

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

ALLEN McAFEE,)
Petitioner,)
v.) PCB 15-84
) (LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

NOTICE OF FILING AND PROOF OF SERVICE

To: John T. Therriault, Acting Clerk
Illinois Pollution Control Board
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State of Illinois Building, Suite 11-500
Chicago, IL 60601

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PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (d), PETITIONER'S POST-HEARING BRIEF, a copy of which is herewith served upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 9th day of January, 2014.

Respectfully submitted,
ALLEN McAFEE, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: /s/ Patrick D. Shaw

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PETITIONER'S POST-HEARING BRIEF

NOW COMES Petitioner, ALLEN McAFEE, by its undersigned counsel, for his Post-Hearing Brief, states as follows:

I. STATEMENT OF FACTS

This appeal arises from an Amended Stage 3 Site Investigation Plan and Budget received by the Agency on July 24, 2014. (R. at 15-190) The subject site is a former service station at which five underground storage tanks were removed in early 2013, following the reporting of LUST incident 2012-1322. (R. at 5)

Prior to submitting the Amended Stage 3 Site Investigation Plan and Budget, McAfee, through his consultants, performed Stage 3 site investigation work consisting of several soil borings and monitoring wells. (R. at 21) The analytical results identified exceedances of Tier 1 remediation objectives at the Northeast corner of the property (B-10 / MW-7), as well as to the East of the property (MW-8). (R. at 26; see also R. 30 (site map)) As a result of these findings, the consultant proposed further stage three investigation by advancing two soil borings and three monitoring wells to fully delineate the off-site soil and groundwater contamination. (R. 26) The budget proposed for this work was \$12,637.43, of which \$2,671.24 pertained to the drilling and

monitoring well costs. (R. 183) If off-site contamination is not defined after this investigation, an “AMENDED, AMENDED Stage 3 Site Investigation Plan and Budget” will be proposed. (R. at 27)

On September 26, 2014, the Agency approved the plan and budget, with the following modifications. First, the Agency determined that the exceedances of remediation objectives identified in MW-8 to the East of the site are not attributable to underground storage tanks, but more likely the railroad. (R. at 1) Consequently, one of the monitoring wells was relocated closer to MW-14, and another monitoring well was converted into a contingency well, as depicted on a map accompanying the final Agency decision. (R. at 1 & 196) Furthermore, if the contingency well is not needed, associated costs would not be reimbursable. (R. at 1) Petitioner has not appealed these decisions.

Furthermore, the Agency also modified the plan by requiring the use of a project labor agreement (PLA), as set forth in Attachment A. (R. at 193) Attachment A does not contain any information regarding PLAs. (R. at 197)¹ A model PLA is identified as being “available on the Illinois EPA’s Leaking UST Program Web site.” (R. at 193) A true and correct copy of the model document is attached hereto as Exhibit A.² The website also contains Fact Sheets concerning PLAs, the original dated July 2013, is attached hereto as Exhibit B, and the revised

¹ In another appeal pending before the Board, Attachment A to the denial letter contains a “NOTICE OF PROJECT LABOR AGREEMENT REQUIREMENT,” summarizing the basis for the PLA determination and other information. See Rumaneh & Oweisi, Inc. v. IEPA, PCB 15-95.

² Petitioner asks the Board to take official notice of the Project Labor Agreement information available on the Agency website. (35 Ill. Adm. Code 101.630; People v. Young, 355 Ill. App. 3d 317, 321 (2nd Dist. 2005) (“we may take judicial notice of information that the Department of Corrections has provided on its website.”))

version dated September 2014, is attached hereto as Exhibit C. Also, available at the same web site is a Workforce Participation Quarterly Reporting Form, attached hereto as Exhibit D. In the event that use of the PLA impacts the budget, a revised budget must be submitted and if the revised costs exceed Subpart H amounts, "bidding is required." (R. at 193)

On October 27, 2014, McAfee timely filed a petition for review of this decision to the extent it requires a PLA. On December 4, 2014, the Board denied the Agency's motion to dismiss, finding that the Board is authorized to review the Agency's decision on a site investigation plan. Subsequently, the Agency filed the administrative record, which includes a work sheet for the PLA determination that concludes that the use of a PLA will advance the State's interest in labor continuity and stability, and minority-owned and women-owned businesses and employment. (R. at 197 (second page numbered 197)).

II. ARGUMENT.

A. LUST PROGRAM

A brief background on the structure of the LUST Program will be useful before considering the recent labor amendments. Initially, the LUST Program utilized classic labor-intensive, dig-and-haul cleanup techniques, where tanks and mass quantities of dirt were simply removed. The LUST Program subsequently evolved to reduce the waste from too much soil being landfilled without adequate assurance that removal was necessary. Initially, the LUST Program used "site classification" to differentiate sites that needed additional work or groundwater monitoring. (35 Ill. Adm. Code Part 732 (applicable to releases on or after September 23, 1994)) Then in 1997, the Board promulgated risk-based cleanup objectives in the

form of the Tiered Approach to Corrective Action Objectives ("TACO"). (35 Ill. Adm. Code Part 742). Subsequently, the "site classification" approach was phased-out in favor of the current "site investigation" program. (35 Ill. Adm. Code Part 734 (applicable to releases on or after June 24, 2002)) These changes have moved the focus towards greater technical analysis, and less labor-intensive work.

There are three major steps in Part 734. First, there is "early action" in which the owner/operator can remove the tanks and visibly contaminated soil and groundwater within four feet of the tanks. (415 ILCS 5/ 57.6) The important limitation on "early action" activities is that they must be performed within approximately 45 or 90 days of a confirmed release, and unlike subsequent activities no plan or budget is required. (Id.; 35 Ill. Adm. Code § 734.210(g)) It is possible that after "early action" no further remediation may be necessary. (35 Ill. Adm. Code § 734.210(h)(3))

Next, there is "site investigation," in which the owner/operator performs an analysis to determine the nature and extent of any remaining contamination, as well as identify specific site conditions of environmental concern at the site. (415 ILCS 5/57.7(a)) Board regulations further divide "site investigation" into three possible stages. The Stage One Site Investigation gathers information about soil and groundwater contamination, (35 Ill. Adm. Code § 734.315), the Stage Two Site Investigation gathers further information on the extent of on-site contamination, (35 Ill. Adm. Code § 734.320), and the Stage Three Site Investigation gathers information on the extent of off-site contamination. (35 Ill. Adm. Code § 734.325)

Finally, if after completing "site investigation," it is determined that TACO standards are being exceeded, the owner/operator must then perform "corrective action" designed to mitigate

environmental risks and achieve remediation objectives. (415 ILCS 5/57.7(b)) As a practical matter this might mean any number of activities, including hauling away more contaminated soil, treating or removing contaminated groundwater, or installing an engineered barrier.

The entire approach therefore is quite incremental, and once the initial early action is performed, carefully analysis determines what, if any, additional site work is necessary. The present case is illustrative, as it involves a second or amended Stage Three Site Investigation Plan and Budget. Not only is this second Stage Three Site Investigation work being proposed, the Agency designated parts of the plan as "contingent" on a need established by the work. Furthermore, if such testing is still inconclusive on the extent and degree of off-site contamination, the consultant will submit a third or "amended, amended" Stage III Site Investigation Plan and Budget. The budget for the subject plan totals \$12,637.43, plus handling charges, and that assumes the contingent well will be needed. This total is further broken down into \$2,671.24 for drilling and monitoring well costs, \$1,404.26 for laboratory analysis, and \$8,561.93 for consulting fees and costs. (R. at 183) To put this in context, early action activities might cost over five times as much and consist largely of excavating, transporting and disposing of tanks and contaminated soil. E.g. Dickerson v. IEPA, PCB 09-87, at p. 5 (Sept 2, 2010) (\$74,780.63 approved before application of deductible). After this initial work is performed, protracted analytical stages determine what if anything further needs to be done at the site.

One final change in the LUST Program came in 2006, when the Board established "Maximum Payment Amounts" in Subpart H of the LUST regulations. (35 Ill. Adm. Code Sec. 734.800 et seq.) These rates were set on the basis that costs of LUST cleanups must be "reasonable" and no more than what is necessary to meet the minimum requirements of the Act.

(415 ILCS 5/57.7(c)) In doing so, the Board approved rates for professional services on an hourly basis, but work such as drilling and monitoring costs are reimbursed on a linear "per foot" basis. (Id.) There is no indication in the rulemaking that the Board took into consideration county "prevailing wage" for any class of worker, (R4-23(A)), an issue that arises from recent changes to the Act.

B. LABOR LAW AMENDMENTS OF 2013.

In 2013, Illinois passed the Economic Development Act of 2013, which contained many disparate provisions unrelated to the LUST Program. (P.A. 98-0109, effective date July 25, 2013). For purposes of the LUST Program, the legislation directed payment of prevailing wage rates, gave the Agency authority to require Project Labor Agreements (PLAs), and increased the resources of the LUST Fund. While this appeal deals specifically with PLAs, they are interrelated. Part of the purpose of the PLA requirement is to increase compliance with prevailing wage requirements by requiring the owner/operator to certify that prevailing wages were paid. (415 ILCS 5/57.7(a)(6)(F))

Specifically, the Act was amended as follows:

In approving any plan submitted pursuant to subsection (a) or (b) of this Section, the Agency shall determine, by a procedure promulgated by the Board under Section 57.14, that the costs associated with the plan are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of this Title. The Agency shall also determine, pursuant to the Project Labor Agreements Act, whether the corrective action shall include a project labor agreement if payment from the Underground Storage Tank Fund is to be requested.

(415 ILCS 5/57.7(c)(3) (added language emphasized))

This provision requires the Agency to consider whether to require PLAs for corrective action, but not site investigation. The Agency's obligation and authority derives first from the Act, but the standards are found in the Project Labor Agreements Act. This is no different than numerous provisions in the Act which incorporate by reference other legal provisions like the Illinois Groundwater Act or RCRA.

A project labor agreement is a “pre-hire collective bargaining agreement covering all terms and conditions of employment on a specific project . . .,” which “can be of particular benefit to complex construction projects.” (30 ILCS 571/1(b)&(g)) An agreement can be required if it “advances the State's interests of cost, efficiency, quality, safety, timeliness, skilled labor force, labor stability, or the State's policy to advance minority-owned and women-owned businesses and minority and female employment. (30 ILCS 571/10) The decision to use a PLA must be based upon “a written, publicly disclosed finding by the department, agency, authority, board, or instrumentality, setting forth the justification for use of the project labor agreement.” (30 ILCS 571/30) The PLA itself must address several considerations, and include such others as the parties “deem appropriate.” (30 ILCS 571/25(g))

These amendments also provide a means of ensuring compliance with the new PLA and prevailing wage requirements by requiring the owner to certify compliance when applying for payment:

For purposes of this Section, a complete application shall consist of:

...

(F) If the Agency determined under subsection (c)(3) of Section 57.7 of this Act that corrective action must include a project labor agreement, a certification from the owner or operator that the corrective action was (i) performed under a project labor agreement that meets the requirements of Section 25 of the Project Labor Agreements Act and (ii) implemented in a manner consistent with the terms and conditions of the Project Labor Agreements Act and in full compliance with all statutes, regulations, and Executive Orders as required under that Act and the Prevailing Wage Act.

(415 ILCS 5/57.8(b)(F))

The Economic Development Act of 2013 also made prevailing wages applicable to “corrective action.” (820 ILCS 130/2) The model project labor agreement requires that wages and fringe benefits be paid based upon the prevailing wages in the relevant county at the time the work is performed, including required contributions to the local fringe benefit fund (Ex. A, ¶ 1.6 & ¶ 1.8) The model agreement also contemplates a pre-job meeting to determine how to meet project employment objectives, such as increased apprenticeship hours for minorities and females. (Ex. A, ¶ 2.8)

The final change to the Illinois Environmental Protection Act was to increase the resources of the UST Fund. (415 ILCS 5/57.11(a) & (f)) The new labor requirements are expected to increase the cost of cleanups.

These are substantial modifications to the existing program. They add a potential, additional work requirement after the plan and budget have been approved. It may be difficult to find contractors willing to execute PLAs, and there may be additional costs and delays in negotiating the PLAs. If there are, the plan and budget must be amended for re-approval. There are additional costs associated with paying prevailing wages and fringe benefits that are not accounted for in the Subpart H rates, and the Agency’s response is to mandate bidding.

However, bidding is optional, and only available for “corrective action.” (415 ILCS 5/57.7(c)(3)(C)). Though the additional costs of bidding are reimbursable, they are likely completely disproportionate to the amount of relevant work being performed at the site investigation stage.

C. PROJECT LABOR AGREEMENTS ARE NOT AUTHORIZED FOR SITE INVESTIGATION.

With that background, the main issue is quite simple. Does the Act authorize PLAs for site investigation? The statutory language is clear:

(3) In approving any plan submitted pursuant to subsection (a) or (b) of this Section, the Agency shall determine, by a procedure promulgated by the Board under Section 57.14, that the costs associated with the plan are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of this Title. The Agency shall also determine, pursuant to the Project Labor Agreements Act, whether the corrective action shall include a project labor agreement if payment from the Underground Storage Tank Fund is to be requested.

(415 ILCS 5/57.7(c)(3) (emphasis added))

The applicable rule of statutory construction is the maxim *expressio unius est exclusio alteri* – “Where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions.” Bridgestone/Firestone, Inc. v. Aldridge, 179 Ill.2d 141, 151-52 (1997). “This rule of statutory construction, *expressio unius est exclusio alterius*, is based on logic and common sense. It expresses the learning of common experience that when people say one thing they do not mean something else. The maxim is closely related to the plain language rule in that it emphasizes the statutory language as it is written.” Id. at 152.

This rule of common sense is even more undeniable when the amendatory language was added to a provision itself distinguishes between “site investigation” and “corrective action.” The first sentence above clearly applies to both, and the second sentence applies only to the latter. If the legislature had intended to authorize project labor agreements for both “site investigation” and “corrective action,” it could have done so as it did with several other sections of the Act. See Bridgestone/Firestone, 179 Ill.2d at 153.³

These rules can only be overcome by a strong contrary legislative intent. Id. at 154. The legislative background of the Act and the new amendments rebuts any such claim. Site investigation and corrective action are entirely different activities, each with their own separate set of statutory and regulatory considerations. The purpose of “site investigation” is purely analytical. 415 ILCS 5/57.7(a)(1)(“a site investigation plan [is] designed to determine the nature, concentration, direction of movement, rate of movement, and extent of the contamination as well as the significant physical features of the site and surrounding area . . .”) As the budget approval herein evidences, almost all of the cost of site investigation are incurred by the professional consultant and the laboratory.

The Project Labor Agreement Act seeks to address concerns of traditional labor, not

³415 ILCS 5/57.1(a) ("site investigation, and corrective action"); 5/57.1(b) ("site investigation, or corrective action"); 5/57.1(c) ("site investigation, or corrective action"); 5/57.5(g) ("site investigation and corrective action"); 5/57.5(h) ("site investigation and corrective action"); 5/57.7 (Title) ("site investigation and corrective action"); 5/57.7(c)(3) ("site investigation or corrective action" **twice**); 5/57(c)(4) ("site investigation plan or corrective action plan") 5/57(c)(4) ("site investigation completion report or corrective action completion report"); 5/57(c)(5) ("site investigation plan . . . ; . . . site investigation budget . . . ; . . . corrective action plan . . . ; or . . . corrective action budget") 5/57.7(e) ("site investigation or corrective action," **thrice**); 5/57.8(a)(3) ("site investigation and corrective action"); 5/57.8(a)(6) ("site investigation or corrective action," **twice**).

professionals and laboratories. In the Agency's initial Fact Sheet, the following explanation of the scope of activities covered by a PLA is explained as follows:

What corrective action activities require a PLA?

Corrective action activities that require a PLA include, but are not limited to, the excavation, transportation, and disposal of contaminated soil, and backfilling of the excavation; installation/replacement of concrete or asphalt; installation of potable water supply wells; and hookup to municipal water supply.

(Ex. B)

These activities occur during either early action or corrective action, not site investigation. The fact sheet was modified at about the time the underlying decision was made:

What activities require a PLA?

Activities that require a PLA include Stage 2 site investigation fieldwork, Stage 3 site investigation fieldwork, or corrective action fieldwork where the Illinois EPA determines that a PLA shall be included. Generally, the fieldwork activities would be those performed by personnel such as laborers, truck drivers, electricians, plumbers, equipment operators, or mechanics.

...

What types of activities are not subject to PLAs?

Non-fieldwork activities performed off-site such as laboratory analysis, report preparation, calculation of Tier 2 remediation objectives, negotiation of highway authority agreements, etc., as well as fieldwork performed by professional consulting firm staff such as sample collection, are examples of activities that would not require the use of a PLA.

(Ex. C)

In other words, the *labor component* for drilling equipment operation require a PLA, though this accounts for a small portion of site investigation activities.

The Project Labor Agreement Act finds that PLAs may be of "particular benefit" for

“complex construction projects.” (30 ILCS 571/1(b) & (g)) Clearly, the legislature made a determination that “site investigation” is not such a project, and to require PLAs would cause costs and delays in the environmental cleanup disproportionate to any benefit.

D. ALTERNATIVELY, THE AGENCY’S DECISION TO REQUIRE A PLA SHOULD BE REVERSED.

The Agency’s authority to require PLAs are not without conditions and requirements that have not been met or demonstrated here. Under the Project Labor Agreements Act, the Agency must make a “written, publicly disclosed finding . . . setting forth the justification for use of the project labor agreement.” (30 ILCS 571/30) The Agency is also required by the Illinois Environmental Protection Act to make "a statement of specific reasons" that it determined a project labor agreement is necessary. (415 ILCS 5/57.7(c)(4)) The Agency must determine that a PLA "advances the State's interests of costs, efficiency, quality, safety, timeliness, skilled labor force, labor stability, or the State's policy to advance minority-owned and women-owned businesses and minority and female employment." (30 ILCS 571/10 (Project Labor Agreements Act))

The Agency has not provided its justification, but simply checked a box on a sheet identifying its conclusion. There is no consideration given to the substantial issue of cost and delays caused by imposing PLAs on a plan with minimal relevant labor costs. Its also particularly inefficient given that each site investigation plan often proceeds two or three wells at a time, quite unlike the large, complex public works projects that traditionally have been the subject of PLAs. And the idea that a PLA would result in labor stability and continuity is

ludicrous with respect to the second stage 3 site investigation plan. There has been extensive drilling work already performed, and if anything, imposing new requirements increases the risk of different workers being hired without the benefit of that previous experience.

Accordingly there is nothing in the record to support the justification for imposing PLAs, if the Board determines they can be imposed at the site investigation stage. Moreover, the paucity of analysis used to assess the appropriateness of imposing a PLA is itself evidence that the requirement is excessive in the context of the small, incremental work performed at the site investigation stage.

WHEREFORE, Petitioner, ALLEN McAFEE, prays that the Board find the Agency erred in its decision, the Board direct the Agency to approve the plan and budget absent any requirement to use a project labor agreement, the Board award payment of attorney's fees; and grant such other and further relief as it deems meet and just.

ALLEN McAFEE,
Petitioner

By its attorneys,
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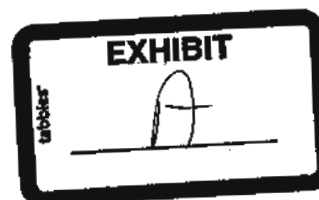
THIS FILING IS SUBMITTED ON RECYCLED PAPER

STANDARD PROJECT LABOR AGREEMENT FOR UST FUND CORRECTIVE ACTION WORK

This Standard Project Labor Agreement ("Agreement" or "PLA") is entered into this _____ day of _____, 20____ by and between _____ [name of general contractor] and each relevant Illinois AFL-CIO Building Trades hereto as determined by the Illinois AFL-CIO Statewide Project Labor Agreement Committee ("PLA Committee") for and on behalf of its affiliated members (hereinafter referred to individually and collectively, as the "Union" or "Unions"). This Agreement shall apply to work for which a PLA is required pursuant to an Illinois Environmental Protection Agency (the "Agency") determination made under Section 57.7 of the Environmental Protection Act (415 ILCS 5/57.7) and Section 10 of the Project Labor Agreements Act (30 ILCS 571/10) (the "PLA Act") that is performed by or on behalf of the underground storage tank(s) ("UST") owner and/or operator ("Owner/Operator") on the project site described on Exhibit A (the "Site," "job-Site," or "project Site") and for which reimbursement is being requested from the Agency for costs associated with said work from the UST Fund (IEMA Incident No. _____) (the "Project Work"), and to the contractors and all subcontractors of every tier performing and/or engaged in said Project Work as herein provided. Unless otherwise indicated herein to the contrary, contractors (including the general contractor and any prime contractors) and subcontractors of every tier performing and/or engaged in the Project Work are collectively referred to herein as the "Contractors."

ARTICLE I - INTENT AND PURPOSES

- 1.1 This PLA is entered into in accordance with the Project Labor Agreements Act ("Act," 30 ILCS 571/1, et seq.). It is mutually understood and agreed that the terms and conditions of this PLA are intended to promote the public interest in obtaining timely and economical completion of the Project by encouraging productive and efficient construction operations; by establishing a spirit of harmony and cooperation among the parties; and by providing for peaceful and prompt settlement of any and all labor grievances or jurisdictional disputes of any kind without strikes, lockouts, slowdowns, delays, or other disruptions to the prosecution of the work. The parties acknowledge the obligations of the Contractors and Subcontractors to comply with the provisions of the Act. The parties will work with the Contractors and Subcontractors within the parameters of other statutory and regulatory requirements to implement the Act's goals and objectives.
- 1.2 As a condition of the award of the contract for performance of work on the Project, Prime Contractor(s) and all its Subcontractors shall execute a "Contractor Letter of Assent", in the form attached hereto as Exhibit B, prior to commencing Construction Work on the Project. The Prime Contractor(s) shall submit their Subcontractor's Contractor Letter of Assent to the Owner/Operator prior to the Subcontractor's performance of Construction Work on the Project. Upon request, copies of the applicable collective bargaining agreements will be provided by the appropriate signatory labor organization consistent with this Agreement and at the pre-job conference referenced in Article III, Section 3.1.
- 1.3 Each Union affiliate and separate local representing workers engaged in Construction Work on the Project in accordance with this PLA are bound to this Agreement by the Illinois AFL-CIO Statewide Project Labor Agreement Committee which is the central committee established with full authority to negotiate and sign PLAs with the State on behalf of all respective crafts. Upon their signing the Contractor Letter of Assent, the Prime Contractor(s), each Subcontractor, and the individual Unions shall thereafter be deemed a party to this PLA. No party signatory to this PLA shall contract or subcontract, nor permit any other person, firm, company, or entity to contract or subcontract for the performance of Construction Work for the Project to any person, firm, company, or entity that does not agree in writing to become bound for the term of this Project by the terms of this PLA prior to commencing such work and to the applicable area-wide collective bargaining agreement(s) with the Union(s) signatory hereto.
- 1.4 It is understood that the Prime Contractor(s) and each Subcontractor will be considered and accepted by the Unions as separate employers for the purposes of collective bargaining, and it is further agreed that the employees working under this PLA shall constitute a bargaining unit separate and distinct from all others. The parties hereto also agree that this PLA shall be applicable solely with respect to this Project, and shall have no bearing on the interpretation of any other collective bargaining agreement or as to the recognition of any bargaining unit other than for the specific purposes of this Project.



- 1.5 In the event of a variance or conflict, whether explicit or implicit, between the terms and conditions of this PLA and the provisions of any other applicable national, area, or local collective bargaining agreement, the terms and conditions of this PLA shall supersede and control. For any work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, the National Agreement of the International Union of Elevator Constructors, and for any instrument calibration work and loop checking performed under the UAIBEW Joint National Agreement for Instrument and Control Systems Technicians, the preceding sentence shall apply only with respect to Articles I, II, V, VI, and VII.
- 1.6 Subject to the provisions of paragraph 1.5 of this Article, it is the parties' intent to respect the provisions of any other collective bargaining agreements that may now or hereafter pertain, whether between the Prime Contractor and one or more of the Unions or between a Subcontractor and one or more of the Unions. Accordingly, except and to the extent of any contrary provision set forth in this PLA, the Prime Contractor(s) and all Subcontractors agree to be bound and abide by the terms of the following in order of precedence: (a) the applicable collective bargaining agreement between the Prime Contractor and one or more of the Unions made signatory hereto; (b) the applicable collective bargaining agreement between a Subcontractor and one or more of the Unions made signatory hereto; or (c) the current applicable area collective bargaining agreement for the relevant Union that is the agreement certified by the Illinois Department of Labor for purposes of establishing the Prevailing Wage applicable to the Project. The Union will provide copies of the applicable collective bargaining agreements pursuant to part (c) of the preceding sentence to the Prime Contractor. Assignments by the Contractors or Subcontractors amongst the trades shall be consistent with area practices; in the event of unresolved disagreements as to the propriety of such assignments, the provisions of Article VI shall apply. Notwithstanding any provision herein and/or any collective bargaining agreement to the contrary, all employees covered by this Agreement shall be classified in accordance with the work performed and paid not less than the hourly wage rates and fringe benefits applicable for those classifications provided under the Prevailing Wage Act (820 ILCS 130/1, et seq.) based on the County in which the work is performed and the applicable prevailing wage rates and fringe benefits in effect at the time the respective Project Work is performed as determined by the Illinois Department of Labor ("IDOL") in accordance with the Prevailing Wage Act.
- 1.7 Subject to the limitations of paragraphs 1.4 to 1.6 of this Article, the terms of each applicable collective bargaining agreement as determined in accordance with paragraph 1.6 are incorporated herein by reference, and the terms of this PLA shall be deemed incorporated into such other applicable collective bargaining agreements only for purposes of their application to the Project.
- 1.8 To the extent necessary to comply with the requirements of any fringe benefit fund to which the Prime Contractor or Subcontractor is required to contribute under the terms of an applicable collective bargaining agreement pursuant to the preceding paragraph, the Prime Contractor or Subcontractor shall execute all "Participation Agreements" as may be reasonably required by the Union to accomplish such purpose; provided, however, that such Participation Agreements shall, when applicable to the Prime Contractor or Subcontractor solely as a result of this PLA, be amended as reasonably necessary to reflect such fact. Upon written notice in the form of a lien of a Contractor's or Subcontractor's delinquency from any applicable fringe benefit fund, Owner/Operator will withhold from the Contractor's periodic pay request an amount sufficient to extinguish any delinquency obligation of the Contractor or Subcontractor arising out of the Project.
- 1.9 In the event that the applicable collective bargaining agreement between a Prime Contractor and the Union or between the Subcontractor and the Union expires prior to the completion of this Project, the expired applicable contract's terms will be maintained until a new applicable collective bargaining agreement is ratified. The wages and fringe benefits included in any new applicable collective bargaining agreement will apply on and after the effective date of the newly negotiated collective bargaining agreement, except to the extent wage and fringe benefit retroactivity is specifically agreed upon by the relevant bargaining parties.

ARTICLE II – APPLICABILITY, RECOGNITION AND COMMITMENTS

- 2.1 The term Construction Work as used herein shall include all "construction, demolition, rehabilitation, renovation, or repair" work performed by a "laborer or mechanic" at the "site of the work" for the purpose of "building" the specific structures and improvements that constitute the Project. Terms appearing within quotation marks in the preceding sentence shall have the meaning ascribed to them pursuant to 29 CFR Part 5 and Illinois labor laws.
- 2.2 By executing the Letters of Assent, Prime Contractor(s) and all its Subcontractors recognizes the Unions signatory to this PLA as the sole and exclusive bargaining representatives for their craft employees employed on the job-site for this Project. Unions who are signatory to this PLA will have recognition on the Project for their craft.
- 2.3 The Prime Contractor and all its Subcontractors retain and shall be permitted to exercise full and exclusive authority and responsibility for the management of its operations, except as expressly limited by the terms of this PLA or by the terms and conditions of the applicable collective bargaining agreement.
- 2.4 Except to the extent contrary to an express provision of the relevant collective bargaining agreement, equipment or materials used in the Project may be pre-assembled or prefabricated, and there shall be no refusal by the Union to handle, transport, install, or connect such equipment or materials. Equipment or materials delivered to the job-site will be unloaded and handled promptly without regard to potential jurisdictional disputes; any such disputes shall be handled in accordance with the provisions of this PLA.
- 2.5 The parties are mutually committed to promoting a safe working environment for all personnel at the job-site. It shall be the responsibility of each employer to which this PLA applies to provide and maintain safe working conditions for its employees, and to comply with all applicable federal, state, and local health and safety laws and regulations.
- 2.6 The use or furnishing of alcohol or drugs and the conduct of any other illegal activity at the job-site is strictly prohibited. The parties shall take every practical measure consistent with the terms of applicable collective bargaining agreements to ensure that the job-site is free of alcohol and drugs.
- 2.7 All parties to this PLA agree that they will not discriminate against any employee based on race, creed, religion, color, national origin, Union activity, age, gender or sexual orientation and shall comply with all applicable federal, state, and local laws.
- 2.8 In accordance with the Act, and to promote diversity in employment, the parties shall determine at their pre-job meeting the apprenticeship hours which are to be performed by minorities and females on the Project. The parties shall consider the total hours to be performed by these underrepresented groups, as a percentage of the workforce, and create aspirational goals for the Project Work, based on the level of underutilization for the service area of the Project (together "Project Employment Objectives"). The Contractors shall provide quarterly reports meeting the requirements of Section 37 of the Act to the Agency for submission to IDOL in accordance with the Act (30 ILCS 571/37).
- 2.8.1 The parties agree that all Contractors working on the Project shall be encouraged to utilize the maximum number of apprentices as permitted under the terms of the applicable collective bargaining agreements to realize the Project Employment Objectives.
- 2.8.2 The Unions shall assist the Contractors in efforts to satisfy Project Employment Objectives. Contractors may request from a Union specific categories of workers necessary to satisfy Project Employment Objectives. The application of this Section shall be consistent with all local Union collective bargaining agreements, the hiring hall rules and regulations established for the hiring of personnel, as well as the apprenticeship standards set forth by each individual Union, and in compliance with the Act and other applicable law.
- 2.9 The parties hereto agree that engineering/architectural/surveying consultants' materials testing employees are subject to the terms of this PLA for Construction Work performed for a Contractor or Subcontractor on this Project. These workers shall be fully expected to objectively and responsibly perform their duties and obligations owed to the Owner/Operator without regard to the potential Union affiliation of such employees or of other employees on the Project.

ARTICLE III - ADMINISTRATION OF AGREEMENT

- 3.1 In order to assure that all parties have a clear understanding of the PLA, and to promote harmony, at the request of the Unions a post-award pre-job conference will be held among the Prime Contractor(s), all Subcontractors and Union representatives prior to the start of any Construction Work on the Project. No later than the conclusion of such pre-job conference, the parties shall, among other matters, provide to one another contact information for their respective representatives (including name, address, phone number, facsimile number, e-mail). Nothing herein shall be construed to limit the right of the Owner/ Operator to discuss or explain the purpose and intent of this PLA with prospective bidders or other interested parties prior to or following its award of the job.
- 3.2 Representatives of the Prime Contractor and the Unions shall meet as often as reasonably necessary following award until completion of the Project to assure the effective implementation of this PLA.
- 3.3 Any notice contemplated under Article VI and VII of this Agreement to a signatory labor organization shall be made in writing to the Local Union with copies to the local Union's International Representative.

ARTICLE IV- HOURS OF WORK AND GENERAL CONDITIONS

- 4.1 The standard work day and work week for Construction Work on the Project shall be consistent with the respective collective bargaining agreements. In the event Project site or other job conditions dictate a change in the established starting time and/or a staggered lunch period for portions of the Project or for specific crafts, the Prime Contractor, relevant Subcontractors and business managers of the specific crafts involved shall confer and mutually agree to such changes as appropriate. If proposed work schedule changes cannot be mutually agreed upon between the parties, the hours fixed at the time of the pre-job meeting shall prevail.
- 4.2 Shift work may be established and directed by the Prime Contractor or relevant Subcontractor as reasonably necessary or appropriate to fulfill the terms of its contract with the general contractor. If used, shift hours, rates and conditions shall be as provided in the applicable collective bargaining agreement.
- 4.3 The parties agree that chronic and/or unexcused absenteeism is undesirable and must be controlled in accordance with procedures established by the applicable collective bargaining agreement. Any employee disciplined for absenteeism in accordance with such procedures shall be suspended from all work on the Project for not less than the maximum period permitted under the applicable collective bargaining agreement.
- 4.4 Except as may be otherwise expressly provided by the applicable collective bargaining agreement, employment begins and ends at the Project site; employees shall be at their place of work at the starting time; and employees shall remain at their place of work until quitting time.
- 4.5 Except as may be otherwise expressly provided by the applicable collective bargaining agreement, there shall be no limit on production by workmen, no restrictions on the full use of tools or equipment, and no restrictions on efficient use of manpower or techniques of construction other than as may be required by safety regulations.
- 4.6 The parties recognize that specialized or unusual equipment may be installed on the Project. In such cases, the Union recognizes the right of the Prime Contractor or Subcontractor to involve the equipment supplier or vendor's personnel in supervising the setting up of the equipment, making modifications and final alignment, and performing similar activities that may be reasonably necessary prior to and during the start-up procedure in order to protect factory warranties. The Prime Contractor or Subcontractor shall notify the Union representatives in advance of any work at the job-site by such vendor personnel in order to promote a harmonious relationship between the equipment vendor's personnel and other Project employees.

- 4.7 For the purpose of promoting full and effective implementation of this PLA, authorized Union representatives shall have access to the Project job-site during scheduled work hours. Such access shall be conditioned upon adherence to all reasonable visitor and security rules of general applicability that may be established for the Project site at the pre-job conference or from time to time thereafter.

ARTICLE V - GRIEVANCE PROCEDURES FOR DISPUTES ARISING UNDER A PARTICULAR COLLECTIVE BARGAINING AGREEMENT

- 5.1 In the event a dispute arises under a particular collective bargaining agreement specifically not including jurisdictional disputes referenced in Article VI below, said dispute shall be resolved by the Grievance/Arbitration procedure of the applicable collective bargaining agreement. The resulting determination from this process shall be final and binding on all parties bound to its process.
- 5.2 Employers covered under this Agreement shall have the right to discharge or discipline any employee who violates the provisions of this Agreement. Such discharge or discipline by a contractor or subcontractor shall be subject to Grievance/Arbitration procedure of the applicable collective bargaining agreement only as to the fact of such violation of this agreement. If such fact is established, the penalty imposed shall not be disturbed. Work at the Project site shall continue without disruption or hindrance of any kind as a result of a Grievance/Arbitration procedure under this Article.
- 5.3 In the event there is a deadlock in the foregoing procedure, the parties agree that the matter shall be submitted to arbitration for the selection and decision of an Arbitrator governed under paragraph 6.8.

ARTICLE VI-DISPUTES: GENERAL PRINCIPLES

- 6.1 This Agreement is entered into to prevent strikes, lost time, lockouts and to facilitate the peaceful adjustment of jurisdictional disputes in the building and construction industry and to prevent waste and unnecessary avoidable delays and expense, and for the further purpose of at all times securing for the employer sufficient skilled workers.
- 6.2 A panel of Permanent Arbitrators is attached as Exhibit C to this Agreement. By mutual agreement between general contractor and the Unions, the parties can open this section of the agreement as needed to make changes to the list of permanent arbitrators.
- 6.3 The PLA Jurisdictional Dispute Resolution Process ("Process") sets forth the procedures below to resolve jurisdictional disputes between and among Contractors, Subcontractors, and Unions engaged in the building and construction industry. Further, the Process will be followed for any grievance or dispute arising out of the interpretation or application of this PLA by the parties except for the prohibition on attorneys contained in 6.11. All decisions made through the Process are final and binding upon all parties.

DISPUTE PROCESS

- 6.4 Administrative functions under the Process shall be performed through the offices of the President and/or Secretary-Treasurer of the Illinois AFL-CIO, or their designated representative, called the Administrator. In no event shall any officer, employee, agent, attorney, or other representative of the Illinois AFL-CIO be subject to any subpoena to appear or testify at any jurisdictional dispute hearing.
- 6.5 There shall be no abandonment of work during any case participating in this Process or in violation of the arbitration decision. All parties to this Process release the Illinois AFL-CIO from any liability arising from its action or inaction and covenant not to sue the Illinois AFL-CIO, nor its officers, employees, agents or attorneys.

- 6.6 In the event of a dispute relating to trade or work jurisdiction, all parties, including the employers, Contractors or Subcontractors, agree that a final and binding resolution of the dispute shall be resolved as follows:
- (a) Representatives of the affected trades and the Contractor or Subcontractor shall meet on the job-site within two (2) business days after receiving written notice in an effort to resolve the dispute. (In the event there is a dispute between local Unions affiliated with the same International Union, the decision of the General President, or his/her designee, as the internal jurisdictional authority of that International Union, shall constitute a final and binding decision and determination as to the jurisdiction of work.)
 - (b) If no settlement is achieved subsequent to the preceding Paragraph, the matter shall be referred to the local area Building & Construction Trades Council, which shall meet with the affected trades within two (2) business days subsequent to receiving written notice. In the event the parties do not wish to avail themselves of the local Building & Construction Trades Council, the parties may elect to invoke the services of their respective International Representatives with no extension of the time limitations. An agreement reached at this Step shall be final and binding upon all parties.
 - (c) If no settlement agreement is reached during the proceedings contemplated by Paragraphs "a" or "b" above, the matter shall be immediately referred to the Illinois Jurisdictional Dispute Process for final and binding resolution of said dispute. Said referral submission shall be in writing and served upon the Illinois AFL-CIO, or the Administrator, pursuant to paragraph 6.4 of this agreement. The Administrator shall, within three (3) days, provide for the selection of an available Arbitrator to hear said dispute within this time period. Upon good cause shown and determined by the Administrator, an additional three (3) day extension for said hearing shall be granted at the sole discretion of the Administrator. Only upon mutual agreement of all parties may the Administrator extend the hearing for a period in excess of the time frames contemplated under this Paragraph. Business days are defined as Monday through Friday, excluding contract holidays.
- 6.7 The primary concern of the Process shall be the adjustment of jurisdictional disputes arising out of the Project. A sufficient number of Arbitrators shall be selected from list of approved Arbitrators as referenced Sec. 6.2 and shall be assigned per Sec. 6.8. Decisions shall be only for the Project and shall become effective immediately upon issuance and complied with by all parties. The authority of the Arbitrator shall be restricted and limited specifically to the terms and provisions of Article VI and generally to this Agreement as a whole.
- 6.8 The Arbitrator chosen shall be randomly selected based on the list of Arbitrators in Sec.6.2 and geographical location of the jurisdictional dispute and upon his/her availability, and ability to conduct a Hearing within two (2) business days of said notice. The Arbitrator may issue a "bench" decision immediately following the Hearing or he/she may elect to only issue a written decision, said decision must be issued within two (2) business days subsequent to the completion of the Hearing. Copies of all notices, pleadings, supporting memoranda, decisions, etc. shall be provided to all disputing parties and the Illinois State Federation of Labor.
- Any written decision shall be in accordance with this Process and shall be final and binding upon all parties to the dispute and may be a "short form" decision. Fees and costs of the arbitrator shall be divided evenly between the contesting parties except that any party wishing a full opinion and decision beyond the short form decision shall bear the reasonable fees and costs of such full opinion. The decision of the Arbitrator shall be final and binding upon the parties hereto, their members, and affiliates.
- In cases of jurisdictional disputes or other disputes between a signatory labor organization and another labor organization, both of which is an affiliate or member of the same International Union, the matter or dispute shall be settled in the manner set forth by their International Constitution and/or as determined by the International Union's General President whose decision shall be final and binding upon all parties. In no event shall there be an abandonment of work.

- 6.9 In rendering a decision, the Arbitrator shall determine:
- (a) First, whether a previous agreement of record or applicable agreement, including a disclaimer agreement, between National or International Unions to the dispute or agreements between local Unions involved in the dispute, governs;
 - (b) Only if the Arbitrator finds that the dispute is not covered by an appropriate or applicable agreement of record or agreement between the crafts to the dispute, he shall then consider the established trade practice in the industry and prevailing practice in the locality. Where there is a previous decision of record governing the case, the Arbitrator shall give equal weight to such decision of record, unless the prevailing practice in the locality in the past ten years favors one craft. In that case, the Arbitrator shall base his decision on the prevailing practice in the locality. Except, that if the Arbitrator finds that a craft has improperly obtained the prevailing practice in the locality through raiding, the undercutting of wages or by the use of vertical agreements, the Arbitrator shall rely on the decision of record and established trade practice in the industry rather than the prevailing practice in the locality; and,
 - (c) Only if none of the above criteria is found to exist, the Arbitrator shall then consider that because efficiency, cost or continuity and good management are essential to the well-being of the industry, the interests of the consumer or the past practices of the employer shall not be ignored.
 - (d) The Arbitrator is not authorized to award back pay or any other damages for a miss-assignment of work; nor, may any party bring an independent action for back pay or any other damages, based upon a decision of an Arbitrator.
- 6.10 The Arbitrator shall set forth the basis for his/her decision and shall explain his/her findings regarding the applicability of the above criteria. If lower ranked criteria are relied upon, the Arbitrator shall explain why the higher-ranked criteria were not deemed applicable. The Arbitrator's decision shall only apply to the Project. Agreements of Record, for other PLA projects, are applicable only to those parties signatory to such agreements. Decisions of Record are those that were either attested to by the former Impartial Jurisdictional Disputes Board or adopted by the National Arbitration Panel.
- 6.11 All interested parties, as determined by the Arbitrator, shall be entitled to make presentations to the Arbitrator. Any interested labor organization affiliated to the PLA Committee and party present at the Hearing, whether making a presentation or not, by such presence shall be deemed to accept the jurisdiction of the Arbitrator and to agree to be bound by its decision. In addition to the representative of the local labor organization, a representative of the labor organization's International Union may appear on behalf of the parties. Each party is responsible for arranging for its witnesses. In the event an Arbitrator's subpoena is required, the party requiring said subpoena shall prepare the subpoena for the Arbitrator to execute. Service of the subpoena upon any witness shall be the responsibility of the issuing party. Attorneys shall not be permitted to attend or participate in any portion of a Hearing. The parties are encouraged to determine, prior to Hearing, documentary evidence which may be presented to the Arbitrator on a joint basis.
- 6.12 The Order of Presentation in all Hearings before an Arbitrator shall be
- I. Identification and Stipulation of the Parties
 - II. Unions(s) claiming the disputed work presents its case
 - III. Union(s) assigned the disputed work presents its case
 - IV. Employer assigning the disputed work presents its case
 - V. Evidence from other interested parties (i.e., general contractor, project manager, owner)
 - VI. Rebuttal by Union(s) claiming the disputed work
 - VII. Additional submissions permitted and requested by Arbitrator
 - VIII. Closing arguments by the parties

- 6.13 All parties bound to the provisions of this Process hereby release the Illinois AFL-CIO, its respective officers, agents, employees or designated representatives, specifically including any Arbitrator participating in said Process, from any and all liability or claim, of whatsoever nature, and specifically incorporating the protections provided in the Illinois Arbitration Act, as amended from time to time.
- 6.14 Neither the Process, as an arbitration panel, nor its Administrator, shall have any authority to undertake any action to enforce its decision(s). Rather, it shall be the responsibility of the prevailing party to seek appropriate enforcement of a decision, including findings, orders or awards of the Arbitrator or Administrator determining non-compliance with a prior award or decision.
- 6.15 If at any time there is a question as to the jurisdiction of the Illinois Jurisdictional Dispute Resolution Process, the primary responsibility for any determination of the arbitrability of a dispute and the jurisdiction of the Arbitrator shall be borne by the party requesting the Arbitrator to hear the underlying jurisdictional dispute. The affected party or parties may proceed before the Arbitrator even in the absence or one or more stipulated parties with the issue of jurisdiction as an additional item to be decided by the Arbitrator. The Administrator may participate in proceedings seeking a declaration or determination that the underlying dispute is subject to the jurisdiction and process of the Illinois Jurisdictional Dispute Resolution Process. In any such proceedings, the non-prevailing party and/or the party challenging the jurisdiction of the Illinois Jurisdictional Dispute Resolution Process shall bear all the costs, expenses and attorneys' fees incurred by the Illinois Jurisdictional Dispute Resolution Process and/or its Administrator in establishing its jurisdiction.

ARTICLE VII -WORK STOPPAGES AND LOCKOUTS

- 7.1 During the term of this PLA, no Union or any of its members, officers, stewards, employees, agents or representatives shall instigate, support, sanction, maintain, or participate in any strike, picketing, walkout, work stoppage, slow down or other activity that interferes with the routine and timely prosecution of work at the Project site or at any other contractor's or supplier's facility that is necessary to performance of work at the Project site. Hand billing at the Project site during the designated lunch period and before commencement or following conclusion of the established standard workday shall not, in itself, be deemed an activity that interferes with the routine and timely prosecution of work on the Project.
- 7.2 Should any activity prohibited by paragraph 7.1 of this Article occur, the Union shall undertake all steps reasonably necessary to promptly end such prohibited activities.
- (a) No Union complying with its obligations under this Article shall be liable for acts of employees for which it has no responsibility or for the unauthorized acts of employees it represents. Any employee who participates or encourages any activity prohibited by paragraph 7.1 shall be immediately suspended from all work on the Project for a period equal to the greater of (a) 60 days; or (b) the maximum disciplinary period allowed under the applicable collective bargaining agreement for engaging in comparable unauthorized or prohibited activity.
- (b) Neither the PLA Committee nor its affiliates shall be liable for acts of employees for which it has no responsibility. The principal officer or officers of the PLA Committee will immediately instruct, order and use the best efforts of his office to cause the affiliated Union or Unions to cease any violations of this Article. The PLA Committee in its compliance with this obligation shall not be liable for acts of its affiliates. The principal officer or officers of any involved affiliate will immediately instruct, order or use the best effort of his office to cause the employees the Union represents to cease any violations of this Article. A Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its rights in any instance shall not be deemed a waiver of its rights in any other instance. During the term of this PLA, the Prime Contractor and its Subcontractors shall not engage in any lockout at the Project site of employees covered by this Agreement.

- 7.3 Upon notification of violations of this Article, the principal officer or officers of the local area Building and Construction Trades Council, and the Illinois AFL-CIO Statewide Project Labor Agreement Committee as appropriate, will immediately instruct, order and use their best efforts to cause the affiliated Union or Unions to cease any violations of this Article. A Trades Council and the Committee otherwise in compliance with the obligations under this paragraph shall not be liable for unauthorized acts of its affiliates.
- 7.4 In the event that activities in violation of this Article are not immediately halted through the efforts of the parties, any aggrieved party may invoke the special arbitration provisions set forth in paragraph 7.5 of this Article.
- 7.5 Upon written notice to the other involved parties by the most expeditious means available, any aggrieved party may institute the following special arbitration procedure when a breach of this Article is alleged:
- (a) The party invoking this procedure shall notify the individual designated as the Permanent Arbitrator pursuant to paragraph 6.8 of the nature of the alleged violation; such notice shall be by the most expeditious means possible. The initiating party may also furnish such additional factual information as may be reasonably necessary for the Permanent Arbitrator to understand the relevant circumstances. Copies of any written materials provided to the arbitrator shall also be contemporaneously provided by the most expeditious means possible to the party alleged to be in violation and to all other involved parties.
 - (b) Upon receipt of said notice the Permanent Arbitrator shall set and hold a hearing within twenty-four (24) hours if it is contended the violation is ongoing, but not before twenty-four (24) hours after the written notice to all parties involved as required above.
 - (c) The Permanent Arbitrator shall notify the parties by facsimile or any other effective written means, of the place and time chosen by the Permanent Arbitrator for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Permanent Arbitrator.
 - (d) The sole issue at the hearing shall be whether a violation of this Article has, in fact, occurred. An Award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The Permanent Arbitrator may order cessation of the violation of this Article, and such Award shall be served on all parties by hand or registered mail upon issuance.
 - (e) Such Award may be enforced by any court of competent jurisdiction upon the filing of the Award and such other relevant documents as may be required. Facsimile or other hardcopy written notice of the filing of such enforcement proceedings shall be given to the other relevant parties. In a proceeding to obtain a temporary order enforcing the Permanent Arbitrator's Award as issued under this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the Permanent Arbitrator's Award shall be served on all parties by hand or by delivery to their last known address or by registered mail.
- 7.6 Individuals found to have violated the provisions of this Article are subject to immediate termination. In addition, general contractor reserves the right to terminate this PLA as to any party found to have violated the provisions of this Article.
- 7.7 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance therewith are hereby waived by parties to whom they accrue.
- 7.8 The fees and expenses of the Permanent Arbitrator shall be borne by the party or parties found in violation, or in the event no violation is found, such fees and expenses shall be borne by the moving party.

ARTICLE VIII- TERMS OF AGREEMENT

- 8.1 If any Article or provision of this Agreement shall be declared invalid, inoperative or unenforceable by operation of law or by any of the above mentioned tribunals of competent jurisdiction, the remainder of this Agreement or the application of such Article or provision to persons or circumstances other than those as to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.
- 8.2 This Agreement shall be in full force as of and from the date of the Authorization to Proceed until the Project contract is closed.
- 8.3 This PLA may not be changed or modified except by the subsequent written agreement of the parties. All parties represent that they have the full legal authority to enter into this PLA. This PLA may be executed by the parties in one or more counterparts.
- 8.4 Any liability arising out of this PLA shall be severable and not joint. General contractor shall not be liable to any person or other party for any violation of this PLA by any other party, and no Contractor or Union shall be liable for any violation of this PLA by any other Contractor or Union.
- 8.5 The failure or refusal of a party to exercise its rights hereunder in one or more instances shall not be deemed a waiver of any such rights in respect of a separate instance of the same or similar nature.

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Exhibit B - Contractor Letter of Assent

(Date) _____ To All Parties:

In accordance with the terms and conditions of the contract(s) for Construction Work on [project identification] this Letter of Assent hereby confirms that the undersigned Prime Contractor or Subcontractor agrees to be bound by the terms and conditions of the Project Labor Agreement established and entered into in connection with said Project.

It is the understanding and intent of the undersigned party that this Project Labor Agreement shall pertain only to the identified Project. In the event it is necessary for the undersigned party to become signatory to a collective bargaining agreement to which it is not otherwise a party in order that it may lawfully make certain required contributions to applicable fringe benefit funds, the undersigned party hereby expressly conditions its acceptance of and limits its participation in such collective bargaining agreement to its work on the Project.

(Authorized Company Officer)

(Company)

Fact Sheet

Project Labor Agreement Requirement (Senate Bill 20/Public Act 98-109) Leaking Underground Storage Tank Program

What is Senate Bill 20?

Senate Bill 20 (which was signed into law as Public Act 98-109) created the Economic Development Act of 2013 and, in part, amended the Environmental Protection Act at 415 ILCS 5/57.7, 57.8, and 57.11, generally, as follows:

- In approving any site investigation or corrective action plan budget, the Illinois EPA shall determine, pursuant to the Project Labor Agreements Act, whether the corrective action shall include a project labor agreement (PLA) if payment from the UST Fund is to be requested.
- If the Illinois EPA determined that the corrective action must include a PLA, a complete application for payment from the UST Fund must include, in part, a PLA certification from the UST owner or operator that the corrective action was (1) performed under a PLA that meets the requirements of Section 25 of the Project Labor Agreements Act and (2) implemented in a manner consistent with the terms and conditions of the Project Labor Agreements Act and in full compliance with all statutes, regulations, and executive orders as required under the Project Labor Agreements Act and the Prevailing Wage Act.

How does Senate Bill 20 affect me?

UST owners and operators who seek payment from the UST Fund must have a PLA for certain corrective action activities. Subsequent applications for payment from the UST Fund must include a PLA certification signed by the UST owner or operator. This applies to work that requires a PLA and that was approved or modified by the Illinois EPA on or after July 25, 2013.

What is a PLA?

According to the Project Labor Agreements Act (30 ILCS 571), a PLA is a form of pre-hire collective bargaining agreement covering all terms and conditions of employment on a specific project. The PLA, in part, sets forth procedures for resolving disputes and grievances; contains guarantees against strikes, lockouts, or similar actions; ensures a reliable source of skilled and experienced labor; sets forth goals for hours to be performed by underrepresented minorities and females; permits the selection of the lowest qualified responsible bidder; and binds all contractors and subcontractors on the public works project.

What corrective action activities require a PLA?

Corrective action activities that require a PLA include, but are not limited to, the excavation, transportation, and disposal of contaminated soil, and backfilling of the excavation; installation/replacement of concrete or asphalt; installation of potable water supply wells; and hookup to municipal water supply. Please contact Leaking UST Program staff if you have questions about whether the PLA requirement applies to the corrective action activities at your site.



Is there guidance on how to prepare a PLA?

For questions about preparation of a PLA, please contact the Leaking UST Program staff.

Does a PLA apply to early action activities?

No. The amendments to the Environmental Protection Act apply to Section 57.7(a) and (b) for site investigation and corrective action.

Does a PLA apply to emergency situations?

No.

If a PLA was required but my application for payment from the UST Fund does not include a signed PLA certification, will my application for payment be approved?

No. For corrective action that must include a PLA, a complete application for payment must contain the PLA certification from the UST owner or operator in order for payment from the UST Fund to be approved.

Am I required to comply with prevailing wage provisions?

Yes. Senate Bill 20 expanded the definition of "public works" at Section 2 of the Prevailing Wage Act (820 ILCS 130) to include any corrective action performed pursuant to Title XVI of the Environmental Protection Act for which payment from the UST Fund is requested. Prevailing wage requirements are overseen and enforced by the Illinois Department of Labor. If you have questions about prevailing wage, please visit the Illinois Department of Labor Web site at www.illinois.gov/idol or dial (217) 782-1710.

When did the law become effective?

The law became effective July 25, 2013.

Who should I contact if I have questions?

You may contact the project manager on-call for the Leaking UST Section at 217-524-3300.

This fact sheet is for general information only and is not intended to replace, interpret, or modify laws, rules, or regulations.

July 2013

Fact Sheet

**Project Labor Agreements and the
Leaking Underground Storage Tank Program
(Public Act 98-109)**

What changes were made to the Leaking Underground Storage Tank Program by Public Act 98-109?

The Economic Development Act of 2013 (Public Act 98-109), in part, amended the Environmental Protection Act at 415 ILCS 5/57.7, 57.8, and 57.11; the Prevailing Wage Act at 820 ILCS 130/2; and the Project Labor Agreements Act at 30 ILCS 571/10, generally as follows:

- If payment from the UST Fund is to be requested, in approving any site investigation or corrective action plan, the Illinois EPA must determine, pursuant to the Project Labor Agreements Act, whether the site investigation or corrective action shall include a project labor agreement (PLA).
- If the Illinois EPA determines that site investigation or corrective action must include a PLA, a complete application for payment from the UST Fund must include, in part, a PLA certification from the UST owner or operator that the site investigation or corrective action was (1) performed under a PLA that meets the requirements of Section 25 of the Project Labor Agreements Act and (2) implemented in a manner consistent with the terms and conditions of the Project Labor Agreements Act and in full compliance with all statutes, regulations, and executive orders as required under the Project Labor Agreements Act and the Prevailing Wage Act.

How do these changes affect UST owners and operators?

UST owners and operators who seek payment from the UST Fund must have a PLA for site investigation or corrective action fieldwork where the Illinois EPA reviews a site investigation or corrective action plan on or after July 25, 2013, and determines that a PLA is required for such activities. Subsequent applications for payment from the UST Fund for costs related to such activities must include a PLA certification signed by the UST owner or operator.

What is a PLA?

A PLA is a form of pre-hire collective bargaining agreement entered into pursuant to the Project Labor Agreements Act (30 ILCS 571) that covers all terms and conditions of employment on a specific project. The PLA, in part, sets forth procedures for resolving disputes and grievances; contains guarantees against strikes, lockouts, or similar actions; ensures a reliable source of skilled and experienced labor; sets forth goals for hours to be performed by underrepresented minorities and females; permits the selection of the lowest qualified responsible bidder; and binds all contractors and subcontractors on the public works project.

What activities require a PLA?

Activities that require a PLA include Stage 2 site investigation fieldwork, Stage 3 site investigation fieldwork, or corrective action fieldwork where the Illinois EPA determines that a PLA shall be included. Generally, the fieldwork activities would be those performed by personnel such as laborers, truck drivers, electricians,



plumbers, equipment operators, or mechanics. Determinations as to whether a PLA is required are made by the Illinois EPA on a project-by-project basis. Please contact Leaking UST Program staff if you have questions about whether the PLA requirement applies to the site investigation or corrective action activities at your site.

Is there a model PLA that may be used?

Yes. The [model PLA](#) is linked herein.

Are emergency situations subject to PLAs?

No.

Are early action activities subject to PLAs?

No. The amendments to the Environmental Protection Act apply to Section 57.7 for site investigation and corrective action. (See below regarding the timing of the Illinois EPA's decision regarding whether a PLA will be required.)

Are Stage 1 site investigation activities subject to PLAs?

No. The Illinois EPA's authority to require the use of a PLA is limited to making such determination while reviewing and approving a site investigation plan or a corrective action plan (Section 57.7(c)(3) of the Environmental Protection Act). The Illinois EPA does not review Stage 1 site investigation plans. Rather, such plans consist of a certification pursuant to 35 Ill. Adm. Code 734.315(b).

What types of activities are not subject to PLAs?

Non-fieldwork activities performed off-site such as laboratory analysis, report preparation, calculation of Tier 2 remediation objectives, negotiation of highway authority agreements, etc., as well as fieldwork performed by professional consulting firm staff such as sample collection, are examples of activities that would not require the use of a PLA.

If the Illinois EPA required a PLA but my application for payment from the UST Fund does not include a signed PLA certification, will my application for payment be approved?

No. For site investigation or corrective action activities that must include a PLA, a complete application for payment must contain the PLA certification from the UST owner or operator in order for payment from the UST Fund to be approved (415 ILCS 5/57.8(a)(6)(F)).

Are there any other new reporting requirements associated with the use of a PLA?

Yes. Pursuant to Section 37 of the Project Labor Agreements Act, workforce participation under the PLA by minorities and females must be reported. The *Workforce Participation Quarterly Reporting Form* is provided as part of the Application for Payment Forms.

Am I required to comply with prevailing wage provisions?

Yes. Public Act 98-109 expanded the definition of "public works" at Section 2 of the Prevailing Wage Act (820 ILCS 130) to include any activities performed pursuant to Title XVI of the Environmental Protection Act for which payment from the UST Fund is requested. This includes emergency situations, early action, all stages of site investigation, and corrective action. Please note that prevailing wage provisions apply regardless of whether the Illinois EPA determines that a PLA is required. Prevailing wage requirements are overseen and enforced by the Illinois Department of Labor. If you have questions about prevailing wage, please visit the Illinois Department of Labor Web site at www.illinois.gov/idol or dial (217) 782-1710.

When did Public Act 98-109 become effective?

The law became effective July 25, 2013.

Who should I contact if I have questions?

You may contact the project manager on-call for the Leaking UST Section at 217-524-3300.

This fact sheet is for general information only and is not intended to replace, interpret, or modify laws, rules, or regulations.

July 2013/revised September 2014

This report should be filed for one quarter. This report is being submitted for of year _____.

**Illinois Environmental Protection Agency
Workforce Participation Quarterly Reporting Form
Project Labor Agreements Act (30 ILCS 571/1 et seq.)**

Name of UST Owner or Operator: _____

IEMA Incident Number(s): _____

Name of Leaking UST Site: _____

Dates of Project Work: _____ To: _____

UST Owner or Operator (or Representative) Contact Information

Name: _____ Title: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ E-mail: _____

Workforce Data

Please indicate the number of minority and female individuals employed under the Project Labor Agreement entered into by the general contractor regarding the above-stated IEMA Incident Number(s):

Female: _____

Black or African American: _____

Hispanic or Latino: _____

Asian American: _____

Native American or Alaskan Native: _____

Native Hawaiian or Other Pacific Islander: _____

Verification Statement

On behalf of _____, I, _____, certify that all
(name of UST owner/operator) (name of individual)
information reported herein is true and accurate to the best of my knowledge and belief.

Signature: _____ Date: _____

Title: _____

NOTE: Pursuant to Section 37 of the Project Labor Agreements Act (30 ILCS 571/37), Sections 57.7 and 57.8 of the Environmental Protection Act (415 ILCS 5/57.7 and 57.8), and Title 35, Section 734.605 of the Illinois Administrative Code (35 Ill. Adm. Code 734.605), the above information is required for work performed pursuant to Title XVI of the Environmental Protection Act for which payment from the Underground Storage Tank Fund is requested. Disclosure of this information is required. Failure to properly complete this form in its entirety may result in the delay or denial of any payment requested hereunder.

