19R-29

Sponsor: Dan Spitale
Councilman at Large

RESOLUTION NO. 2019-R29

A RESOLUTION OF THE HAMMOND COMMON COUNCIL APPROVING THE CONSTRUCTION AGREEMENT OF THE WEST LAKE COORIDOR RAIL PROJECT BETWEEN THE CITY OF HAMMOND AND THE NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT

WHEREAS, The Northern Indiana Commuter Transportation District (NICTD) operates the South Shore Line passenger rail service from Millennium Station in Chicago, Illinois through Lake, Porter, LaPorte, and St. Joseph Counties in Indiana; and

WHEREAS, NICTD has applied for a New Starts Capital Investment Grant from the Federal Transit Administration for the West Lake Corridor Rail Project ("Rail Project"); and

WHEREAS, the Indiana General Assembly has authorized NICTD to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers in financing, leasing, and constructing the Rail Project pursuant to I.C. § 5-1.3-3-7; and

WHEREAS, the City of Hammond supports the construction of the Rail Project, which involves the design and construction of a new approximate 8-mile extension of the South Shore Line from Hammond, Indiana to the border of Munster and Dyer, Indiana, along with new passenger stations including the Gateway Station as well as a maintenance facility in Hammond and that this investment in the city is in the hundreds of millions of dollars; and

WHEREAS, the Agreement details the responsibilities of the city and NICTD through the construction portion of the project and also ensures that the city will be able to construct a downtown station north of Douglas street in a preferred location; and

WHEREAS, this Agreement has been reviewed by the city's engineering and planning departments and that they recommend approval;

NOW, THEREFORE, BE IT RESOLVED, by the Hammond Common Council, that the "Agreement Regarding Construction of Rail Project" between the City of Hammond and the Northern Indiana Commuter Transportation District is in all respects approved and confirmed. This Resolution shall be in full force and effect from and after its adoption by the Common Council, signing by the President thereof and approval by the Mayor.

ADOPTED AND APPROVED BY the Common Council of the City of Hammond, Indiana, this 7th day of October, 2019.

Dave Woerpel, Vice President
Hammond Common Council

ATTEST:

Robert J. Golec, City Clerk
City of Hammond, Indiana

PRESENTED BY ME, the undersigned City Clerk of the City of Hammond, Indiana, to the Mayor, for approval and signature, this 8th day of October, 2019.

Robert J. Golec, City Clerk
City of Hammond, Indiana

The foregoing Resolution No. R29 consisting of three (3) typewritten pages, including this page, was APPROVED AND SIGNED BY ME, the undersigned Mayor of the City of Hammond, Indiana, this 8th day of October, 2019.

Thomas M. McDermott, Jr., Mayor
City of Hammond, Indiana

PASSED by the Common Council on the 7th day of October, 2018 and Approved by the Mayor on the 8th day of October, 2019.

Robert J. Goled

Robert J. Goled, City Clerk, Hammond, Indiana

AGREEMENT REGARDING CONSTRUCTION OF RAIL PROJECT

Northern Indiana Commuter Transportation District

West Lake Corridor

City of Hammond

Area: MP WL64.9 – MP WL69.2

THIS AGREEMENT between the City of Hammond, Indiana, by and through its Mayor and City Council (hereinafter "Community") and the Northern Indiana Commuter Transportation District operating the South Shore Line (hereinafter "the District") is to be effective as of the _____ day of _____ , 2019.

RECITALS

WHEREAS, since 1990, the District has operated the South Shore Line passenger rail service from Millennium Station in Chicago, Illinois through Lake, Porter, LaPorte, and St. Joseph Counties in Indiana.

WHEREAS, the District has applied for a New Starts Capital Investment Grant from the Federal Transit Administration for the West Lake Corridor Project ("Rail Project").

WHEREAS, the District and Community support the construction of the Rail Project, which involves: the design and construction of a new approximate 8-mile extension of the South Shore Line from Hammond, Indiana to the border of Munster and Dyer, Indiana, along with new passenger stations, catenary, and structures necessary for passenger rail operations.

WHEREAS, the Indiana General Assembly has authorized the District to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers in financing, leasing, and constructing the Rail Project. I.C. § 5-1.3-3-7.

WHEREAS, the District and Community are parties to a Memorandum Agreement dated February 1, 1993, and Easement Agreement dated December 20, 1995 related to the Rail Project.

WHEREAS, this Agreement is intended to follow those prior agreements among the Parties, and to establish the respective rights and obligations of each Party that are particular to the design of the current Rail Project.

WHEREAS, the parties agree that it is in the best interests of both the District and Community to perform all actions necessary to complete the Rail Projects.

NOW, THEREFORE, the parties, intending to be duly bound, set forth their mutual rights and responsibilities to accomplish that purpose in a coordinated and unified approach to the funding, acquisition, and construction of the Rail Project.

1. **Definitions** – the defined terms set forth in this section shall apply throughout this Agreement.

   Agreement – This Agreement regarding Construction of Rail Project between the Northern Indiana Commuter Transportation District and the City of Hammond, Indiana.

   Community – The City of Hammond, Indiana, including all Boards, Districts, Commissions, public officials, and any other entity serving the City of Hammond.

Contractor – Any person or entity hired to perform work or provide services on behalf of the District or the Community, including any sub-contractors.

The District – the Northern Indiana Commuter Transportation District.

IFA – the Indiana Finance Authority.

Rail Project – the West Lake Corridor Project.

RDA – the Northwest Indiana Regional Development Authority.

2. Findings and Purpose

A. The foregoing recitals are incorporated in this Agreement as the findings of the parties.

B. The purpose of this Agreement is to establish the mutual rights and responsibilities of the District and Community in order to complete the Rail Project.

3. Duration

A. This Agreement shall be for an initial term of ten (10) years.

B. This Agreement shall terminate earlier if the Rail Project is completed.

C. After an initial ten (10) years has expired, if the Rail Project has not started construction, the Agreement will be automatically renewed for an additional ten (10) year term, unless either party sends notice, in writing, to the other party stating its intention to terminate the Agreement. Such notice must be sent at least 365 days before the expiration of the initial term.

4. Rights and Responsibilities

A. The District or its Contractors shall:

i. Design and construct the Rail Project through the Design-Build procurement process under Indiana Law.

ii. Acquire all real estate necessary for the Rail Project, in accordance with federal and state law, including all necessary appraisals and review appraisals. iii. Maintain insurance coverage for the construction of the Rail Project, and require its Contractors performing construction activities to maintain general liability insurance coverage of at least $5,000,000 per occurrence. The District shall require its Contractors performing construction activities to include as indemnitees the City of Hammond, and all of its boards, commissions, districts, officials, officers, directors, employees, and agents.

iv. Place signage at Russell Street directing pedestrians and cyclists north or south (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A).

v. Develop a Maintenance and Protection of Traffic Plan to address disruptions to travel during the course of the Rail Project (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A).

vi. Convert Russell Street from a one-way to a two-way street from Hohman Avenue to Lyman Avenue, including modification of traffic signals, signage, and striping of Hohman Avenue and Russell Street (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A).

vii. Restripe the intersection of 173rd Street and Harrison Avenue to provide for a left-turn lane, a through lane, and a right-turn lane (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A). viii. Upgrade all traffic signals within 200 feet of at-grade crossings of the West Lake Corridor track with an interconnection with the rail signal warning system (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A).

ix. As feasible, limit the lane closures for construction to off-peak hours (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A).

x. Coordinate work zone traffic-control plans and detour plans with the Community, to address requirements for access to neighborhoods, businesses, medical facilities, and emergency facilities (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A).

xi. Create a public exhibit for the OK Champion Building, which will highlight the historical industrial development of Hammond, in consultation with a qualified historian who meets the Secretary of the Interior's Professional Qualification Standards in 36 CFR Part 61, which historian will assess the context and presentation to ensure the history and associations contributing to the significance of the property are incorporated into the exhibit (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A).

xii. Provide for noise-receiver-based treatments for 5 single-family homes in Hammond between mileposts (MP) 66.9 and 67.2, which could include windows, doors, and insulation (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A). The milepost locations are shown on the attached Exhibit 'D'.

xiii. Provide for concrete noise barriers with a height of four (4) to five (5) feet from top of rail between MP 65.3 and 65.5 (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A). The milepost locations are shown on the attached Exhibit 'D'.

xiv. Provide for concrete noise barriers with a height of four (4) to five (5) feet from top of rail between MP 66.3 and 66.4 (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A). The milepost locations are shown on the attached Exhibit 'D'.

xv. Provide concrete noise barrier wall with a height of three (3) feet from top of rail south of MP 68.1, if the Jefferson Hotel exists at the time of construction, on the west side of the elevated alignment of the Rail Project (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A). The milepost locations are shown on the attached Exhibit 'D'.

xvi. Implement ballast mats (or other track support system modifications) between MP 66.3 and 66.4, to extend the length of one full trainset on either side of the affected receptor (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A). The milepost locations are shown on the attached Exhibit 'D'.

xvii. In areas of the Rail Project between the State line and Sibley Street, relocate Community-owned utilities that need to be relocated due to the Rail Project, or upgrade those Community-owned utilities which need to be upgraded to deliver adequate service to the Rail Project. Alternatively, the District will reimburse Community for costs incurred by Community in performing said relocations or upgrades in this area of the Rail Project. The District shall include Community's preferred utility contractors in the Design-Builder package for underground facilities.

xviii. Relocate, or remove and replace, the Community-owned utilities in the Marble Street right-of-way between Hohman Avenue and Wabash Street, to the right-ofway of the new public road described in section 4(A)(xix).

xix. Establish a new public road, with sixty (60) feet of public right-of-way, the name of the road to be determined, between Sheffield Avenue and Wabash Avenue. The roadway and all utilities installed in the public right-of-way shall meet the minimum design standards of the Community.

xx. Produce and review a concept plan for a potential future road extension of Wabash Avenue from Marble Street to Michigan Street. The District will work with the Community during the design process to evaluate the feasibility of creating a public right-of-way for a future southern extension of Wabash Avenue to the Grand Calumet River.

xxi. Avoid disturbing the protective cap installed by US EPA located within the Grand Calumet River and along the northern side of Area of Concern 2 (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A).

xxii. Coordinate selection of landscape treatments to be consistent with the requirements of the Community's landscaping ordinance with respect to any improvements constructed within the Community (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A).

xxiii. Provide Community with data or analysis on the estimated flows and loads for all new and changed connections to the Community-owned Utilities based on the design of the Rail Project.

xxiv. After completion of the Rail Project, operate trains consistent with federal regulations and safe train operating standards.

B. Community or its Contractors shall:

i. Review project plans once they have reached 60% completion and submit any proposed changes to the District within 30 days of receiving said 60% plans. Any proposed changes submitted by the Community shall be subject to the review and final approval of the District. Proposed changes submitted by the Community, and approved by the District, are subject to the following requirements:

a. The District's Design-Build Contractor shall create a cost estimate to complete the 100% design, engineering, and the construction for the proposed changes, and that cost estimate will be shared with the Community;

b. After receiving the cost estimate, the Community shall notify the District within 14 days whether it desires to proceed with the proposed changes;

c. If the Community notifies the District that it desires to proceed with the proposed changes, the changes will be incorporated into the appropriate design and construction package; and

d. The cost of any changes approved by the District, including but not limited to the costs of design, engineering, and construction, which cost increases or would increase the Contract Price in the Design-Build Contract, shall be the sole responsibility of the Community, including any change orders. The District shall invoice the Community for these additional costs, and the Community shall pay the invoiced amounts within thirty (30) days.

e. If Community requires a reasonable extension of time to complete the review of project plans or the cost estimate for proposed changes, Community shall make a written request to the District as soon as possible. Extensions of time are subject to the District's discretion. The District will not unreasonably withhold its consent to allow time for appropriate action to be taken at public meetings.

f. This section shall also apply to a proposed change in the design and construction to make feasible a future passenger station in Downtown Hammond and/or a vehicle/pedestrian underpass at Russell Street, which would not be constructed until after the Rail Project has entered Revenue Service. Community shall engage a consultant to develop a projected cost for this design and construction. Within 30 days after NICTD gives a notice to proceed to a Design Build contractor, Community, at its option, may request the District issue a change order to the District's Design-Builder Contractor to prepare the cost estimate as set forth in this section. Within 30 days after receipt of the Design Builder's Change Order for design and construction to make feasible a future passenger station in Downtown Hammond and/or a vehicle/pedestrian underpass at Russell Street (and shall not include design or construction of that future station or underpass), Community must agree in writing to pay all amounts associated with these changes in order for them to be incorporated in the design and construction of the Rail Project. These amounts include, but are not limited to, NICTD, RDA, and IFA staff and consultant expenses.

ii. Agree to adhere to the District's Sensitive Security Information Policy and Procedure in the event the Community would be in receipt of information designated as Sensitive Security Information (as defined in 49 C.F.R. Parts 15 and 1520).

iii. Close or vacate the portion of Russell Street to be occupied by the Rail Project, when requested by the District (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A).

iv. Vacate a portion of the following streets, as shown on the attached Exhibit 'B', when requested by the District:

a. Hanover Street west of Sheffield Avenue to be occupied by the Rail Project;
b. Brunswick Street west of Wabash Avenue to be occupied by the Rail Project;
c. Marble Street from Sheffield Avenue to Wabash Avenue;

d. Dearborn Avenue from Brunswick Street to Gostlin Street;
e. Chicago Street from Sheffield to its west terminus, and Chicago Street between Hanover Street and Brunswick Street, when requested by the District; and
f. A portion of Wabash Avenue north of the CSX (B&O CT) crossing, to be occupied by the Rail Project

v. Vacate any platted alleys to be occupied by the Rail Project, when requested by the District. The platted alleys currently anticipated to be occupied by the Rail Project are shown on the attached Exhibit 'B', which is subject to completion of the Final Design.

vi. Convey real property and any property rights needed for the Rail Project to the District, as an in-kind local contribution, after completion of appraisals, review appraisals, and approval by the FTA of the value of each in-kind contribution. Except, that temporary easements or any other property rights with an estimated value of less than $5,000, shall be conveyed at no cost to the District and the value of such low-value property rights shall be an additional in-kind contribution by Community to the extent permitted by the FTA. In the event that FTA disallows an in-kind contribution from Community from the local matching funds, the District shall give written recognition to Community for the value of the disallowed contribution. The Community-owned real property currently needed for the Rail Project is shown on the attached Exhibit 'C', which is subject to completion of the Final Design. Nothing contained in this Section 4.B.vi., however, is intended to impact or alter Community's existing obligations under I.C. 36-7.5, I.C. § 6-3.6-9.5, or I.C. § 6-3.6-11-5.5.

vii. Perform relocations or upgrades (protect in place or replace) of Communityowned utilities in areas of the Rail Project located between Sibley Street and the southern corporate boundary of Community, which relocations and/or upgrades are necessary due to the Rail Project, or reimburse the District for its costs of performing said relocations or upgrades. The District shall include Community's preferred utility contractors in the Design-Builder package for underground facilities. Community may, at its option, abandon any affected utilities (December 20, 1995 Easement Agreement at § 17). Abandoned underground utilities shall be removed or completely filled with grout, compacted sand, or other Districtapproved methods. In addition, abandoned manholes and other structures shall be removed to a minimum depth of 2 feet below finished grade and be completely filled with grout, compacted sand, or other methods as approved by the District. viii. Monitor traffic operations of the future roundabout at Hohman Avenue and Chicago Street near the Hammond Gateway Station (pursuant to the March 2018 Final Environmental Impact Statement, Record of Decision, Attachment A). ix. Perform all these contractual obligations in a reasonably timely manner, so as not to delay the schedule for the Rail Project. For obligations requiring action of the City Council or another Board, this shall mean no longer than sixty (60) days after receiving a request in writing.

5. Cost Responsibility:

A. The District shall perform all obligations set forth in section 4.A. of this Agreement at no additional cost or expense of Community.

B. Community shall perform all obligations set forth in section 4.B. of this Agreement at no cost or expense of the District.

6. **Third-Party Beneficiaries**: The RDA and IFA are intended third party beneficiaries of this Agreement, and the RDA and IFA are entitled to enforce the terms of this Agreement, consistent with third party beneficiary rights and on the same terms and conditions as the District. Notwithstanding their status as third party beneficiaries, the RDA and IFA shall not be deemed to have assumed any liability or obligation of this Agreement without their written consent.

7. **Assignment:** The District may assign this contract to the RDA and/or the IFA, or their respective designees, in the event that RDA and/or IFA exercise their Construction Period Step-In Rights and/or Operations Step-In Rights per Article 11 of the Amended and Restated Governance Agreement Concerning Development of the Rail Projects, effective June 24, 2019 ("Governance Agreement").

8. **Access to Records:** Community must provide the FTA, the District, RDA, and/or IFA with access to all documents related to the Rail Project, and provide copies of all documents to FTA at its request, the District at its request, RDA at its request, or the IFA at its request. Provision of such copies shall be at Community's sole cost and expense.

9. **Termination:**

   A. In the event that the District's obligations are funded or financed by the RDA and/or IFA, and require State appropriations, and to the extent the RDA and/or IFA determine that funds are not appropriated or otherwise available to support the continuing performance of the District's obligations, the District may terminate this Agreement for convenience. Such a termination for convenience shall be at no cost to the District, RDA, and/or IFA, except for costs of work performed or services provided prior to termination, for which the District is responsible under this Agreement.

   B. Community shall have no right of termination for convenience, except as set forth in section 3.C above.

10. **Insurance:** The District shall carry, or shall require its Contractors to carry insurance policies providing coverage for commercial general liability, automobile liability, railroad protective liability, worker's compensation, employer's liability, contractor's

pollution, pollution legal liability, builder's risk, professional errors and omissions, and delayed opening coverage, all pursuant to the Governance Agreement.

11. Federal Funding Requirements:

A. As a condition for the Rail Project to continue qualifying for Federal funding under a Full Funding Grant Agreement, Community agrees to comply with all the Federal funding requirements attached hereto as Exhibit 'A' and incorporated herein. Community acknowledges that it has reviewed these Federal funding requirements in Exhibit 'A', understands them, and agrees that Exhibit 'A' may be updated from time to time in order to reflect the current Federal laws, regulations, policies, and related administrative practices applicable to this Agreement. Community further agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in this Agreement of a contrary intent. Such contrary intent might be evidenced by express language in other portions of this Agreement, or a letter signed by the Federal Transit Administrator the language of which modifies or otherwise conditions the text of a particular provision of this Agreement or its funding source terms and conditions. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date this Agreement has been executed and may apply to this Agreement. To achieve compliance with changing Federal requirements, Community agrees to include in all subcontracts specific notice that Federal requirements may change and the changed requirements will apply to the project as required. All limits or standards set forth in this Agreement to be observed in the performance of this Agreement are minimum requirements.

B. Incorporation of Terms. The provisions of this Agreement include, in part, certain Standard Terms and Conditions required by FTA, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by FTA, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement consistent with regulatory deferral to state law. Community shall not perform any act, fail to perform any act, or refuse to comply with any District requests which would cause the District to be in violation of the FTA terms and conditions.

12. Additional Terms

A. Venue and Governing Law. This Agreement shall be governed by the laws of the State of Indiana, except for any rules concerning choice of laws. The parties agree that the venue for any litigation relating to this Agreement shall be the Superior or Circuit Court of Porter County, Indiana.

B. Authority. Each party acknowledges and covenants that it has taken all necessary actions to bind itself to the terms, conditions, and obligations of this Agreement.

C. Construction of Language. The language used in this Agreement is language developed and chosen by all parties to express their mutual intent and no rule of strict construction shall be applied against either party.

D. Final Agreement. This Agreement, together with the exhibits incorporated herein, shall constitute the entire agreement of the parties relating to the subject matter hereof. No warranties, representations, or promises pertaining to this Agreement or any property or rights affected hereby have been made, nor shall be binding upon, any party except as expressly stated in this Agreement.

E. Modification. This Agreement may be amended or modified only by an instrument in writing signed by all parties.

F. Notice. Unless otherwise provided herein, all notices and communications concerning this Agreement shall be sent by US Mail, certified or registered, postage prepaid and properly addressed as follows:

If to the District:

Northern Indiana Commuter Transportation District
Attention: President
33 East U.S. Highway 12
Chesterton, Indiana 46304

With a copy to:

Harris Welsh & Lukmann
Attention: L. Charles Lukmann, III
107 Broadway
Chesterton, Indiana 46304

If to Community:

City of Hammond
Attention: Mayor
5925 Calumet Avenue
Hammond, Indiana 46320

With a copy to:

City of Hammond
Attention: Law Department
5925 Calumet Avenue
Hammond, Indiana 46320

G. Non-waiver. Except as otherwise provided herein, no delay or failure by any party to exercise any right under this Agreement shall constitute a waiver of that or any other right, unless expressly provided in this Agreement, or in a separate writing signed by that party.

H. Headings. The headings of each division are for convenience only and shall not be used to interpret or construe its provisions.

I. Counter-parts. This Agreement may be executed in separate and multiple counterparts, and in such case each counter-part, facsimile, electronic signature, or other electronic or hard copy, shall be considered an original.

J. Severability. Each and every separate division (including, but not limited to, paragraph, clause, condition, covenant, or agreement) contained in this Agreement shall be separable from every other division. If any division is determined to be unconstitutional, illegal, violative of public policy, unenforceable, void, voidable, or otherwise invalid for any reason, that determination shall have no effect on the continuing validity and enforceability of all or any other division of this Agreement.

[*Remainder of Page Intentionally Left Blank – Signature Page Follows*]

IN WITNESS WHEREOF, the parties indicate their acceptance and have executed this Agreement as of the date and year first written above.

CITY OF HAMMOND

By: Robert A. Markovich
Robert A. Markovich
Its: City Council President

By: _____
Thomas M. McDermott, Jr.
Its: Mayor

NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT

By: _____
Michael Noland, President

The following Departments, Districts, Works, and Commissions of the City of Hammond also agree to be bound by this Agreement:

Hammond Parks and Recreation Department

By: _____
Michael Dye
Its: President

Hammond Water Works Department

By: _____
Sharon Daniels
Its: President

Hammond Sanitary District

By: _____
Sam Dimopoulos
Its: President

Hammond Redevelopment Commission

By: _____
Tony Hauprich
Its: President

EXHIBIT A
FEDERAL FUNDING COMPLIANCE REQUIREMENTS

The following Federal Funding Compliance Requirements, set forth in ¶1 through ¶21 below, are incorporated into and made a part of the Agreement for Community's performance of the Work on the Project:

1. **Buy America Requirements.** All construction contracts for the Project will be subject to the Buy America requirements of the FTA. The Community agrees to comply with 49 USC 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 USC 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

The applicable FTA Buy America requirements appear in 49 CFR Part 661.5 and require the following:

a. Except as provided in Sec. 661.7 and Sec. 661.11 of this part, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.

b. All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

c. The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock.

d. For a manufactured product to be considered produced in the United States all of the manufacturing processes for the product must take place in the United States;

and all of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

2. **Government Access to Records and Reports.** In accordance with 2 CFR §200.336, Community agrees to provide the District, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of Community which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions. Community also agrees, pursuant to 49 CFR §633.17, to provide the FTA Administrator or his/her authorized representatives, including any Project Management Oversight Contractor ("PMOC"), access to Community's records and work sites pertaining to a major capital project, defined at 49 U.S.C. §5302(3), which is receiving Federal financial assistance through the programs defined at 49 U.S.C §5307, 5309 or 5311.

2.1. Community agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

2.2. Community agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the Community agrees to maintain same until the District, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

3. **Government-Wide Debarment and Suspension.** In accordance with Executive Order 12549, as implemented by 2 CFR Part 180 and 2 CFR Part 1200, a person (as defined in 2 CFR 180.985) who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. As a participant in a federally assisted primary covered transaction (grant recipient), the District is required to obtain a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions" from all lower tier participants on this Agreement whose contract or agreement will exceed $25,000. Community will submit for itself and obtain and submit from all consultants and subcontractors whose contracts will exceed $25,000 the certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions" Any Agreement or sub-agreement or sub-contract executed without such certification will be voidable by the District.

3.1. In the event that Community has certified prior to award that it is not debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, this Agreement may be cancelled, terminated or suspended by the District and Community will be liable for any and all damages incurred by the District as a result of such cancellation, termination or suspension because of such false certification.

3.2. Community will ensure that certifications completed by subcontractors, lower tier subcontractors or suppliers are attached to and incorporated into their subcontracts or agreements.

4. **Civil Rights.** The following requirements apply to this Contract:

a. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U. S. C. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the Americans With Disabilities Act of 1990, 42 U.S.C. §12132, and the Federal law at 49 U.S.C. §5332, Community agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Community agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

b. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Contract:

i. **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Community agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. 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 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Community 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 shall 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, Community agrees to comply with any implementing requirements FTA may issue.

ii. **Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Community agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Community agrees to comply with any implementing requirements FTA may issue.

iii. **Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Community agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Community agrees to comply with any implementing requirements FTA may issue.

c. **Subcontracts.** Community agrees to include these requirements in each consultant contract or sub-agreement or sub-contract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

5. **Clean Air Requirements.** Community and its subcontractors shall be required to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§7401 *et seq*. To the extent that Community discovers or becomes aware of a violation of these requirements during the course of performing this Agreement, Community agrees to report such violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Community also agrees to include the requirements of the above clause in each sub-agreement or sub-contract issued pursuant to this Agreement exceeding $100,000 financed in whole or in part with Federal assistance provided by the FTA.

6. **Clean Water Requirements.** Community and its subcontractors shall be required to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U. S. C. 1251 *et seq*. To the extent that Community discovers or becomes aware of a violation of these requirements during the course of performing this Agreement, Community agrees to report such violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office. Community also agrees to include the requirements of the above clause in each sub-agreement or sub-contract issued pursuant to this Agreement exceeding $100,000 financed in whole or in part with Federal assistance provided by the FTA.

7. **Changes to Federal Requirements.** Community shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the District and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Community's failure to so comply shall constitute a material breach of this Contract.

8. **Anti-Lobbying.** In accordance with the Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. §1601, *et seq*.], Community, and any contractors who apply or

propose for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. §1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. §1352. Such disclosures are forwarded from tier to tier up to the recipient.

8.1. Community will submit for itself the form entitled "Certification of Restrictions on Lobbying" and if applicable, the form entitled "Disclosure of Lobbying", and obtain and retain from all consultants and subcontractors whose contracts will exceed $100,000 the certification entitled "Certification of Restrictions on Lobbying", and obtain from all consultants and subcontractors, at any tier, whose agreements will exceed $100,000, and submit to the District, if applicable, the form entitled "Disclosure of Lobbying".

8.2. Community and its consultants and subcontractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such Community, consultants and subcontractors under ¶8.1. An event that materially affects the accuracy of the information reported includes:

a. A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

8.3. Community will ensure that certifications completed by lower tier consultants and subcontractors are attached to and incorporated into their contracts or agreements.

9. **False Statements or Claims.** Community acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 *et seq* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Agreement. Upon execution of the underlying Agreement, Community certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA-assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, Community further acknowledges that if it makes, or causes to be made, a false, fictitious, or

fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Community to the extent the Federal Government deems appropriate.

9.1. Community acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on Community, to the extent the Federal Government deems appropriate. Community also agrees to include the terms of ¶9 and ¶9.1 in each consultant contract and sub-agreement and sub-contract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the consultants and subcontractors who will be subject to the provisions.

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

11. **Seismic Safety.** Community agrees that any new building or addition to an existing building is required to be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41. Community has agreed to have an architect or engineer certify compliance to the extent required by the regulation. To the extent that Community discovers or becomes aware of a violation of these requirements during the course of performing this Agreement, Community agrees to report immediately such violation to Owner. Community also agrees to ensure that its Work performed under the Agreement, including all portions of the Work performed by subcontractors, shall be in compliance with the seismic safety standards required in the Agreement Documents. The seismic safety standards applicable to this Agreement are contained in Section 2312 ICBO Uniform Building Code (UBC).

12. **Energy Conservation.** Community has agreed to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy plan issued in compliance with the Energy Policy and Conservation Act. To the extent that Community discovers or becomes aware of a violation of these requirements during the course of performing this Agreement, Community agrees to report

immediately such violation to Owner. Community also agrees to ensure that its Work performed under the Agreement, including all portions of the Work performed by subcontractors, shall be in compliance with the energy efficient standards required in the Agreement Documents.

13. **Agreement Work Hours and Safety Standards Act.** To the extent applicable to the Work provided by Community under this Agreement, Community shall comply with the following:

a. **Overtime Requirements.** Neither Community nor any of its consultants or subcontractors for any part of the Community's Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty (40) hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one half times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week.

b. **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the requirements of Subparagraph (a) of ¶13 Community and any consultant or subcontractor responsible therefore shall be liable for the unpaid wages. In addition, Community, consultant, or subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of Subparagraph (a) of ¶13 in the sum of ten dollars ($10) for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by Subparagraph (a) of ¶13.

c. **Withholding for Unpaid Wages and Liquidated Damages.** the District shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by Community, consultant, or subcontractor under this Agreement or any other Federal contract with Community or any other federally assisted agreement subject to the Contract Work Hours and Safety Standards Act, which is held by Community, such sums as may be determined to be necessary to satisfy any liabilities of Community or consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Subparagraph (a) of ¶13.

d. **Consultant and Subcontractor Agreements.** Community shall insert in any consultant Agreement and sub-agreement and sub-contract the clause set forth in Subparagraphs (a) through (d) of ¶13 and also a clause requiring the consultants and subcontractors to include these clauses in any lower tier subcontracts. Community shall be responsible for compliance by any consultant or subcontractor or lower tier subcontractors with Subparagraphs (a) through (d) set forth in ¶13.

14. **Davis-Bacon and Copeland Anti-Kickback Acts.** Community shall comply with the requirements of the Davis-Bacon Act (as codified at 29 CFR parts 1 *et seq.*) and the Copeland Anti-Kickback Act (as codified at 29 CFR part 3) ("Acts"), with respect to the payment of wages and fringe benefits to laborers for the Work on the Project, and these Acts are incorporated by reference in this Agreement. Community shall be responsible for the compliance by any subcontractor or lower tier subcontractors with all the contract clauses in 29 CFR 5.5. Community and its subcontractors shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) of the Davis-Bacon Act, as follows, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts:

a. **Minimum Wages**:

i. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Community and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Community, its contractors, and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii. (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

2. The classification is utilized in the area by the construction industry; and

3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the Community and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

iii. Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Community shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

iv. If the Community does not make payments to a trustee or other third person, the Community may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Community, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Community to set aside in a separate account assets for the meeting of obligations under the plan or program.

v. (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and

2. The classification is utilized in the area by the construction industry; and

3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Community and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify

the contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

b. **Withholding**:

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

c. **Payrolls and Basic Records**:

i. Payrolls and basic records relating thereto shall be maintained by the Community during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of

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

ii. (A) The Community shall submit monthly for each week in which any Agreement work is performed a copy of all payrolls to the District for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Community is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Community or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Agreement and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Community, contractor, or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

iii. The Community, contractor, or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Community, contractor, or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Community, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

d. **Apprentices and Trainees:**

i. *Apprentices* - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Community, contractor, or subcontractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is

not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Community's, contractor's, or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Community will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on
the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Community will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

iii. *Equal employment opportunity* - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

e. **Compliance with Copeland Act Requirements:**

The Community shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

f. **Subcontracts:**

The Community, contractor, or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Community shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the Agreement clauses in 29 CFR 5.5.

g. **Agreement Termination: Debarment:**

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Agreement, and for debarment as a Community, as a contractor, and a subcontractor as provided in 29 CFR 5.12.

h. **Compliance with Davis-Bacon and Related Act requirements:**

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

i. **Disputes Concerning Labor Standards:**

Disputes arising out of the labor standards provisions of this Agreement shall not be subject to the general disputes clause of this contract. Such disputes shall be

resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Community (or any of its contractors, or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

j. **Certification of Eligibility:**

i. By entering into this Agreement, the Community certifies that neither it (nor he or she) nor any person or firm who has an interest in the Community is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

ii. No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government Agreement by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

15. **Recovered Materials.** Community agrees to comply with the all of the requirements of Section 6002 of the Resource Conservation and Recovery Act ("RCRA") as amended (42 U.S.C. 6972), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

16. **No Federal Government Obligation to Third Parties.** Community acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the District, Community, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the Contract. Community agrees to include the above clause in each sub-agreement financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

17. **Contracts Involving Federal Privacy Act Requirements.** The following requirements apply to Community and its employees that administer any system of records on behalf of the Federal Government under the Contract: (1) Community agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Community agrees to obtain the express consent of the Federal Government before Community or its employees operate a system of records on behalf of the Federal Government. Community understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act,

apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. (2) Community also agrees to include these requirements in each sub-agreement to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

18. **ADA Access.** Community agrees to comply, and assures the compliance of each subcontractor at any tier of the Project, with the applicable laws and regulations, set forth below, for nondiscrimination on the basis of disability:

a. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities.

b. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities.

c. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities.

d. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination.

e. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR part 37.

f. U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27.

g. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38.

h. Other applicable laws and amendments pertaining to nondiscrimination and access for seniors or individuals with disabilities.

19. **Cargo Preference.** Use of United States-Flag Vessels - Community agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are

available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient

(through the Community in the case of a subcontractor's bill-of-lading.) (c) to include these requirements in all subcontracts issued pursuant to this Agreement when the sub-agreement may involve the transport of equipment, material, or commodities by ocean vessel.

20. **Disadvantaged Business Enterprise Participation.**

a. **DBE Program.** This Agreement is subject to the requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is ten percent (10%). the District's overall goal for DBE participation is nine and seventy-eight hundredths percent (9.78%). The DBE commitment for this Agreement is as stated on the DBE Commitment Form executed by Community and on file with the Director of Procurement. If the total Agreement price is increased as a result of change orders (modifications), the Community shall make a good faith effort to achieve a commensurate increase in DBE participation.

b. **DBE Obligation.** Community shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The Community shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT- assisted Agreements. Failure by the Community to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the District deems appropriate, which may include, but is not limited to, (1) withholding monthly progress payments, (2) assessing sanctions, (3) liquidated damages, and/or (4) disqualifying the Community from future bidding as non-responsible. Each subagreement the Community signs with a subcontractor must include the assurance in this paragraph.

c. **DBE Modifications or Substitutions.** In the event that Community wishes to modify its DBE subcontractor commitments, the Community must notify the District DBE Liaison Officer in writing and request approval for the modification. Community may not, without the District's prior written consent, terminate for convenience any DBE subcontractor approved by the District under this Agreement and then perform the work of the sub-agreement with its own forces. This includes any changes to items of work, material, services or DBE firms which differ from those identified on the DBE Commitment Form on file with the Director of Procurement. When a DBE subcontractor is terminated or fails to complete its work

for any reason, Community must make good faith efforts to find another DBE subcontractor to substitute for the original DBE firm. These good faith efforts must be directed at finding another DBE firm to perform at least the same amount of work under this Agreement as the DBE firm that was terminated or failed to complete its work. Community must provide the District with any and all documents and information as may be requested with respect to the requested substitution. If the District determines that Community failed to make food faith efforts, the District will provide the opportunity for administrative reconsideration pursuant to 49 CFR 26.53. As part of this reconsideration, Community will have the opportunity to provide written documentation or argument and to meet with a designated the District official concerning the issue of whether it met the goal or made adequate good faith efforts to do so. A written decision will be sent to Community explaining the basis for finding that Community did or did not meet the goal or make adequate good faith efforts to do so.

d. **Reporting and Recordkeeping.** Community shall submit documentation concerning Community's performance in meeting the DBE commitment during the period of the Agreement. Community shall enter into written agreements with the DBEs listed in its DBE Commitment Form or with substitutes which have been approved by the District. Community shall utilize the specific DBEs listed to perform the work and supply the materials for which it is listed unless the Community obtains written consent from the District as provided in paragraph (c) above. Unless consent is provided, Community shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. Copies of all executed DBE agreements shall be provided to the District's Director of Procurement by Community immediately upon execution with a duplicate copy furnished to the District DBE Liaison Officer. In addition thereto, Community shall meet the following requirements:

i. Submit a work schedule outlining when the DBE subcontractors and material suppliers will commence and complete their services or work under the Agreement within 30 days of Agreement execution.

ii. Submit monthly reports in a format approved by the District detailing progress toward meeting the DBE commitment for this project and proofs of payment to the District DBE Liaison Officer. Monthly claims for payment from Community will not be processed without submission of these reports and documentation.

iii. Promptly notify the District of any situation in which any regularly scheduled progress payment is not made to a DBE.

iv. Not willfully make any false statements or provide incorrect information as part of its reporting and recordkeeping duties and obligations hereunder. The willful making of false statements or providing of incorrect information is considered a material breach of Agreement and shall entitle the District

to all remedies and relief as otherwise provided in the case of a contractual breach in accordance with Article VII of the Agreement.

e. **Prompt Payment and Retainage.** Community is required to pay its subcontractors, suppliers and consultants performing services related to this Agreement for satisfactory performance of those services no later than ten (10) days following Community's receipt of payment for that work from the District.
If Community elects to withhold retainage from its subcontractors and material suppliers, Community may not withhold retainage in any greater percentage amount or for any longer duration than the District withholds retainage from Community. Failure to carry out prompt payment is considered a breach of the Agreement. The District will not reimburse Community for work performed by subcontractors, suppliers and consultants unless and until Community ensures that all subcontractors, suppliers and consultants are promptly paid. The District may not award future contracts to a Community who refuses to pay promptly in accordance with this provision.

21. Veterans Employment.

a. To the extent practicable, Community agrees that it:

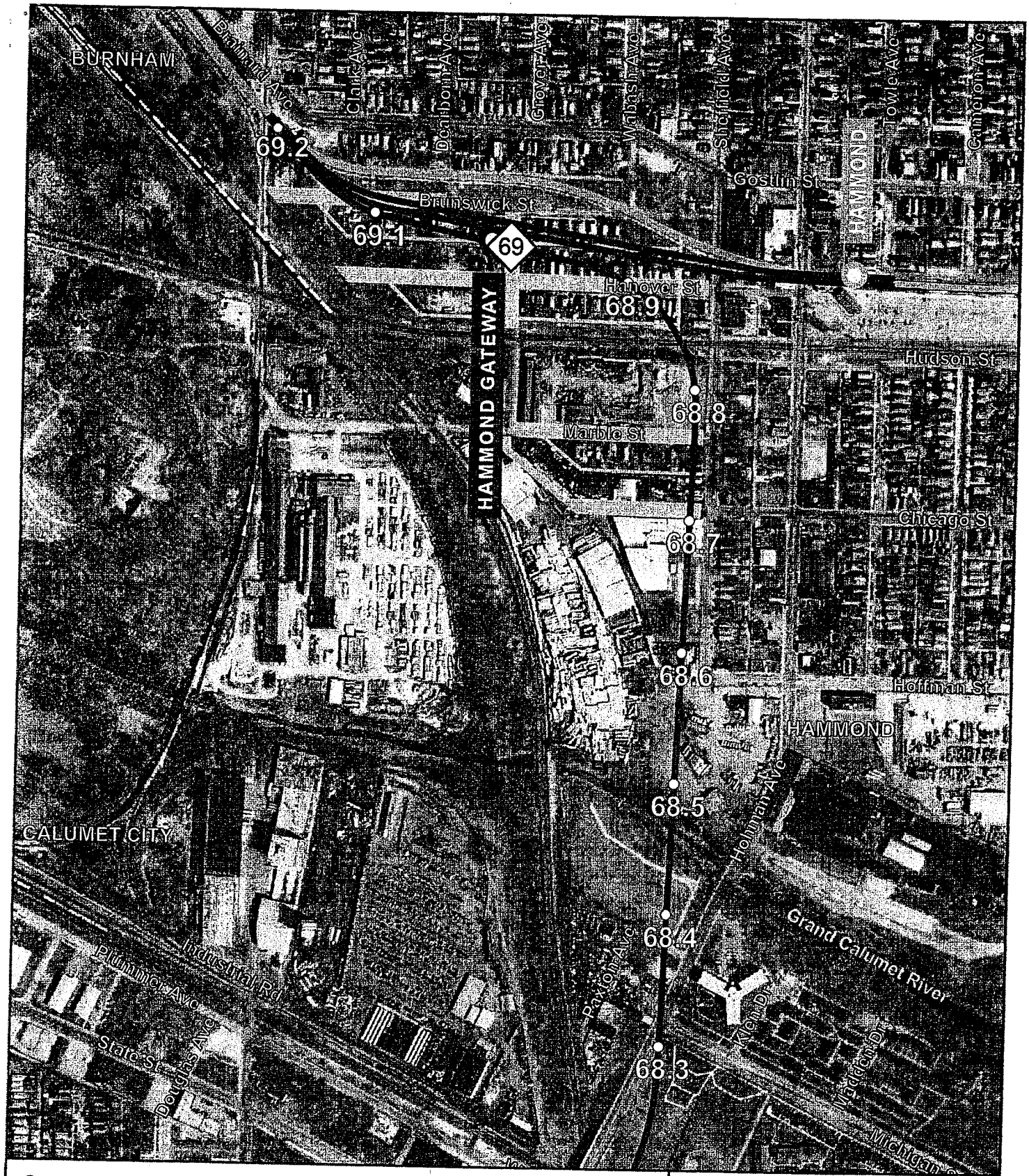
i. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party Agreement in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and

ii. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

b. Community also assures that its subrecipients will:

i. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party Agreement in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and

ii. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.



Existing Station

Proposed Station

Existing South Shore Line

FEIS Preferred Alternative

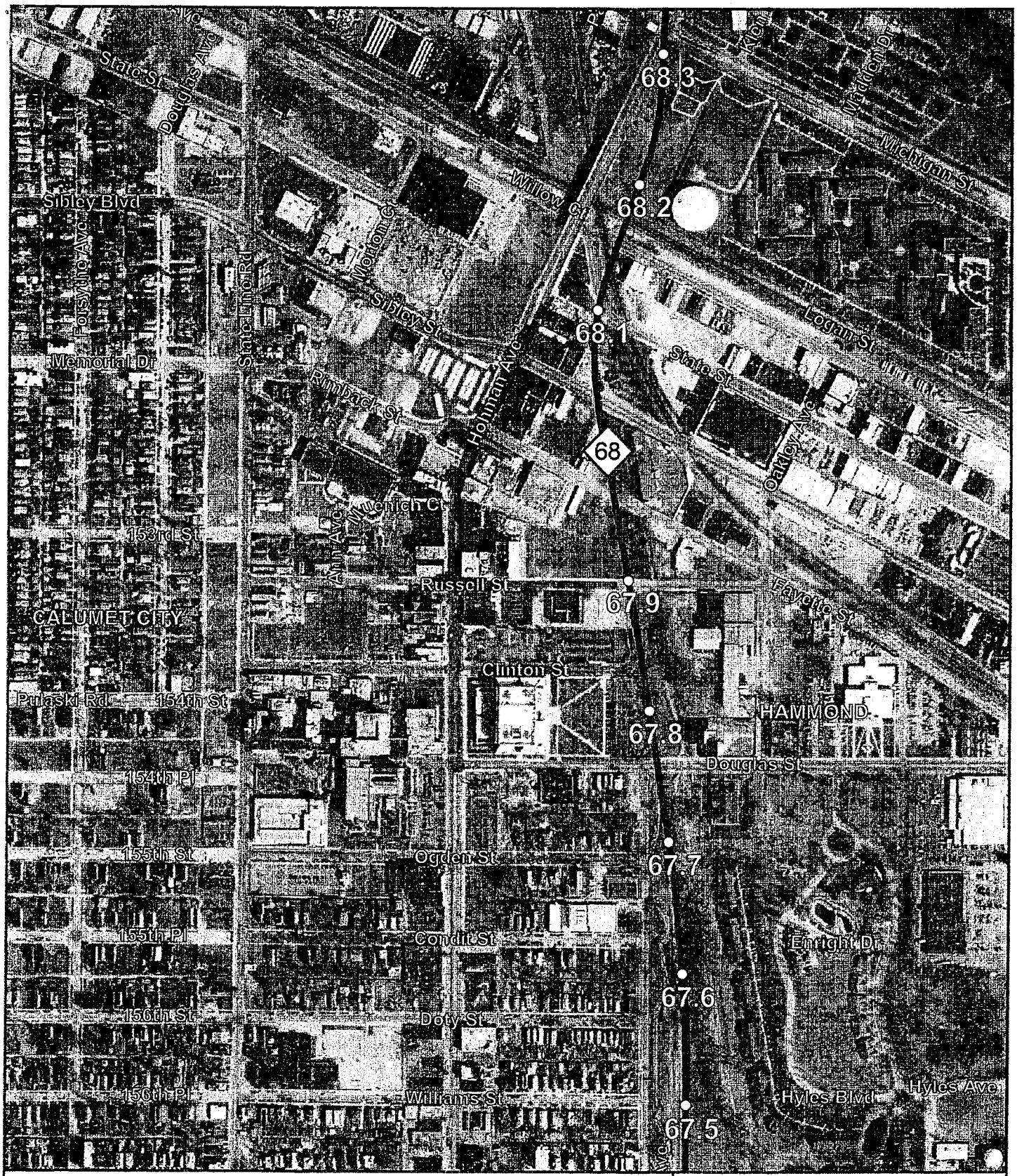
Streets and alleys to be acquired

EXHIBIT B

WEST•LAKE CORRIDOR

SHEET 1 OF 2

Data for Reference Only



Existing Station

Proposed Station

Existing South Shore Line

FEIS Preferred Alternative

Streets and alleys to be acquired

BACKGROUND SOURCE: ESRI, DIGITALGLOBE, GEOEYE, EARTHSTAR GEOGRAPHICS, CNES/AIRBUS DS, USDA, USGS, AEROGRID, IGN, AND THE GIS USER COMMUNITY BACKGROUND SOURCE: ESRI, DIGITALGLOBE, GEOEYE, EARTHSTAR

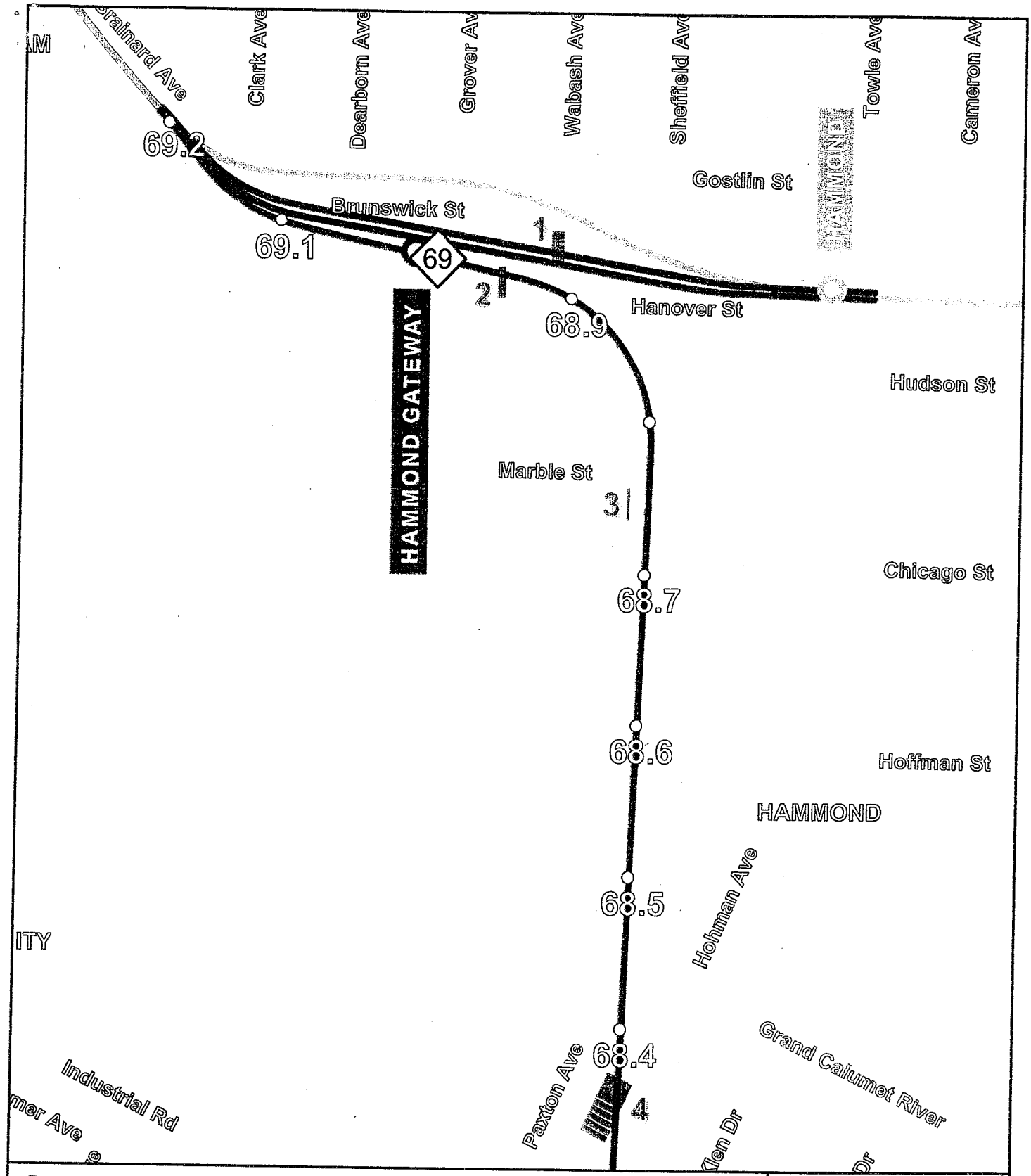
EXHIBIT B

WEST·LAKE

SHEET 2 OF 2

Data for Reference Only

GEOGRAPHICS, CNES/AIRBUS DS, USDA, USGS, AEROGRID, IGN, AND THE GIS USER COMMUNITY



- Existing Station
- Proposed Station
- Existing South Shore Line
- FEIS Preferred Alternative
- Full Take
- Partial Take
- Easement

1. 232 Brunswick St (BLN 134)
2. 217 Hanover St (BLN 202)
3. 252 Marble St (BLN 180)
4. 4926-4942 Hohman Ave (BLN 174)
5. 422 Michigan St (BLN 086)
6. 425 Sibley St (BLN 173)
7. 417 Fayette St (BLN 172)
8. 432 Sibley St (BLN 208)
9. 225 Russell St (BLN 171)
10. 466 Fayette St (BLN 178)
11. Russell (BLN 178A)
12. Vacant Land (BLN 170)
13. 256 Clinton St (BLN 080)
14. 0 Hammond (BLN 079)

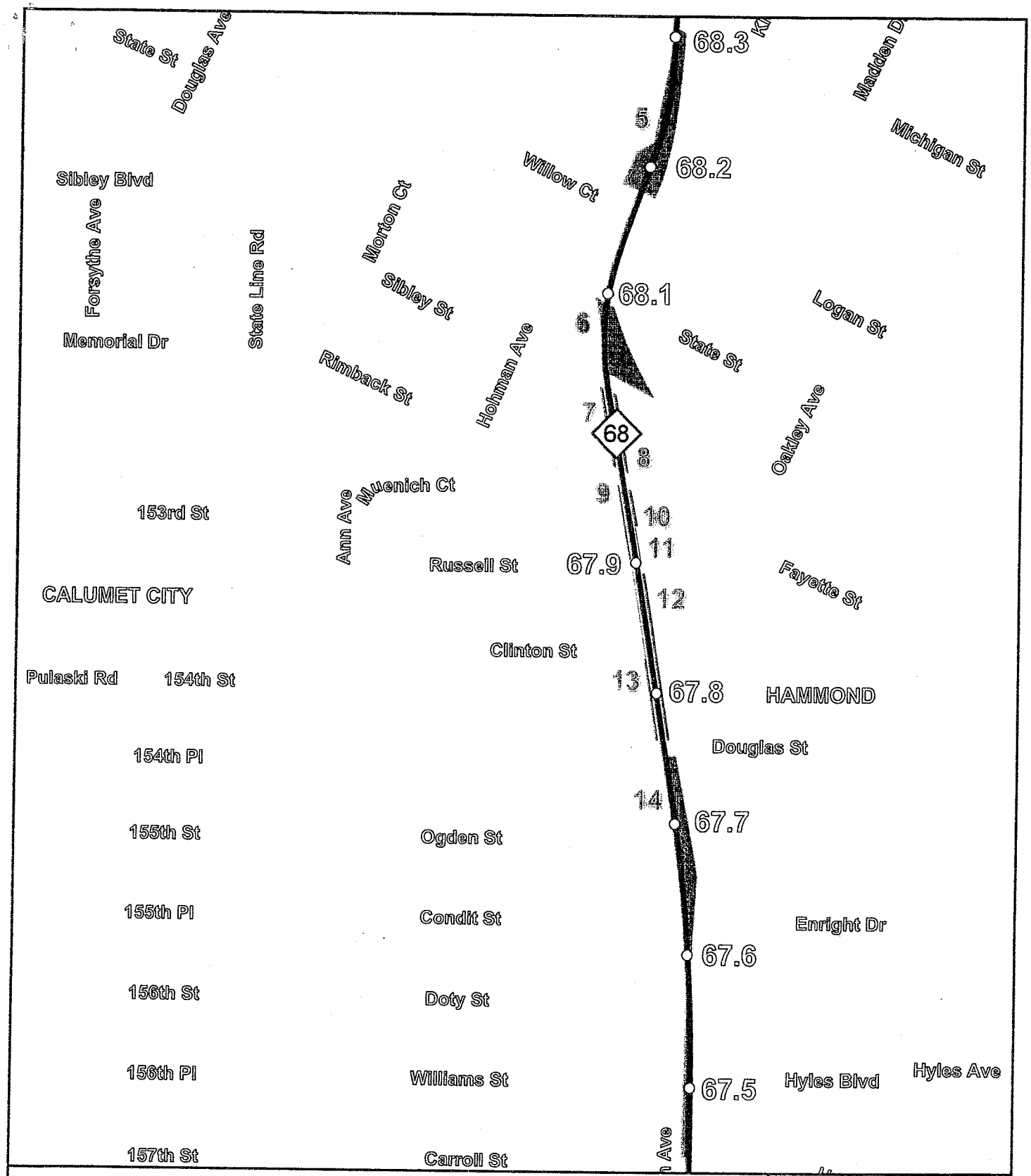
EXHIBIT C

WEST•LAKE

SHEET 1 OF 2

Data for Reference Only

BACKGROUND SOURCE: ESRI, DIGITALGLOBE, GEOEYE, EARTHSTAR GEOGRAPHICS, CNES/AIRBUS DS, USDA, USGS, AEROGRID, IGN, AND THE GIS USER COMMUNITY



- Existing Station
- Proposed Station
- Existing South Shore Line
- FEIS Preferred Alternative
- Full Take
- Partial Take
- Easement

1. 232 Brunswick St (BLN 134)
2. 217 Hanover St (BLN 202)
3. 252 Marble St (BLN 180)
4. 4926-4942 Hohman Ave (BLN 174)
5. 422 Michigan St (BLN 086)
6. 425 Sibley St (BLN 173)
7. 417 Fayette St (BLN 172)
8. 432 Sibley St (BLN 208)
9. 225 Russell St (BLN 171)
10. 466 Fayette St (BLN 178)
11. Russell (BLN 178A)
12. Vacant Land (BLN 170)
13. 256 Clinton St (BLN 080)
14. 0 Hammond (BLN 079)

EXHIBIT C

WEST•LAKE CORRIDOR

SHEET 2 OF 2

Data for Reference Only

BACKGROUND SOURCE: ESRI, DIGITALGLOBE, GEOEYE, EARTHSTAR GEOGRAPHICS, CNES/AIRBUS DS, USDA, USGS, AEROGRID, IGN, AND THE GIS USER COMMUNITY

Existing Station

Proposed Station

Existing South Shore Line

FEIS Preferred Alternative

Milepost

Anticipated location of noise walls
(to be verified by Design-Builder)

EXHIBIT D

WEST·LAKE CORRIDOR

SHEET 1 OF 2

Data for Reference Only

BACKGROUND SOURCE: ESRI, DIGITALGLOBE, GEOEYE, EARTHSTAR GEOGRAPHICS, CNES/AIRBUS DS, USDA, USGS, AEROGRID, IGN, AND THE GIS USER COMMUNITY

Existing Station

Proposed Station

Existing South Shore Line

FEIS Preferred Alternative

Milepost

Anticipated location of noise walls
(to be verified by Design-Builder)

EXHIBIT D

WEST LAKE CORRIDOR

SHEET 2 OF 2

Data for Reference Only

BACKGROUND SOURCE: ESRI, DIGITALGLOBE, GEOEYE, EARTHSTAR GEOGRAPHICS, CNES/AIRBUS DS, USDA, USGS, AEROGRID, IGN, AND THE GIS USER COMMUNITY