has a parent firm.

- | | |
|---|--|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Limited liability company |
| <input type="checkbox"/> Business corporation | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Not-for-Profit corporation | <input type="checkbox"/> Joint Venture |
| <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Limited Liability Partnership |
| | { } Other: _____ |

A. CORPORATIONS (FOR-PROFIT AND NOT-FOR-PROFIT)

This information must be provided for the corporation and for any parent corporation.

1. Incorporated in the State of _____.

2. List below the name and title of all officers of the corporation:

Name	Title
_____	_____
_____	_____
_____	_____

3. List below the name and title of all directors of the corporation:

Name	Title
_____	_____
_____	_____
_____	_____

TO BE COMPLETED BY FOR -PROFIT CORPORATIONS ONLY:

1. Is the Corporation listed on the New York Stock Exchange? [☐] Yes [☐] No

If the Corporation is listed on an exchange other than the New York Stock Exchange, the name of the exchange is: _____

2. If there are fewer than 100 shareholders, list below the name, business address, and percentage of ownership interest of each shareholder:

Name	Business Address	Ownership Interest
_____	_____	_____ %
_____	_____	_____ %
_____	_____	_____ %

3. If there are 100 or more shareholders, list below the name, business address, and percentage of ownership interest for each shareholder who owns shares or options equal to or in excess of 5% of the ownership of the corporation:

Name	Business Address	Ownership Interest
_____	_____	_____ %
_____	_____	_____ %

_____ %

TO BE COMPLETED BY NOT-FOR-PROFIT CORPORATIONS ONLY:

List below the name and business address of officers, trustees and board members.

Name	Business Address	Title
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. PARTNERSHIPS

List below the name and business address and the percentage of ownership interest for each general, limited, or individual partner entitled to receive 5% or more of the profit derived from partnership activities. The names of all individuals in such partnerships must be listed.

Name	Business Address	Ownership Interest
_____	_____	_____ %
_____	_____	_____ %
_____	_____	_____ %

C. LIMITED LIABILITY COMPANIES

1. List below the names and titles of the officers, if any. If there are no officers, write "none":

Name	Title
_____	_____
_____	_____
_____	_____

2. List below the name, business address, and percentage of ownership interest of each (i) member and (ii) manager.

Name	Business Address	Ownership Interest
_____	_____	_____ %
_____	_____	_____ %
_____	_____	_____ %

D. LAND TRUSTS, BUSINESS TRUSTS, ESTATES, AND OTHER SIMILAR ENTITIES

1. Trust name and number, or other information identifying the trust: _____
2. List below the name and business address of all trustees:

Name	Business Address
_____	_____
_____	_____
_____	_____

3. List below the name, business address, and percentage of ownership interest of all beneficiaries:

Name	Business Address	Ownership Interest
_____	_____	_____ %
_____	_____	_____ %
_____	_____	_____ %

E. ADDITIONAL INFORMATION - TO BE COMPLETED BY ALL BIDDERS

1. Is any ownership interest in the Bidder held by one or more agents or nominees on behalf of another individual or legal entity? ☐ Yes ☐ No

If Yes, list below each principal's name, business address, percentage of ownership interest, and the name of the principal's agent or nominee:

Name	Business Address	Ownership Interest	Agent/Nominee
_____	_____	_____ %	_____
_____	_____	_____ %	_____
_____	_____	_____ %	_____

2. Is the Bidder or any ownership interest in the Bidder, constructively controlled by another individual or legal entity, other than an agent or nominee disclosed above? ☐ Yes ☐ No

If Yes, list below the name and business address of each individual or entity possessing constructive control, the party whose interest is controlled, and the relationship between the two under which the control is or may be exercised:

Name	Business Address	Name of Party Whose Interest is Controlled	Relationship
_____	_____	_____ %	_____
_____	_____	_____ %	_____
_____	_____	_____ %	_____

3. Is any stock or beneficial interest in the Bidder held by a corporation or other legal entity?
[] Yes [] No

If Yes, each such corporation or other legal entity shall make all disclosures requested in Part I (Disclosure of Ownership Interests) of this Disclosure Affidavit and shall certify all information provided.

4. Is any ownership interest held by a current or former CTA employee? [] Yes [] No

If Yes, provide names and amount of ownership interest:

Name	Ownership Interest
_____	_____ %
_____	_____ %
_____	_____ %

5. Is any current or former CTA employee employed by the Bidder: [] Yes [] No

If Yes, provide name, title and areas of responsibility:

Name	Title	Areas of Responsibility
_____	_____	_____
_____	_____	_____
_____	_____	_____

NOTE: The information provided in this form, shall be kept current. In the event of material changes, the Bidder shall supplement this Affidavit, up to the time the Authority takes action on the Bid, or other application for which this Affidavit is being submitted.

BIDDER:

By _____
(If a corporation and signed by any person other than the President or Vice-President, a certified copy of a resolution or by-law authorizing such person to sign, must accompany this contract)

NOTARIZATION - REQUIRED

State of _____

County of _____

Signed and Sworn to before me on
this _____ day of _____, 2002

By _____
(Signature of Notary Public)

(NOTARY'S SEAL)

Appendix L

Non-Disclosure Statement
(Prime Consultant & Sub-Consultant)

NON-DISCLOSURE STATEMENT

In connection with the Proposal submitted herewith in response to the Chicago Transit Authority's ("CTA") Request for Proposal ("RFP"), **Requisition No. B09OP03436 – Request for Proposals (RFP) for the purchase of electricity for exclusive use by the Chicago Transit Authority for a period of up to twenty-four months beginning with the next meter read date after January 1, 2010,**

_____ ("Company") acknowledges and agrees that the evaluation process conducted by the CTA on all Proposals submitted is confidential and sensitive. Company further agrees not to take any action(s) that would frustrate the process, provide any unfair advantage to itself, or provide any advantage or disadvantage to any other proposer in connection with the proposal. Therefore, Company states as follows:

1. All substantive details of the Proposal submitted by Company and all materials and information provided, discussed, disclosed or otherwise conveyed, whether in writing or orally, by the CTA or Company or between Company and CTA during demonstrations, presentations, meetings or negotiations in connection with the CTA's evaluation of Company's Proposal, including cost or price information, technical information or any other proposal information or conditions with respect to the possible procurement transaction contemplated by the proposal (the "Transaction"), the identity of the CTA's evaluation committee, the name of the proposers, or any sub-contractor, and the number of proposers are hereby referred to as "Confidential Evaluation Material" for purposes of this Statement. Confidential Evaluation Material shall also include all communications regarding the Transaction with Authorized CTA Personnel, including: (i) requests for additional information, (ii) requests for tours or management meetings, (iii) discussions or questions regarding the Transaction, (iv) the occurrence, existence, or lack thereof, of any such communication, discussion or negotiation, (v) the status of discussions or negotiations and (vi) the fact that any Confidential Evaluation Material has been made available to Company. The term Confidential Evaluation Materials does not include statements informing another of the submission or existence of the Proposal.
2. Company will limit knowledge of and access to the Confidential Evaluation Materials to only those of its principals, directors, officers, employees and representatives, who have a need to know such information (collectively the "Company Parties") and such Confidential Evaluation Materials shall be used solely in connection with negotiations with Authorized CTA Personnel regarding the Transaction. When the Company discloses Confidential Evaluation Material to any of the Company Parties, it shall be the Company's responsibility to ensure that all Company Parties recognize the confidential nature of such information, together with the restrictions on use and disclosure contained herein.
3. Company will not disclose any Confidential Evaluation Material to any employee, officer or Board member of the CTA who is not named as Authorized CTA Personnel. Additionally, Company will not contact any employee, officer or Board member of the CTA other than the Authorized CTA Personnel on any matter involving this Transaction. Authorized CTA Personnel shall mean only the CTA Procurement Administrator for the Transaction, the General Manager – Purchasing, the Vice President – Purchasing and Warehousing and any other CTA person or position specifically authorized in writing by either the CTA's Procurement Administrator, General Manager - Purchasing, or Vice President – Purchasing and Warehousing.
4. The Company shall not disclose any Confidential Evaluation Material to, or use any such information for the advantage or disadvantage of, any third person. The term "third person" shall be broadly interpreted to include without limitation any corporation, company, group, partnership or an individual other than the Company Parties and Authorized CTA Personnel.

- 5 Notwithstanding the above, the obligations of Company regarding the Confidential Evaluation Material do not apply to information which in the opinion of Company's counsel is otherwise required to be disclosed by law. In such event, Company shall provide CTA with written notice of such a determination, and a supporting statement from its counsel, prior to disclosure.
6. Company shall advise the CTA in writing if it learns of any unauthorized use or disclosure of Confidential Evaluation Material.
7. The CTA shall be entitled to equitable relief, including injunction, if any provision of this Statement is breached. Additionally, the CTA reserves the right to disqualify the Company from further consideration for the Transaction in the event of a breach of the terms of this Statement.
8. This Statement is governed by the laws of the State of Illinois and any lawsuits involving this Statement shall be filed in courts of competent jurisdiction located in Cook County, Illinois.
9. This Statement shall be effective as of the date signed and shall continue in full force and effect until the date on which a contract award for the Transaction is made by the CTA's Board.

Agreed to and Accepted:

Company

By: _____

Name: _____

Title: _____

Date: _____

RFP NON-DISCLOSURE STATEMENT SUB-CONSULTANT

In connection with the Proposal submitted herewith in response to the Chicago Transit Authority's ("CTA") Request for Proposal ("RFP") **Requisition No. B09OP03436 – Request for Proposals (RFP) for the purchase of electricity for exclusive use by the Chicago Transit Authority for a period of up to twenty-four months beginning with the next meter read date after January 1, 2010,** _____ ("Company") acknowledges and agrees that the evaluation process conducted by the CTA on all Proposals submitted is confidential and sensitive. Company further agrees not to take any action(s) that would frustrate the process, provide any unfair advantage to itself, or provide any advantage or disadvantage to any other proposer in connection with the RFP.

Therefore, Company states as follows:

1. All substantive details of the Proposal submitted by Company and all materials and information provided, discussed, disclosed or otherwise conveyed, whether in writing or orally, by the CTA or Company or between Company and CTA during demonstrations, presentations, meetings or negotiations in connection with the CTA's evaluation of Company's Proposal, including cost or price information, technical information or any other proposal information or conditions with respect to the possible procurement transaction contemplated by the RFP (the "Transaction"), the identity of the CTA's evaluation committee, the name of the proposers, or any sub-contractor, and the number of proposers are hereby referred to as "Confidential Evaluation Material" for purposes of this Statement. Confidential Evaluation Material shall also include all communications regarding the Transaction with Authorized CTA Personnel, including: (i) requests for additional information, (ii) requests for tours or management meetings, (iii) discussions or questions regarding the Transaction, (iv) the occurrence, existence, or lack thereof, of any such communication, discussion or negotiation, (v) the status of discussions or negotiations and (vi) the fact that any Confidential Evaluation Material has been made available to Company. The term Confidential Evaluation Materials does not include statements informing another of the submission or existence of the Proposal.
2. Company will limit knowledge of and access to the Confidential Evaluation Materials to only those of its principals, directors, officers, employees and representatives, who have a need to know such information (collectively the "Company Parties") and such Confidential Evaluation Materials shall be used solely in connection with negotiations with Authorized CTA Personnel regarding the Transaction. When the Company discloses Confidential Evaluation Material to any of the Company Parties, it shall be the Company's responsibility to ensure that all Company Parties recognize the confidential nature of such information, together with the restrictions on use and disclosure contained herein.
3. Company will not disclose any Confidential Evaluation Material to any employee, officer or Board member of the CTA who is not named as Authorized CTA Personnel. Additionally, Company will not contact any employee, officer or Board member of the CTA other than the Authorized CTA Personnel on any matter involving this Transaction. Authorized CTA Personnel shall mean only the CTA Procurement Administrator for the Transaction, the General Manager – Purchasing, the Vice President – Purchasing and Warehousing and any other CTA person or position specifically authorized in writing by either the CTA's Procurement Administrator, General Manager - Purchasing, or Vice President – Purchasing and Warehousing.
4. The Company shall not disclose any Confidential Evaluation Material to, or use any such information for the advantage or disadvantage of, any third person. The term "third person" shall be broadly interpreted to include without limitation any corporation,

company, group, partnership or an individual other than the Company Parties and Authorized CTA Personnel.

- 5 Notwithstanding the above, the obligations of Company regarding the Confidential Evaluation Material do not apply to information which in the opinion of Company's counsel is otherwise required to be disclosed by law. In such event, Company shall provide CTA with written notice of such a determination, and a supporting statement from its counsel, prior to disclosure.
6. Company shall advise the CTA in writing if it learns of any unauthorized use or disclosure of Confidential Evaluation Material.
7. The CTA shall be entitled to equitable relief, including injunction, if any provision of this Statement is breached. Additionally, the CTA reserves the right to disqualify the Company from further consideration for the Transaction in the event of a breach of the terms of this Statement.
8. This Statement is governed by the laws of the State of Illinois and any lawsuits involving this Statement shall be filed in courts of competent jurisdiction located in Cook County, Illinois.
9. This Statement shall be effective as of the date signed and shall continue in full force and effect until the date on which a contract award for the Transaction is made by the CTA's Board.

Agreed to and Accepted:

Company

By: _____

Name: _____

Title: _____

Date: _____

Appendix M
Price Proposal

Attachment A-1: Fixed Price Offer – Traction Accounts

- 1.) Fixed price inclusive of: energy, ancillary services, capacity, transmission services, congestion, transmission & distribution losses and PJM Administration Fee.
 - Aggregated price for each of three accounts groups included in RFP.
 - No charges or fees will be allowed other than shown on this table.
- 2.) Insert your firm's all inclusive energy price for the applicable term and bandwidth provisions. In addition, please insert the fixed premium that would be added to your energy price associated with the delivery of an annual total of 35,000,000 kWh of green E-certified power as part of the electric power provided under the contract.

Table 1 – Fixed Price Offers (Traction Accounts)

(Name of supplier here)			Option
TERM	Unlimited Bandwidth (\$/MWh)	10% Monthly Bandwidth (\$/MWh)	Green Power Premium** (\$/MWh)
12-Months	\$	\$	\$
24-Months	\$	\$	\$
36-Months	\$	\$	\$

** Wind, solar etc. Certification by a nationally recognized third party such as the Center for Resource Solutions (CRS) Green-e product certification, by the City of Chicago Department of Environment or by a Federal or state certification agency designated by law

is acceptable. Green Power available under an approved tariff is also acceptable.

Pricing Component	Fixed or Pass-Through ('F' or 'PT')
Capacity	F
Ancillary Services	F
Transmission	F
Congestion	F
Transmission & Distribution Losses	F
ISO/PJM Administration Costs	F
Electric Utility Delivery Charges	PT

Traction Power - Account List (8)*

Account Number	Address	City
261625003	200 CHICAGO	EVANSTON
261626000	3711 OAKTON	SKOKIE
681204008	9570 W GAGE	ROSEMONT
681205005	328 GARFIELD	OAK PARK
681206002	2134 S 54TH AVE	CICERO
681207009	711 DES PLAINES AVE	FOREST PARK
2771018003	125 N DESPLAINS	CHICAGO
6537023006	862 E 63RD	CHICAGO

*All accounts have the capability of providing hourly interval usage data.

Attachment A-2: Fixed Price Offer – Non Traction Group A Accounts

- 1.) Fixed price inclusive of: energy, ancillary services, capacity, transmission services, congestion, transmission & distribution losses and PJM Administration Fee.
 - Aggregated price for each of three accounts groups included in RFP.
 - No charges or fees will be allowed other than shown on this table.
- 2.) Insert your firm's all inclusive energy price for the applicable term and bandwidth provisions.

Table 2 – Fixed Price Offers (Non Traction I Accounts)

(Name of supplier here)		
TERM	Unlimited Bandwidth (\$/MWh)	10% Monthly Bandwidth (\$/MWh)
12-Months	\$	\$
24-Months	\$	\$
36-Months	\$	\$

Pricing Component	Fixed or Pass-Through ('F' or 'PT')
Capacity	F
Ancillary Services	F
Transmission	F
Congestion	F
Transmission & Distribution Losses	F
ISO/PJM Administration Costs	F
Electric Utility Delivery Charges	PT

Non Traction Group A Account List (53)

Account Number	Address	City
134305007	1 N HARLEM	FORESTPARK
261622002	3701 OAKTON ST	SKOKIE
270586000	1681 RAILROAD AVE EVANSTON	EVANSTON
301137011	5801 N RIVER RD ROSEMONT	ROSEMONT
304115008	2150 S 54TH AVE	CICERO
642346003	1649 W HOWARD ST	CHICAGO
681202004	711 DES PLAINES AVE, FOREST PARK	FOREST PARK
697526006	329 E 61ST ST	CHICAGO
699638009	2610 N MILWAUKEE AVE	CHICAGO
719029017	567 W LAKE HDQTRS	CHICAGO
758079006	5800 N RIVER RD	ROSEMONT
783076059	6315 S ASHLAND	CHICAGO
798736008	4755 N KIMBALL AVE	CHICAGO
935423000	2600 W PERSHING RD, CHICAGO	CHICAGO
972333001	9460 S DAN RYAN, CHICAGO	CHICAGO
972371001	9800 S DAN RYAN	CHICAGO
972392000	10201 S STONY ISLAND, CHICAGO	CHICAGO
1017334003	3900 W MAYPOLE	CHICAGO
1017349004	358 S KEDZIE	CHICAGO
1017765008	142 W 35TH, STREET CHICAGO	CHICAGO
1026573009	20 E ROOSEVELT	CHICAGO
1026600001	901 W DIVISION ST, CHICAGO	CHICAGO
1026677002	2520 S ARCHER AVE	CHICAGO
1026679006	3001 S ASHLAND AVE	CHICAGO
1026681006	3528 S LEAVITT	CHICAGO
1043792008	7401 S WOOD, CHICAGO	CHICAGO
1110044008	4901 S WESTERN	CHICAGO
1110063003	4900 S KEDZIE	CHICAGO
1110140005	5100 S PULASKI RD	CHICAGO
1110141002	5601 S KILPATRICK AVE	CHICAGO
1110143006	4612 W 59TH ST, CHICAGO	CHICAGO
1199723004	400 E 63RD ST CHICAGO	CHICAGO
1299234004	100 W RANDOLPH	CHICAGO
1310146001	5419 W ARMSTRONG AV	CHICAGO
1310238004	1343 W 103RD ST	CHICAGO
1353424004	4917 N MILWAUKEE AV, CHICAGO	CHICAGO
1353441005	3112 W FOSTER AVE, CHICAGO	CHICAGO
1353444006	5550 N HARLEM AVE	CHICAGO
1353445003	5800 N CUMBERLAND A, CHICAGO	CHICAGO
1430167008	128 N STATE ST CHICAGO	CHICAGO
1430168005	128 S STATE ST,01 CHICAGO	CHICAGO
1430321002	127 N DEARBORN	CHICAGO
1528290003	642 N PULASKI RD	CHICAGO
1528579009	1000 O'HARE DRIVE	CHICAGO
1633175006	210 W 79TH ST, CHICAGO	CHICAGO
1862373001	120 N RACINE	CHICAGO
1862533007	350 N ORLEANS	CHICAGO
2826381008	351 LINDEN AVE	WILMETTE
3305051006	4200 S WABASH	CHICAGO
3879449003	33 N WELLS	CHICAGO
5052119002	18 W VAN BUREN ST CHICAGO	CHICAGO
5061091035	2005-21 S PULASKI	CHICAGO
8109006017	5308 W CERMAK	CICERO

Attachment A-3: Fixed Price Offer – Non Traction Group B Accounts

- 1.) Fixed price inclusive of: energy, ancillary services, capacity, transmission services, congestion, transmission & distribution losses and PJM Administration Fee.
 - Aggregated price for each of three accounts groups included in RFP.
 - No charges or fees will be allowed other than shown on this table.
- 2.) Insert your firm's all inclusive energy price for the applicable term and bandwidth provisions.

Table 3 – Fixed Price Offers (Non Traction II Accounts)

(Name of supplier here)		
TERM	Unlimited Bandwidth (\$/MWh)	10% Monthly Bandwidth (\$/MWh)
12-Months	\$	\$
24-Months	\$	\$
36-Months	\$	\$

Pricing Component	Fixed or Pass-Through ('F' or 'PT')
Capacity	F
Ancillary Services	F
Transmission	F
Congestion	F
Transmission & Distribution Losses	F
ISO/PJM Administration Costs	F
Electric Utility Delivery Charges	PT

Non Traction B Account List (171)

Account Number	Address	City
0151099035	3049 W LELAND, CTA/AUDIO	CHICAGO
0255161089	1939 S SPRINGFIELD	CHICAGO
0270587007	900 FOSTER AVE	EVANSTON
0270594002	901 NOYES ST	EVANSTON
0270715001	3220 W DEVON AVE LINCOLNWOOD	LINCOLNWOOD
0378381009	950 S OAK PARK AVE OAK PARK	OAK PARK
0378383003	1 S HARLEM AVE OAK PARK	OAK PARK
0434056005	1022 CENTRAL ST	EVANSTON
0434064007	1316 SHERMAN EVANSTON	EVANSTON
0434067008	836 CHICAGO AVE EVANSTON	EVANSTON
0434106000	601 SOUTH BLVD EVANSTON	EVANSTON
0536689004	2133 S 48TH CT CICERO	CICERO
0549404006	4600 W MONTROSE CHICAGO	CHICAGO
0549521002	15 W 87TH ST CHICAGO	CHICAGO
0608288008	3200 W LAKE ST CHICAGO	CHICAGO
0608292002	350 N CENTRAL CHICAGO	CHICAGO
0608636004	220 W GARFIELD BLVD CHICAGO	CHICAGO
0642293007	1358 W MORSE AVE CHICAGO	CHICAGO
0642315008	1523 W JARVIS AVE CHICAGO	CHICAGO
0697273000	944 W ARMITAGE AVE CHICAGO	CHICAGO
0699585003	222 MERCHANDISEMTC HC CHICAGO	CHICAGO
0721131022	1934 S LAWDALE AVE	CHICAGO
0724248006	1200-08 W LOYOLA	CHICAGO
0743107011	2010 S DAMEN AVE	CHICAGO
0783052004	220 W 63RD ST CHICAGO	CHICAGO
0783066008	6321 25 S HALSTED	CHICAGO
0783075007	6316 S BISHOP	CHICAGO
0798571007	151 S WABASH AVE CHICAGO	CHICAGO
0798705003	4643 N DAMEN	CHICAGO
0798712008	4645 N WESTERN	CHICAGO
0798731021	4648 N KEDZIE	CHICAGO
0798748035	1118 W ARGYLE ST, CHICAGO	CHICAGO
0840084004	1909 N WESTERN AVE UNIT STAND	CHICAGO
0855057019	3600 W LAKE	CHICAGO
0935559005	314 E 43RD ST CHICAGO	CHICAGO
0935560008	4003 S INDIANA	CHICAGO
0954612009	15 E 69TH ST CHICAGO	CHICAGO
0972270009	1119 W BRYN MAWR AVE CHICAGO	CHICAGO
0972272003	1121 W BERWYN AVE,	CHICAGO
1011140150	2019 S KOSTNER	CHICAGO
1017326001	125 N DESPLAINES ST CHICAGO	CHICAGO
1017333006	264 N HARDING AVE	CHICAGO
1017426006	1710 W POLK ST CHICAGO	CHICAGO
1017565008	1501 S CLARK	CHICAGO
1017581002	616 S STATE ST CHICAGO	CHICAGO
1017582009	1212 N ASHLAND AVE CHICAGO	CHICAGO
1017583006	501 N MILWAUKEE AVE CHICAGO	CHICAGO
1017584003	783 N MILWAUKEE AVE CHICAGO	CHICAGO
1017585000	815 W NORTH AVE CHICAGO	CHICAGO

1017586007	2 W CHICAGO AVE CHICAGO	CHICAGO
1017587004	105 W DIVISION ST CHICAGO	CHICAGO
1017588001	2 W GRAND AVE CHICAGO	CHICAGO
1017763004	16 E 35TH ST	CHICAGO
1026542004	2800 W LAKE CHICAGO	CHICAGO
1043068061	2238 N BISSELL ST	CHICAGO
1043652009	3411 N SOUTHPORT AVE CHICAGO	CHICAGO
1095060013	4000 W LAKE STREET	CHICAGO
1101012070	945 W WELLINGTON AVE CHICAGO	CHICAGO
1110116009	319 E 51ST ST CHICAGO	CHICAGO
1199531006	121 W VAN BUREN ST CHICAGO	CHICAGO
1199720003	800 E 63RD	CHICAGO
1221091015	1724 S WABASH	CHICAGO
1299647001	1816 W IRVING PARK	CHICAGO
1299695007	15 W 79TH	CHICAGO
1310102009	1118 W THORNDALE AVE CHICAGO	CHICAGO
1310177006	1119 W GRANVILLE AVE CHICAGO	CHICAGO
1353389000	4401 N CLIFTON	CHICAGO
1353390003	4620 N BROADWAY ST CHICAGO	CHICAGO
1430156005	2 N WABASH AVE CHICAGO	CHICAGO
1430160009	150 N WELLS ST CHICAGO	CHICAGO
1430162003	540 W LAKE ST CHICAGO	CHICAGO
1430165004	5960 W MADISON ST CHICAGO	CHICAGO
1430166001	201 23 S WABASH	CHICAGO
1430291009	300 W CHICAGO AVE CHICAGO	CHICAGO
1430292006	313 W INSTITUTE PL CHICAGO	CHICAGO
1430320005	431 S DAMEN AVE CHICAGO	CHICAGO
1430322018	430 S HALSTED CHGO NEW ACC NO.	CHICAGO
1430323006	530 S PULASKI RD CHICAGO	CHICAGO
1430324003	530 S KEDZIE CHICAGO	CHICAGO
1430325000	720 S CICERO CHICAGO	CHICAGO
1430326007	430 S RACINE CHICAGO	CHICAGO
1430327004	430 S WESTERN CHICAGO	CHICAGO
1430329008	1536 40 N SEDGWICK CHICAGO	CHICAGO
1430341004	138 N CERMAK	CHICAGO
1430359006	1710 W 18TH ST, CHICAGO	CHICAGO
1576006017	1815 W MONTROSE	CHICAGO
1633064008	940 W ADDISON	CHICAGO
1633067009	3940 N SHERIDAN RD CHICAGO	CHICAGO
1633119008	3622 W ADDISON, CHICAGO	CHICAGO
1633123002	4131 W IRVING PARK RD	CHICAGO
1671164016	2011 S CALIFORNIA BLDG	CHICAGO
1722098036	945 W BELMONT AVE TEMP 2	CHICAGO
1848026050	949 W WEBSTER AVE UNIT	CHICAGO
1862615004	314 E 47TH ST	CHICAGO
2196138022	4851 W 21ST PL	CICERO
2216310004	1601 W LAKE	CHICAGO
2216324008	4790 W LAKE	CHICAGO
2216330006	5148 W LAKE	CHICAGO
2216401000	3355 W BELMONT	CHICAGO
2226108034	947 W ATGELD	CHICAGO
2707087092	2009 S WESTERN	CHICAGO
3297349004	5956 68 W CHICAG	CHICAGO
3352071001	937 W FULLERTON	CHICAGO
3655114009	4241 N KOSTNER AVE *UNIT TUNN CHICAGO	CHICAGO

3699240002	21 E 14TH ST CHICAGO	CHICAGO
3712643003	5005 DEMPSTER	SKOKIE
3816508007	924 28 W SCHOOL ST CHICAGO	CHICAGO
3818773002	3723 N HALSTED ST *UNIT 1 CHICAGO	CHICAGO
3853168003	1920 S HARDING	CHICAGO
3855129004	1909 N WESTERN	CHICAGO
3864103036	4650 N ROCKWELL, AUDIO HSE	CHICAGO
3879124001	100 W LAKE ST CHICAGO	CHICAGO
3879126005	203 N LASALLE CHICAGO	CHICAGO
3916131026	1917 S CENTAL PARK	CHICAGO
3943152004	200 N STATE	CHICAGO
3963098001	220 W LAKE	CHICAGO
3963233000	200 W RANDOLPH	CHICAGO
4012027006	1944 S KEDZIE	CHICAGO
4119240009	1703 S STATE ST	CHICAGO
4203235003	149 W 18TH ST CHICAGO	CHICAGO
4494574000	1 S HARLEM AVE OAK PARK	OAK PARK
4494575007	100 S OAK PARK AVE OAK PARK	OAK PARK
4494576004	1050 S AUSTIN BLVD OAK PARK	OAK PARK
4494577001	36 S RIDGELAND AVE OAK PARK	OAK PARK
4668329006	2430 S CICERO AVE CICERO	CICERO
4809707019	1473 N CLYBORN	CHICAGO
4840131002	4721 W 16TH ST CICERO	CICERO
4915723003	1117 W WILSON AVE	CHICAGO
4947154014	2135 S KILBOURN AVE	CHICAGO
4968617007	35 E VAN BUREN ST CHICAGO	CHICAGO
4984062048	5025 W 21ST PL	CICERO
4999145009	1117 W LAWRENCE AVE CHICAGO	CHICAGO
5055626004	4790 W LAKE ST UNIT STO2	CHICAGO
5055628008	4790 W LAKE STO4	CHICAGO
5136599002	220 N WELLS ST, 01 CHICAGO	CHICAGO
5155010035	405 S STATE	CHICAGO
5433089005	5308 W CERMAK RD CONCESS	CICERO
5481763003	1560 N DAMEN AVE CHICAGO	CHICAGO
5556609007	700 W HARRISON CHICAGO	CHICAGO
5587478005	4601 N RAVENSWOOD AVE CHICAGO	CHICAGO
5811090002	351 N AUSTIN BLVD CHICAGO	CHICAGO
5851599002	7485 N ROGERS AVE CHICAGO	CHICAGO
6013057000	5324 N WESTERN AVE CHICAGO	CHICAGO
6063647009	600 E GRAND AVE *UNIT CTA CHICAGO	CHICAGO
6226419009	2 E BELLEVUE	CHICAGO
6226421009	426 S CLINTON ST	CHICAGO
6226422006	1642 N CLYBOURN	CHICAGO
6226426004	330 W DIVISION	CHICAGO
6226428008	520 S FRANKLIN ST CHICAGO	CHICAGO
6226429014	425 S HALSTED ST	CHICAGO
6226430008	124 W LAKE ST	CHICAGO
6226431005	408 W LAKE ST	CHICAGO
6226432002	977 N MILWAUKEE AV	CHICAGO
6226437007	315 N STATE ST	CHICAGO
6226442008	1239 S STATE ST	CHICAGO
6242001007	2211 N CALIFORNIA	CHICAGO
6343593006	4648 N ROCKWELL	CHICAGO
6786066006	318 E GARFIELD BLVD	CHICAGO

6807223003	2446 S ARCHER AV.	CHICAGO
7327103003	4856 S CALIFORNIA	CHICAGO
8186711006	7847 S WESTERN AVE CHICAGO	CHICAGO
8260134001	315 E 63RD ST CHICAGO	CHICAGO
8764534007	6320 S RACINE	CHICAGO
8848566001	6315 S JUSTINE ST CHICAGO	CHICAGO
8944208000	7918 S EMERALD AVE CHICAGO	CHICAGO
9039830002	10351 S PULASKI RD CHICAGO	CHICAGO
9084065000	3558 S KEDZIE AVE CHICAGO	CHICAGO
9255075005	2201 W 43RD ST CHICAGO	CHICAGO
9586525027	2021 W 34TH ST CHICAGO	CHICAGO
9768677004	6200 S CALUMET AVE CHICAGO	CHICAGO
9768813000	5915 1/2 S PRAIRIE AVE,	CHICAGO

Attachment B: Block Purchase Offer – Traction & Non Traction Group A Accounts

- 1.) Provide wholesale energy pricing for On Peak & Off Peak block purchases of 20 MWs into the ComEd Zone.
 - Separate On Peak and Off Peak prices must be shown for each term requested.
 - Spaces are provided to show your firm's prices by month for the calendar months of January 2010 through December 2010.

- 2.) Insert your firm's proposed Fixed Retail Adder per MWh that would be charged to recover Bidder's Retail Energy Costs. Retail Energy Costs include, but are not limited to: capacity, ancillary services, network integrated transmission service, congestion, transmission & distribution losses, ISO/PJM Administration costs, and Proposer's margin.

Table 4 – Block Purchase Offers (Traction & Non Traction Group A Accounts)

(Name of supplier here)				
	ComEd Zone	ComEd Zone	Total Usage Within Block	
Month	20 MW Price On Peak*	20 MW Price Off Peak*	On Peak (in MWhs)	Off Peak (in MWhs)
Jan-10	\$	\$	6,400	8,480
Feb-10	\$	\$	6,400	7,040
Mar-10	\$	\$	7,360	7,520
Apr-10	\$	\$	7,040	7,360
May-10	\$	\$	6,400	8,480
Jun-10	\$	\$	7,040	7,360
Jul-10	\$	\$	6,720	8,160
Aug-10	\$	\$	7,040	7,840
Sep-10	\$	\$	6,720	7,680
Oct-10	\$	\$	6,720	8,160
Nov-10	\$	\$	6,720	7,680
Dec-10	\$	\$	7,360	7,520
Average Price: 12-mo	\$	\$	81,920	93,280
Average Price: 24-mo	\$	\$	163,520	186,880
Average Price: 36-mo	\$	\$	245,120	280,960

Prices should be provided in \$/MWh

* On Peak = Non Holiday Weekdays from 6:00 am to 10:00 pm CT

Off Peak = Weekdays from 10:00 pm to 6:00 am CT, Weekends and NERC Holidays

Pricing Component	Fixed Retail Adder (\$/MWh)		
	12-month	24-month	36-month
Capacity	\$	\$	\$
Ancillary Services	\$	\$	\$
Network Integrated Transmission	\$	\$	\$
Transmission & Distribution Losses	\$	\$	\$
Congestion	\$	\$	\$
ISO/PJM Admin Costs	\$	\$	\$
Proposer's Margin	\$	\$	\$
Total Fixed Retail Adder	\$	\$	\$
Please provide an estimate of the cost associated with any pricing component not included in the table that would be passed at cost to CTA.			

Traction Power & Non Traction Group A - Account List (61)

Account Number	Address	City
261625003	200 CHICAGO	EVANSTON
261626000	3711 OAKTON	SKOKIE
681204008	9570 W GAGE	ROSEMONT
681205005	328 GARFIELD	OAK PARK
681206002	2134 S 54TH AVE	CICERO
681207009	711 DES PLAINES AVE	FOREST PARK
2771018003	125 N DESPLAINS	CHICAGO
6537023006	862 E 63RD	CHICAGO
134305007	1 N HARLEM	FORESTPARK
261622002	3701 OAKTON ST	SKOKIE
270586000	1681 RAILROAD AVE EVANSTAN	EVANSTON
301137011	5801 N RIVER RD ROSEMONT	ROSEMONT
304115008	2150 S 54TH AVE	CICERO
642346003	1649 W HOWARD ST	CHICAGO
681202004	711 DES PLAINES AVE, FOREST PARK	FOREST PARK
697526006	329 E 61ST ST	CHICAGO
699638009	2610 N MILWAUKEE AVE	CHICAGO
719029017	567 W LAKE HDQTRS	CHICAGO
758079006	5800 N RIVER RD	ROSEMONT
783076059	6315 S ASHLAND	CHICAGO
798736008	4755 N KIMBALL AVE	CHICAGO
935423000	2600 W PERSHING RD, CHICAGO	CHICAGO
972333001	9460 S DAN RYAN, CHICAGO	CHICAGO
972371001	9800 S DAN RYAN	CHICAGO
972392000	10201 S STONY ISLAND, CHICAGO	CHICAGO
1017334003	3900 W MAYPOLE	CHICAGO
1017349004	358 S KEDZIE	CHICAGO
1017765008	142 W 35TH, STREET CHICAGO	CHICAGO
1026573009	20 E ROOSEVELT	CHICAGO
1026600001	901 W DIVISION ST, CHICAGO	CHICAGO
1026677002	2520 S ARCHER AVE	CHICAGO
1026679006	3001 S ASHLAND AVE	CHICAGO
1026681006	3528 S LEAVITT	CHICAGO
1043792008	7401 S WOOD, CHICAGO	CHICAGO
1110044008	4901 S WESTERN	CHICAGO
1110063003	4900 S KEDZIE	CHICAGO

1110140005	5100 S PULASKI RD	CHICAGO
1110141002	5601 S KILPATRICK AVE	CHICAGO
1110143006	4612 W 59TH ST, CHICAGO	CHICAGO
1199723004	400 E 63RD ST CHICAGO	CHICAGO
1299234004	100 W RANDOLPH	CHICAGO
1310146001	5419 W ARMSTRONG AV	CHICAGO
1310238004	1343 W 103RD ST	CHICAGO
1353424004	4917 N MILWAUKEE AV, CHICAGO	CHICAGO
1353441005	3112 W FOSTER AVE, CHICAGO	CHICAGO
1353444006	5550 N HARLEM AVE	CHICAGO
1353445003	5800 N CUMBERLAND A, CHICAGO	CHICAGO
1430167008	128 N STATE ST CHICAGO	CHICAGO
1430168005	128 S STATE ST,01 CHICAGO	CHICAGO
1430321002	127 N DEARBORN	CHICAGO
1528290003	642 N PULASKI RD	CHICAGO
1528579009	1000 O'HARE DRIVE	CHICAGO
1633175006	210 W 79TH ST, CHICAGO	CHICAGO
1862373001	120 N RACINE	CHICAGO
1862533007	350 N ORLEANS	CHICAGO
2826381008	351 LINDEN AVE	WILMETTE
3305051006	4200 S WABASH	CHICAGO
3879449003	33 N WELLS	CHICAGO
5052119002	18 W VAN BUREN ST CHICAGO	CHICAGO
5061091035	2005-21 S PULASKI	CHICAGO
8109006017	5308 W CERMAK	CICERO

Appendix N
Insurance Requirements

**CHICAGO TRANSIT AUTHORITY
INSURANCE AND BOND REQUIREMENTS**

[Short Form rev. 07/30/09]

REQUISITION NUMBER: **B09OP03436**

SPECIFICATION NUMBER CTA: _____

PART I. GENERAL INSTRUCTIONS AND REQUIREMENTS

A. WAYS TO COMPLY WITH CTA INSURANCE REQUIREMENTS.

1. HOW TO COMPLY IF CGL, OWNERS PROTECTIVE LIABILITY, BUILDER'S RISK INSURANCE AND/OR PROFESSIONAL LIABILITY ARE REQUIRED BY PART III OF THIS DOCUMENT.

The method to satisfy the CTA's insurance requirements for Comprehensive General Liability, Owners Protective Liability, Builder's Risk and Professional Liability. For Comprehensive General Liability, Owners Protective Liability, Builder's Risk and Professional Liability the Contractor must provide the CTA with the following insurance documents:

- a) The CTA Certificate of Coverage on the CTA approved form. The CTA Certificate of Coverage may be completed only by an authorized representative of the insurance company, an agent, broker, or underwriter. The CTA Certificate of Coverage must be accompanied by all endorsements pertaining to the general liability policy.
- b) Disclosure of all deductibles and/or self insured retentions

The Chicago Transit Authority reserves the right to request a complete copy of the insurance binder and/or the general liability policy from the Named Insured.

2. HOW TO COMPLY IF *RAILROAD PROTECTIVE INSURANCE* IS REQUIRED BY PART III OF THIS DOCUMENT.

If any work is to be performed within fifty (50) feet of rail right-of-way, the Contractor is (1), required to provide Railroad Protective Liability Insurance and (2), to have the CGL policy exclusion for coverage of work within fifty (50) feet of rail right of way deleted by endorsement to the CGL policy. There are two ways to satisfy the CTA's insurance requirements for Railroad Protective. The Contractor must provide the CTA with one of the following insurance documents before work is approved:

- a) Copies of the CGL and Railroad Protective Liability Policies
(with applicable endorsements)
- b) Insurance Binders for the CGL and Railroad Protective Liability Policies
(with applicable endorsements)

Method b is a temporary method that is valid only for 90 days. A certified copy of the railroad protective insurance policy must be furnished prior to the expiration of this 90 day period.

3. HOW TO COMPLY FOR ALL OTHER TYPES OF REQUIRED INSURANCE.

For all other insurance required by Part III of this document, an ACORD™ certificate is acceptable.

B. DEADLINE FOR INITIAL SUBMITTAL OF CONTRACTOR'S INSURANCE AND BOND DOCUMENTS.

The Contractor must furnish all required insurance and performance and payment bond documents within fourteen days of the date that the Contractor receives a letter (the "Insurance Submittal Letter") from the CTA's General Manager of Purchasing requesting the Contractor to submit the documents required by these Insurance and Bond Requirements. CTA will not execute the Contract until the required insurance and bond documents are delivered to CTA and approved by CTA. Failure to deliver the required documents within fourteen days of receipt of the Insurance Submittal Letter is a material failure to comply with the specifications and may result in any or all of the following at the CTA's sole discretion:

1. debarment or suspension, and
2. determination of Contractor non-responsibility.

C. CTA ADDRESS.

All notices and documents must be mailed to the CTA at:

Chicago Transit Authority
Manager of Insurance Controls, Risk Management
P.O. Box 7564
Chicago, IL 60680-7564

D. OBLIGATION TO MAINTAIN CONTINUOUS COMPLIANCE

1. The Contractor expressly agrees that failure to comply and maintain compliance with all insurance and bond requirements shall constitute a material breach of the Contract which may result in default and, if uncured, termination for default under the contract. In addition, such failure, if uncured, may result in debarment and suspension.

2. The Contractor is prohibited from performing any work if Contractor has allowed any of the required insurance policies to expire.

PART II. INSURANCE REQUIREMENTS

- A. The CTA must be named as an Additional Insured and Certificate Holder. When the CTA is an additional insured, the coverage shall be primary.
- B. The CTA must be the Named Insured on the Owners Protective Liability, Railroad Protective Liability, or Builders Risk Insurance policies.
- C. The Commercial General Liability and Owners Protective Liability, General Aggregate Limit of Liability, if any, must apply on a per location, per project basis by endorsement to the policy.
- D. All insurance carriers must be acceptable to the CTA. All insurance companies shall have at least an A VII POLICY HOLDER RATING, or better, by the A.M. Best Co., Inc. Insurance companies with lower ratings will not be accepted. Carriers licensed to do business in the State of Illinois must issue all insurance, with the exception of Railroad Protective.
- E. To the extent permitted by the Contractor's insurance policies required by the CTA, the Contractor and its insurers waive all rights of subrogation against the CTA.
- F. The insurance to be carried shall in no way be subject to limitations, if any, expressed in the indemnity section of the General Conditions (or any statutory, judicial or common law limitations).

PART III. INSURANCE COVERAGES

A. WORKERS COMPENSATION

Coverage A: In form and in accordance with the laws of the State of Illinois.

Coverage B: Employers Liability:

\$1,000,000 Bodily Injury by Accident

\$1,000,000 Bodily Injury by Disease, Policy Limit

B. COMPREHENSIVE OR COMMERCIAL GENERAL LIABILITY:

\$2,000,000 General Aggregate (Per Location)

\$2,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal Injury and Advertising Injury

\$1,000,000 Per Occurrence

The Commercial General Liability policy shall include, without limitation: (i) Broad Form Contractual Liability, (ii) Products/Completed Operations to be maintained in full force and effect for a period of two (2) years following final completion of the work under the Contract, (iii) Independent Contractors' Protective Liability, (iv) Premises/Operations, including deletion of explosion, collapse and underground (XCU) exclusions, (v) Broad Form Property Damage, including Products/Completed Operations, (vi) Bodily Injury and Personal Injury Liability, with employee and contractual exclusions deleted, (vii) Severability of Interest and Cross Liability endorsement and (viii) Contractor expressly agrees to waive, and will require its insurer to waive, its rights, benefits and entitlement under the "Other Insurance" clause of its Commercial General Liability policy, with respect to the CTA.

If any work is to be performed within fifty (50) feet of rail right-of-way, the Contractor is required to provide Railroad Protective Liability Insurance by the other provisions of these Insurance and Bond Requirements, as well as required to have the CGL policy exclusion for coverage of work within fifty (50) feet of rail right-of-way deleted by endorsement to CGL policy. The Railroad Protective Liability Policy must reflect the CTA as the Named Insured.

C. AUTOMOBILE LIABILITY

\$1,000,000 Combined Single Limit (Bodily Injury and Property Damage)

N/A Uninsured/Underinsured Motorist Including Owned, Non-Owned, Hired and Borrowed Vehicles and Equipment

D. UMBRELLA LIABILITY

N/A Each occurrence and in the aggregate, excess of the underlying policies.

The Umbrella Liability Policy shall specifically identify each of the policies described in A, B, and C above on the Schedule of Underlying Coverages, and shall provide coverage at least as broad as each of the underlying policies.

E. OWNERS PROTECTIVE LIABILITY

N/A General Aggregate (Per Location)

N/A Per Occurrence

N/A Combined Single Limit (Bodily Injury and Property Damage Per Location)

The definition of designated contractor must be amended to include contractors of every tier.

F. RAILROAD PROTECTIVE LIABILITY

N/A Bodily Injury per Occurrence

N/A Bodily Injury Aggregate

N/A Property Damage per Occurrence

N/A Property Damage Aggregate

The definition of designated contractor must be amended to include contractors of every tier.

G. POLLUTION LIABILITY

N/A OCC

H. PROFESSIONAL LIABILITY

N/A Per Claim

I. OTHER INSURANCE: **CTA NAMED ADDITIONAL INSURED ON THE GENERAL LIABILITY POLICY**

PART IV PERFORMANCE AND PAYMENT BOND REQUIREMENTS

- A. The Contractor shall furnish separate Performance and Payment Bonds.
- B. The surety or sureties issuing the bond must be acceptable to the Authority and must have a Best's Key Rating Guide of AVII or greater and be listed in the most recently published "Listing of Approved Sureties" of the U.S. Department of the Treasury Circular 570, with underwriting limitations in excess of the Contract Price. The bond must cover the warranty period required by the Contract.
- C. The Performance Bond shall be for faithful performance of the Contract.
- D. The Payment Bond shall be for security for the payment of all persons for furnishing materials, provisions, or other supplies, or items used in, upon, for, or about the performance of the Work contracted to be done, or for performing any Work or labor thereon of any kind.
- E. The Authority reserves the right to require additional security under this Contract if any surety upon any bond furnished with this Contract becomes unacceptable to the Authority.

PART V. PERFORMANCE AND PAYMENT BONDS REQUIRED FOR THIS CONTRACT.

Payment Bond: N/A
Performance Bond: N/A

Named _____ Specification #: _____
Insured: _____ RFP#: _____
Address: _____ Project #: _____
(NUMBER & STREET) Contract #: _____

(CITY) (STATE) (ZIP)

The insurance policies and endorsements indicated below have been issued to the designated named insured with the policy limits as set forth herein covering the operation described within the contract involving the named insured and the Chicago Transit Authority. The Certificate issuer agrees that in the event of cancellation, non-renewal or material change involving the indicated policies, the issuer will provide at least sixty (60) days prior written notice of such change to the Chicago Transit Authority at the address shown on this Certificate. This certificate is issued to the Chicago Transit Authority in consideration of the contract entered into with the named insured, and it is mutually understood that the Chicago Transit Authority relies on this certificate as a basis for continuing such agreement with the named insured.

- a) Each insurance policy required by this agreement, except policies for workers' compensation and professional liability, will read:
"The Chicago Transit Authority is an additional insured as respects to operations and activities of, or on behalf of the named insured, performed under contract with or permit from the Chicago Transit Authority".
- b) The General, Automobile and Excess/Umbrella Liability Policies described provide for separation of insureds applicable to the named insured and the CTA.
- c) Workers Compensation and Property insurer shall waive all rights of subrogation against the Chicago Transit Authority.
- d) The receipt of this certificate by the CTA does not constitute agreement by the CTA that the insurance requirements in the contract have been fully met, or that the insurance companies indicated by this certificate are in compliance with all contract requirements.

Name and Address of Certificate Holder and Receipt of Notice	Signature of Authorized Representative
Certificate Holder/Additional Insured	_____
Chicago Transit Authority	Agent/Company Address
Dept. of Risk Management	_____
P.O. Box 7564	_____
Chicago, IL 60680	Telephone _____