



DISADVANTAGED BUSINESS ENTERPRISE POLICY STATEMENT

Champaign-Urbana Mass Transit District


The Champaign-Urbana Mass Transit District (MTD) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. MTD has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, MTD has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of MTD to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and,
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

MTD's External Affairs Director has been delegated as the DBE Liaison Officer. In that capacity, this individual is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by MTD in its financial assistance agreements with DOT.

MTD has disseminated this policy statement to the Board of Trustees and all of the components of our organization. This policy statement is published on MTD's public website (mtd.org) and is distributed to DBE and non-DBE communities that perform work for MTD on DOT-assisted contracts. Distribution is accomplished through email to contractors, the local Small Business Development Center, and other community organizations servicing the disadvantaged business community.


Karl P. Gnadt
Managing Director


Date



SECTION 1: GENERAL REQUIREMENTS

Objectives (26.1)

The objectives of MTD's DBE Program are found in MTD's Disadvantaged Business Enterprise Policy Statement as provided in 49 CFR Part 26.1.

Applicability (26.3)

As a Tier I recipient of federal financial assistance from the USDOT and FTA, MTD is required to implement a DBE Program in accordance with 49 CFR Part 26. The DBE Program herein applies to certified DBE firms, and all federally funded (DOT assisted) contracts.

Definitions (26.5)

The terms used in this program have the meanings defined in 49 CFR Part 26.5.

Non-Discrimination (26.7)

MTD will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, MTD will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Record Keeping Requirements (26.11)

Reporting to FTA (26.11(a-b))

MTD will report DBE participation to the USDOT and FTA on an annual basis or as directed, using the Uniform Report of DBE Awards or Commitments and Payments Form. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List (26.11(c))

In an effort to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on MTD's federally assisted contracts for use in helping set overall goals and maintain the objectives of 49 CFR Part 26, MTD maintains a bidders list. MTD Appx. 2.5b Bidders List, **Exhibit #1**, is used in solicitations to collect the following information about DBE and non-DBE contractors and subcontractors:

1. Firm name;
2. Firm address, including zip code;



3. Firm's status as a DBE or non-DBE;
4. Race and gender information for the firm's majority owner;
5. NAICS code applicable to each scope of work the firm will perform in its bid;
6. Firm's point of contact and the point of contact's title, phone number, and email address;
7. Firm's website;
8. Age of the firm; and
9. The annual gross receipts of the firm. This information may be obtained by asking each firm to indicate into what gross receipts bracket they fit (*e.g.*, less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million; etc.) rather than requesting an exact figure from the firm.

At the time of this DBE Program update, the USDOT is currently developing a centralized online system for recipients to submit bidders list information. MTD will require all bidders on federally assisted projects to provide this information within bid/proposal submissions. MTD will require all bidders responding to an RFP on a design-build procurement to submit an open-ended DBE Performance Plan (DPP) within the proposal submission, detailing the types of work the bidder will solicit DBEs to perform and a projected timeframe in which subcontracts will come to fruition. While this system is under development, MTD will continue collecting the necessary bidders list data. Submission of this data to USDOT will be performed once the system becomes operational.

Federal Financial Assistance Agreement (26.13)

MTD is a recipient of federal financial assistance has signed the following assurances, applicable to all federal and DOT-assisted contracts:

Assurance (26.13(a))

MTD shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. MTD shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. MTD's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to MTD of its failure to carry out its approved program, the USDOT may impose sanction as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance (26.13(b))

MTD will ensure that the following clause is placed in every federal and DOT-assisted contract and subcontract: The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the



termination of this contract or such other remedy as the recipient 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 contractor from future bidding as non-responsible.

SECTION 2: ADMINISTRATIVE REQUIREMENTS

DBE Program Updates (26.21)

As a Tier I recipient of federal financial assistance from FTA, MTD shall continue to carry out this program until all funds from DOT financial assistance have been expended. MTD shall provide to DOT updates representing significant changes in the program.

DBE Policy Statement (26.23)

MTD has issued a Disadvantaged Business Enterprise Policy Statement, found on the first page of this program. This statement expresses MTD's commitment to this DBE Program and ensuring compliance with the objectives of 49 CFR Part 26. This policy statement has been circulated throughout MTD and to both DBE and non-DBE business communities that perform work on DOT-assisted contracts. The policy statement is also available online at mtd.org.

DBE Liaison Officer (DBELO) (26.25)

MTD's Managing Director has designated the following individual as the DBE Liaison Officer (DBELO):

Ashlee McLaughlin
External Affairs Director
Champaign-Urbana Mass Transit District
1101 E University Avenue
Urbana, Illinois 61802
217.384.8188
amclaughlin@mtd.org

The DBELO is responsible for implementing and overseeing all aspects of MTD's DBE program, ensuring compliance with 49 CFR Part 26. As shown in **Exhibit #2**, MTD's organizational chart confirms that the DBELO has direct, independent access to the Managing Director for all DBE program matters.

The DBELO is responsible for developing, implementing and monitoring all aspects of MTD's DBE program, in coordination with other appropriate officials. The DBELO is assisted by the Procurement Specialist and additional support staff to assist in the administration of the program. The duties and responsibilities of the DBELO include the following:



- Develops, monitors, and provides the implementation and continuing evaluation of the DBE Program;
- Ensures reporting of statistical data and other information as required by DOT;
- Prepares and administers Federal and State grants in accordance with established procedures and maintains required compliance documentation and records;
- Reports all transit vehicle procurement awards to FTA;
- Refers DBEs to the Uniform Certification Process provided by IDOT, as applicable;
- Reviews good faith effort analyses;
- Serves as the MTD's reconsideration official for determination of sufficient good faith efforts;
- Investigate complaints and protests filed against the DBE Program;
- Reviews bid invitations, specifications, contracts, and related administrative documents, as necessary;
- Participates in outreach events to DBEs and community organizations to advise them of opportunities;
- Participates in pre-bid meetings, project kick-off meetings, and project status meetings;
- Maintains records on past DBE participation to be used in monitoring progress towards current goals and towards setting future goals;
- Establishes or approves contract-specific DBE goals where applicable;
- Evaluates all change orders that affect the original contract value for potential DBE participation opportunities;
- Maintain accurate and up-to-date records demonstrating DBE efforts and progress within MTD;
- Reviews third party contracts and purchase requisitions for compliance with this program, as necessary;
- Analyzes MTD's progress toward goal attainment and identifies ways to improve progress;
- Advises the Managing Director on DBE matters and achievement;
- Ensure that safeguards are instituted to mitigate any potential conflicts of interest including reporting relationships;
- Works to set triennial and project DBE goals following FTA's methodology; and
- Reviews and approves the DBE goal methodology.

Procurement Specialist

MTD's Procurement Specialist is responsible for assisting in the administration of MTD's DBE Program. The duties and responsibilities of the Procurement Specialist in accordance with this DBE Program include the following:

- Dissemination of the DBE Policy Statement;
- Create and maintain webpage to provide a list of support services for DBEs and small businesses;
- Publicly advertise and issue solicitation notifications for all IFB/RFPs to DBEs with NAICS codes related to the solicitation, as applicable;
- Submit bid notices and project documents as requested to DBEs in a timely manner;
- Prepares bid invitations, specifications, contracts, and related administrative documents;
- Participates in pre-bid meetings, project kick-off meetings, and project status meetings;
- Determines whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive;
- Perform and document analysis of good faith efforts;
- Completes MTD Appx. 2.5d DBE Project Compliance Review Checklist, as necessary;



- Prepares and/or reviews third party contracts and purchase requisitions for compliance with this program, where applicable, as necessary;
- Review subcontracts executed by contractors for compliance with this program, as necessary;
- Maintain MTD's Bidders List Directory;
- Maintain accurate and up-to-date records demonstrating DBE efforts and progress within MTD;
- Participates in outreach events to DBEs and community organizations to advise them of opportunities;
- Maintains records on past DBE participation to be used in monitoring progress towards current goals and towards setting future goals;
- Monitor contractors' and subcontractors' compliance with their DBE participation commitments through the life of the contracts;
- Works to set triennial and project DBE goals following FTA's methodology;
- Establishes contract-specific DBE goals where applicable;
- Reviews bid invitations, specifications, contracts, and related administrative documents, as necessary;
- Evaluates all change orders that affect the original contract value for potential DBE participation opportunities; and
- Offers instruction on bid/proposal specifications, procurement policies and procedures, and general bidding requirements to DBEs and non-DBEs when requested.

Support Staff

A project manager or managers will be designated for each DOT-assisted contract. The project manager may be an MTD employee and/or a consultant (Architect, Engineer, etc.). The project manager(s) has the following duties and responsibilities:

- Reviews bid specifications prior to release;
- Participates in pre-bid meetings, project kick-off meetings, and project status meetings;
- Provides on-site oversight and monitoring of work performed;
- Completes MTD Appx. 2.5e DBE Participation Field Log, ensuring DBEs perform work as promised;
- Completes MTD Appx. 2.5d DBE Project Compliance Review Checklist.

DBE Financial Institutions (26.27)

It is MTD Policy to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

MTD has searched the IL UCP DBE Directory <https://webapps.dot.illinois.gov/UCP/ExternalSearch> for NAICS Codes 522320, 522110, 541211, 541219, 541214 in District 5 and the FDIC Minority Depository Institutions Program <https://www.fdic.gov/regulations/resources/minority/mdi.html> for qualified companies offering financial and related services.

MTD has identified the following such institutions operating in Champaign County, Illinois: None.

Information on the availability of such institutions can be obtained from the DBELO.



Prompt Payment Mechanisms (26.29)

MTD will ensure that the following clause is placed in every federal and DOT-assisted contract and subcontract: The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from MTD. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of MTD. All payment applications with the exception of the first payment application shall be accompanied by MTD's Appx. 2.5f Prompt Payment Form in compliance with this regulation. This clause applies to both DBE and non-DBE subcontracts. Failure to comply with the payment requirements herein will constitute a material breach of the contract.

MTD Appx. 2.5f Prompt Payment Form, **Exhibit #3**, is used in all MTD contracts which include both DBE and non-DBE subcontracts to monitor compliance with 49 CFR Part 26.29.

Directory (26.31)

IDOT (the uniform certification program (UCP) agency) maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the DBE firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The directory is updated monthly. MTD includes the URL to IDOT's UCP directory in all solicitations by which interested persons can obtain access to the directory: <https://webapps.dot.illinois.gov/UCP/ExternalSearch>.

Overconcentration (26.33)

Overconcentration may occur when prime firms subcontract work to DBEs and other small businesses in certain work types more frequently than others. This event would place a disproportionate burden on non-small businesses in those areas of work.

To address future concerns of overconcentration, MTD will focus on using non-DBE firms for areas where an overconcentration has been identified. MTD will maintain records on past DBE participation to compare the participation rates across different NAICS codes and contract types to determine if a disproportionate share of DBE contracts is concentrated in a specific industry, trade, or scope of work. Every three years when developing the DBE goal methodology, MTD will review the contracting activities for the past three years to see if DBE overconcentration exists. In such cases, MTD will attempt to assist DBEs in performing work outside the field in which non-DBEs are unduly burdened.

Business Development Programs (26.35)

MTD has not established a business development program.

Monitoring & Enforcement Mechanisms (26.37)

MTD will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:



1. MTD will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. MTD will consider similar action under its own legal authority, including responsibility determinations in future contracts. MTD will monitor and enforce mechanisms to ensure compliance with 49 CFR Part 26. Failure to comply with the DBE requirements of the contract or failure to utilize DBE firms as stated in the bid/proposal constitutes a material breach of contract. The DBELO shall have the discretion to recommend to MTD's Managing Director to apply suitable sanctions to the contractor if the contractor is found to be in non-compliance with the DBE requirements. Such sanctions may include but are not limited to withholding payment to the contractor until corrective action is taken; suspension and/or termination of the contract, in whole or in part; and debarring or suspending the contractor from entering into future contracts with MTD.
3. MTD will maintain a running tally of actual payments to DBE firms for work committed to them at the time of contract award. This includes:
 - a. A frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether the current implementation of contract goals is projected to be sufficient in meeting MTD's annual goal; and
 - b. Review of payments made to each listed DBE relative to the progress of the work, including payments for such work to the prime contractor to determine whether the prime contractor is on track with meeting its DBE commitment and whether any projected shortfall exists which will require the prime contractor's good faith efforts to address to meet the contract goal pursuant to 49 CFR § 26.53(g).

Small Business Participation (26.39)

MTD's DBE Program includes an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors. MTD is committed to providing equal and open access for all small business enterprises to participate in MTD's contracting opportunities.

SECTION 3: GOALS, GOOD FAITH EFFORTS, & COUNTING

Set-asides or Quotas (26.43)

MTD does not use quotas in any way in the administration of this DBE program.



Overall Goals (26.45)

General Rule

In accordance with 49 CFR Part 26.45, MTD will set an overall goal for DBE participation on DOT-assisted contracts to submit to FTA by August 1 every three years. The overall goal shall be based on demonstratable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on MTD's DOT-assisted projects. The goal shall reflect MTD's determination of the level of DBE participation to be expected absent the effects of discrimination. The overall goal must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

Developing the DBE Participation Goal

MTD will also request use of project-specific DBE goals as appropriate and/or will establish project specific DBE goals as directed by FTA. The process generally used by MTD to establish overall DBE goals is as follows:

1. Calculate base figures to determine the relative availability of DBEs in specific areas of expertise using the ILUCP, Census Bureau's County Business Pattern (CBP) data base, IDOT's 2017 Disparity Study, and the NAICS.
2. Examine all available evidence to determine what adjustment, if any, is needed to the base figure to arrive at an overall goal, unless the evidence suggests an adjustment is not necessary. Evidence which is considered includes MTD's figure of the actual DBE participation in the DOT-assisted contracts during the previous years, as appropriate and IDOT's 2017 Disparity Study.
3. Before finalizing the overall goal each time, MTD will consult with IDOT, minority, women's, general contractor groups and/or other small business to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and MTD's efforts to establish a level playing field for the participation of DBEs. The consultation includes a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process. The consultation process is documented in the submission of the overall goal to FTA.
4. Following this consultation, MTD will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at MTD's office and for a 30-day comment period following the date of the notice. This publication will be posted in MTD's local newspaper, *The News-Gazette*, and MTD's website, and include addresses to which comments may be sent and addresses where the proposal may be reviewed.

Goal Submission

MTD will submit an overall DBE goal to FTA every three years. MTD's overall goal submission to FTA shall include:

1. The overall goal for DBE participation, as a percentage of all FTA funds (exclusive of transit vehicle procurements) that MTD anticipates expending on DOT-assisted contracts in the three forthcoming fiscal years (including the breakout of estimated race neutral and race-conscious participation, as appropriate);
2. A description of the methodology, worksheets, etc., used to establish the goal, including:



- a. Base figures and the evidence with which the goal was calculated;
 - b. The adjustments made to the base figure and the evidence relied on for the adjustments or an explanation of why evidence was not used to adjust the base figure; and
 - c. Projections of the portions of the overall goal expected to be met through race-neutral and race-conscious measures, respectively.
3. A description of the consultations MTD engaged with, and a summary of information and comments received during this public participation process and MTD's responses to such; and
 4. Proof of publication of the goal in media outlets listed above.

MTD will begin using the overall goal on October 1st of each three-year period, unless otherwise directed by FTA. If MTD sets a DBE goal specific to a project, that goal will be applied at the time of the first solicitation for any FTA-assisted contract associated with that project. Once established, both the overall three-year goal and any project-specific goals remain in effect for the duration of their respective periods. If additional time is needed to collect data or take other steps to develop an approach to setting overall goals, MTD will request FTA for an interim goal and/or goal-setting mechanism which shall reflect the relative availability of DBEs and avoid imposing undue burdens on non-DBEs.

Shortfall Analysis (26.47)

If the awards and commitments shown on MTD's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, MTD will perform a shortfall analysis:

1. Analyze in detail the reasons for the difference between the overall goal and awards and commitments made in that fiscal year;
2. Establish specific steps and milestones to correct the problems identified in the analysis which will enable MTD to fully meet the goal for the new fiscal year; and
3. Retain analysis and corrective actions in records for no less than three (3) years, to be made available FTA upon request for review.

Transit Vehicle Manufacturers Goals (26.49)

MTD requires each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the TVM requirements of 49 CFR Part 26.49. MTD will verify each TVM bidder/proposer's eligibility on FTA's website prior to the award of a contract or option on a contract. MTD shall report all transit vehicle procurement awards to FTA within 30 days of making an award of a new contract and/or exercising an option on a multi-year contract including the name of the successful TVM and the federal share of the contractual commitment at the time of award.

MTD will not include FTA assistance for transit vehicle procurements in the base amount from which the overall goal is calculated. Alternatively, MTD may, at its discretion and with FTA approval, establish project-



specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Means Used to Meet Overall Goals (26.51)

Race-Neutral Participation (26.51(a-c))

MTD aims to meet the maximum feasible portion of the overall goal using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal. MTD will use the following race-neutral means to increase DBE participation:

1. Solicitations issued for IFB/RFPs will be publicly advertised and issued to all DBEs in the ILUCP with NAICS codes related to the solicitation, as applicable;
2. Ensure unreasonable requirements are not placed on firms in order to qualify to do business, such as unnecessary past experience and excessive bonding;
3. Establish delivery schedules, quantities, and specifications, where the solicitation permits;
4. Provide a list of DBEs who have expressed interest in the project via addendum when DBEs have expressed interest;
5. Schedule procurement timelines to provide sufficient time prior to submission dates;
6. Issue reminders regarding procurement timelines to ensure fairness and transparency by keeping all potential bidders informed, fostering equal opportunity, encouraging participation, reducing confusion, and giving businesses adequate time to prepare;
7. Provide resources and support services for DBEs and small businesses on MTD's website, offering guidance on procurement processes, technical assistance resources, and sharing information about upcoming opportunities to support active DBE participation; and,
8. Include the link to the ILUCP in all bidding documents.

When submitting the overall DBE goal to FTA, MTD will also submit the anticipated portion of the goal which MTD expects to meet through race-neutral means and the basis for such portion. The projection is subject to approval by FTA, in conjunction with the overall goal.

Contract Goals (26.51(d-g))

MTD will use contract goals during the period covered by MTD's overall goal to meet any portion of the overall goal MTD does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of MTD's overall goal that is not projected to be met through the use of race-neutral means.

MTD will establish contract goals only on those DOT-assisted contracts that have subcontracting opportunities. MTD need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (*e.g.*, type and location of work, availability of DBEs to perform the particular type of work). Contract goals established will not be subdivided into group-specific goals, but rather provide for participation by all certified DBEs.



To ensure MTD's DBE Program continues to be narrowly tailored to overcome the effects of discrimination, MTD will adjust the use of contract goals as follows:

1. If the FTA-approved overall DBE goal estimates that MTD can meet the overall goal for a given year through race-neutral means, MTD will implement the DBE Program without setting goals during that year, unless it becomes necessary to meet the overall goal.
2. If, during the course of any year in which MTD is using contract goals, MTD determines that the overall goal will be exceeded, MTD will reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If it is determined that MTD will fall short of the overall goal, MTD will make appropriate modifications in the use of race-neutral and/or race-conscious measures in effort to meet the overall goal.
3. If the DBE participation MTD has obtained by race-neutral means alone meets or exceeds the overall goal for two consecutive years, MTD is not required to make a projection of the amount of the goal MTD can meet using such means in the next year. MTD will continue using only race-neutral means to meet the overall goal unless and until MTD does not meet the overall goal for a year.
4. If MTD obtains DBE participation that exceeds the overall goal in two consecutive years using contract goals (*i.e.*, not through the use of race-neutral means alone), MTD will reduce the use of contract goals proportionately in the following year.

In any year in which MTD projects meeting part of the goal through race-neutral means and the remainder through contract goals, MTD will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. MTD will report this data to FTA as provided in 49 CFR Part 26.11.

Good Faith Efforts Procedures (26.53)

Demonstration of Good Faith Efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in 49 CFR Part 26, Appendix A.

MTD is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. MTD shall ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before committing to the performance of the contract by the bidder/offeror.

Information to be Submitted (26.53(b))

MTD treats bidder/offerors' compliance with good faith efforts' requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will only be awarded on the condition of meeting the requirements of 49 CFR Part 26.53. MTD will require the bidders/offerors to submit the following information within submissions of bids/proposals:

1. The names and addresses, including zip codes, of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;



3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and,
6. If the contract goal is not met, evidence of good faith efforts.

Administrative Reconsideration (26.53(d))

Within 10 days of being informed by MTD that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official who has not played any role in the original determination:

Ashlee McLaughlin
External Affairs Director/DBELO
Champaign-Urbana Mass Transit District
1101 E University Avenue
Urbana, Illinois 61802
amclaughlin@mtd.org

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether the goal was met, or adequate good faith efforts were made. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. MTD will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the DOT.

Design-Build Contracts (26.53(e))

If MTD solicits a design-build procurement with minimal project details at time of letting, MTD may set a DBE goal that proposers must meet by submitting a DBE Open-Ended Performance Plan (OEPP) within proposals. The OEPP will replace the requirement to provide the information required in 49 CFR 26.53(b). To be considered responsive, MTD requires bidders/offerors to the following be included in OEPP submissions:

1. A commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amount) that the proposer will solicit DBEs to perform; and,
2. An estimated time frame in which actual DBE subcontracts would be executed.

MTD may agree to make revisions to the OEPP throughout the life of the project (*e.g.*, replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

Good Faith Efforts when a DBE is Replaced on a Contract (26.53(f))

MTD will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to



meet the contract goal. MTD will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, MTD prohibits the prime contractor from terminating a DBE subcontractor without prior written consent. Upon notifying MTD, the contractor shall complete MTD Appx. 2.5g DBE Termination Request, **Exhibit #4**. Written consent will be granted if MTD determines, based on the reasons outlined in the concurrence document, that the prime contractor has good cause to terminate the DBE firm or any portions of its work.

If the contractor fails or refuses to comply in the time specified, MTD will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, MTD may issue a termination for default proceeding.

Good Faith Efforts to Meet the Contract Goal (26.53(g))

When a DBE or any part of its work is terminated by the prime contractor, or if the DBE fails to complete its work on the contract for any reason, including when work committed to a DBE is not countable or reduced due to overestimations made prior to award, MTD requires the prime contractor to use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the prime contractor.

Counting DBE Participation (26.55)

MTD will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

SECTION 4: CERTIFICATION STANDARDS

Certification Process (26.61 – 26.73)

MTD does not process DBE certifications. Any firms interested in becoming a DBE will be referred to IDOT to be certified under the ILUCP. IDOT will use the certification standards of Subpart D of 49 CFR Part 26 and the certification procedures of Subpart E of 49 CFR Part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. IDOT will make certification decisions based on the facts as a whole. IDOT certification application form and documentation requirements can be obtained from IDOT. For information about the certification process or to apply for certification, firms should contact:

Illinois Department of Transportation (IDOT)
2300 S. Dirksen Parkway
Springfield, IL 62764
(217) 782-5490
www.dot.state.il.us



SECTION 5: CERTIFICATION PROCEDURES

Unified Certification Programs (26.81)

MTD participates in a statewide uniform certification plan administered by IDOT. The ILUCP will meet all of the requirements of this section.

Certifications (26.83)

Certification Decisions (26.83(a-h))

Certifications and recertifications are performed by IDOT, confirming the eligibility of the DBEs under 49 CFR Part 26.

No Change Affidavits and Notices of Change (26.83(i-j))

IDOT requires all DBEs to inform them, in a written affidavit, of any change in circumstances affecting the DBEs continuing eligibility within 30 days of the occurrence of the change affecting the DBE's ability to meet size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26 or any material change in the information provided in the DBE's application form.

Conversely, if no material changes in the DBE's application have occurred, IDOT requires all owners of all DBEs to submit, on the anniversary date of the DBEs certification, a "no change" affidavit meeting the requirements of 49 CFR Part 26.83(j).

Decertification (26.87)

Decertifications and suspensions are performed by IDOT.

Consequences (26.87(j))

In the event MTD has executed a contract with a prime contractor who has:

1. Made the commitment to using a DBE, but a subcontract has not been executed before IDOT issues the Notice of Decision (NOD) regarding the DBE's certification status, the prime contractor will not include the portion of the DBE's work in the contract goal. MTD will require the prime contractor to meet the contract goal with an eligible DBE or demonstrate good faith efforts to do so.
2. Executed a subcontract with a DBE before IDOT issues the NOD regarding the DBE's certification status, the prime contractor will continue to count the portion of the DBE's work toward the contract goal. However, the prime contractor may not extend or add work to the contract without prior written consent from MTD.
3. Executed a subcontract with a DBE that is later decertified, the DBE's performance of the contract prior to decertification may continue to count toward meeting the contract goal. However, the portion of the DBE's performance after decertification must not count toward the MTD's overall goal.
4. Executed a subcontract with a DBE before the certifier issues the NOD regarding the DBE's certification status, the prime contractor may continue to receive credit toward the contract goal



as set forth in 49 CFR Part 26.87(j)(3). However, the portion of the DBE's performance of the subcontract after decertification will not count towards MTD's overall goal.

In the event MTD has made a commitment to using a DBE prime contractor, but the contract has not been executed before IDOT issues the NOD regarding the DBE's certification status, the DBE's work will not count toward MTD's overall goal.

The following exceptions apply to these situations:

1. If the DBE was decertified solely because it exceeds the business size standard during the performance of the contract, MTD may continue to count the portion of the DBE's work on the contract remaining after IDOT issued the NOD towards MTD's overall goal and the contract goal.
2. If the DBE was decertified because it was acquired by or merged with a non-DBE, MTD will not continue to count the portions of the decertified firm's work on the contract remaining, after IDOT has issued a NOD, toward either the contract goal or the overall goal, even if a prime contractor has executed a subcontract with the firm or MTD has executed a prime contract with a DBE that was later decertified. In this case, if eliminating the credit of the decertified firm will affect the prime contractor's ability to meet the contract goal, MTD will require the prime contractor to subcontract an eligible DBE to the extent needed to meet the contract goal or demonstrate good faith efforts to do so.

Certification Appeals (26.88)

A firm that has been decertified may appeal the decision to the USDOT, Office of Civil Rights, under 49 CFR Part 26.89. Any firm or complainant may appeal IDOT's decision in a certification manner to DOT. Such appeals shall be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division (S-33)
1200 New Jersey Ave. S.E.
Washington, DC 20590
(855) 368-4200
<https://www.transportation.gov/civil-rights>

SECTION 6: COMPLIANCE & ENFORCEMENT

Information, Confidentiality, Cooperation, & Intimidation or Retaliation (26.109)

Availability of Records (26.109(a))

In responding to requests for information concerning any aspect of MTD's DBE Program, MTD complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). MTD may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.



MTD will require all prime contractors to maintain records and documents of payments to DBEs for no less than 3 years following the performance of the contract. These records shall be available upon request by any authorized representative of MTD or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

Confidentiality of Information on Complainants (26.109(b))

MTD will safeguard from disclosure to third-parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. A summary of Illinois's FOIA law is available: <http://www.nfoic.org/illinois-foia-laws>.

Notwithstanding any contrary provisions of state or local law, MTD will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Cooperation (26.109(c))

MTD will cooperate fully and promptly with USDOT and recipient (*e.g.*, IDOT, MTD, etc.) compliance reviews, investigations, and other requests for information.

Intimidation & Retaliation (26.109(d))

MTD will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.



EXHIBIT #1

| Originated | Revision |
|-------------|---------------|
| J. Sullivan | V. Carrington |
| 3/15/19 | 1/23/25 |

Appx. 2.5b

Bidders List

The Contractor shall provide the information requested below for both the Contractor and all Subcontractors/Suppliers. The Bidders List shall contain the business firms which will be providing materials, supplies, equipment, or services on the project. Failure to complete the form in its entirety could result in the bid being deemed nonresponsive.

Prime Contractor Information

| | | | |
|-----------------------|-------|------------------------|--------------------------|
| Firm Name: | _____ | Bid Amount: | _____ |
| Street Address: | _____ | City, State, Zip: | _____ |
| NAICS Code(s): | _____ | | |
| Point of Contact: | _____ | Website: | _____ |
| Title: | _____ | Annual Gross Receipts: | Less than \$1 million |
| Phone: | _____ | | \$1-3 million |
| Email: | _____ | | \$3-6 million |
| DBE? | Yes | No | Greater than \$6 million |
| Owner Race/Ethnicity: | _____ | Age of Firm: | _____ |
| Owner Gender: | _____ | | |

Subcontractor Information

| | | | |
|-----------------------|-------|------------------------|--------------------------|
| Firm Name: | _____ | Bid Amount: | _____ |
| Street Address: | _____ | City, State, Zip: | _____ |
| NAICS Code(s): | _____ | | |
| Point of Contact: | _____ | Website: | _____ |
| Title: | _____ | Annual Gross Receipts: | Less than \$1 million |
| Phone: | _____ | | \$1-3 million |
| Email: | _____ | | \$3-6 million |
| DBE? | Yes | No | Greater than \$6 million |
| Owner Race/Ethnicity: | _____ | Age of Firm: | _____ |
| Owner Gender: | _____ | | |

| | | | |
|-----------------------|-------|------------------------|--------------------------|
| Firm Name: | _____ | Bid Amount: | _____ |
| Street Address: | _____ | City, State, Zip: | _____ |
| NAICS Code(s): | _____ | | |
| Point of Contact: | _____ | Website: | _____ |
| Title: | _____ | Annual Gross Receipts: | Less than \$1 million |
| Phone: | _____ | | \$1-3 million |
| Email: | _____ | | \$3-6 million |
| DBE? | Yes | No | Greater than \$6 million |
| Owner Race/Ethnicity: | _____ | Age of Firm: | _____ |
| Owner Gender: | _____ | | |



| Originated | Revision |
|-------------|---------------|
| J. Sullivan | V. Carrington |
| 3/15/19 | 1/23/25 |

Appx. 2.6

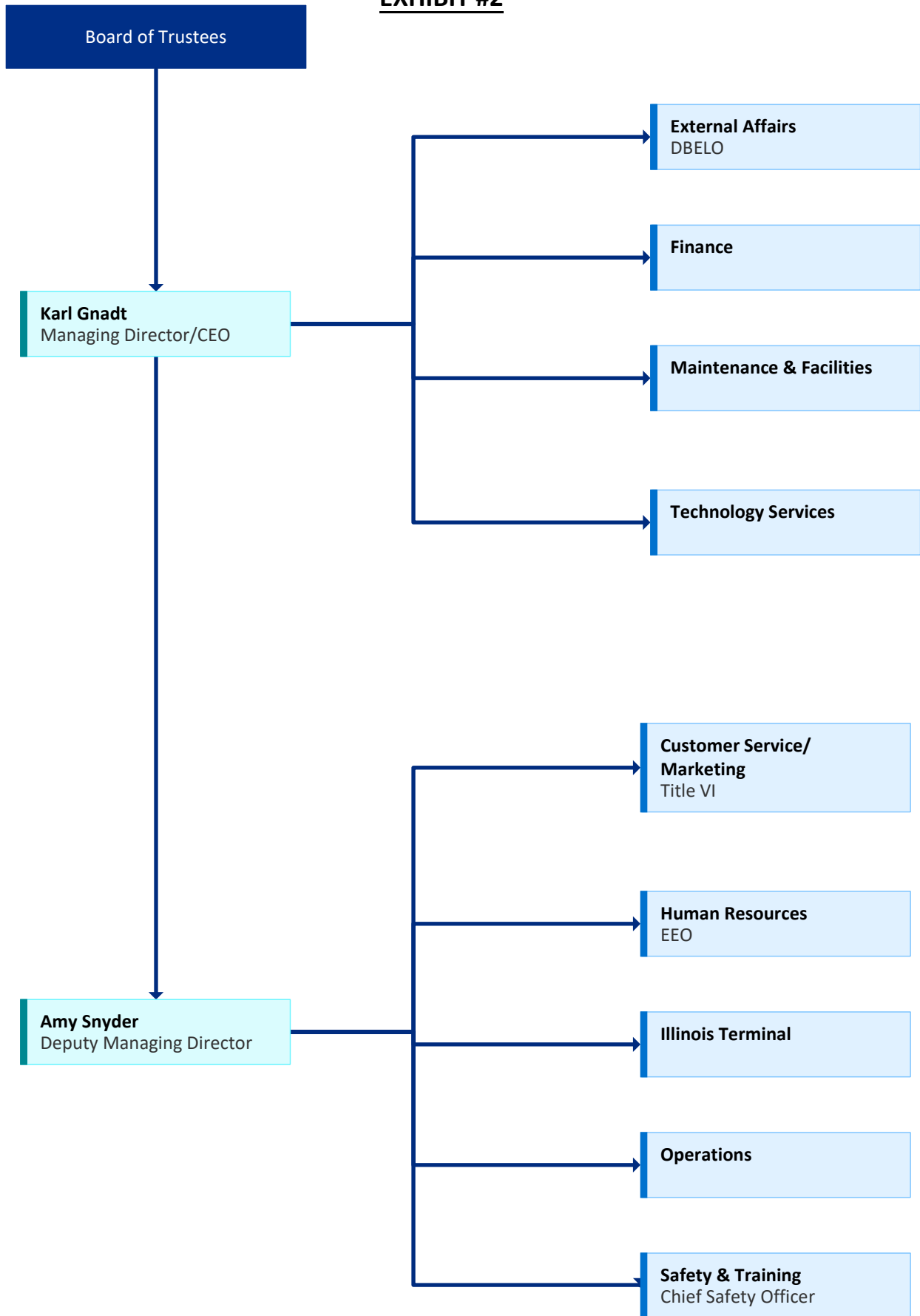
Subcontractor Information continued

| | | | |
|-----------------------|-------------|------------------------|--------------------------|
| Firm Name: | _____ | Bid Amount: | _____ |
| Street Address: | _____ | City, State, Zip: | _____ |
| NAICS Code(s): | _____ | | |
| Point of Contact: | _____ | Website: | _____ |
| Title: | _____ | | Less than \$1 million |
| Phone: | _____ | Annual Gross Receipts: | \$1-3 million |
| Email: | _____ | | \$3-6 million |
| DBE? | Yes No | | Greater than \$6 million |
| Owner Race/Ethnicity: | _____ | Age of Firm: | _____ |
| Owner Gender: | _____ | | |

| | | | |
|-----------------------|-------------|------------------------|--------------------------|
| Firm Name: | _____ | Bid Amount: | _____ |
| Street Address: | _____ | City, State, Zip: | _____ |
| NAICS Code(s): | _____ | | |
| Point of Contact: | _____ | Website: | _____ |
| Title: | _____ | | Less than \$1 million |
| Phone: | _____ | Annual Gross Receipts: | \$1-3 million |
| Email: | _____ | | \$3-6 million |
| DBE? | Yes No | | Greater than \$6 million |
| Owner Race/Ethnicity: | _____ | Age of Firm: | _____ |
| Owner Gender: | _____ | | |

| | | | |
|-----------------------|-------------|------------------------|--------------------------|
| Firm Name: | _____ | Bid Amount: | _____ |
| Street Address: | _____ | City, State, Zip: | _____ |
| NAICS Code(s): | _____ | | |
| Point of Contact: | _____ | Website: | _____ |
| Title: | _____ | | Less than \$1 million |
| Phone: | _____ | Annual Gross Receipts: | \$1-3 million |
| Email: | _____ | | \$3-6 million |
| DBE? | Yes No | | Greater than \$6 million |
| Owner Race/Ethnicity: | _____ | Age of Firm: | _____ |
| Owner Gender: | _____ | | |

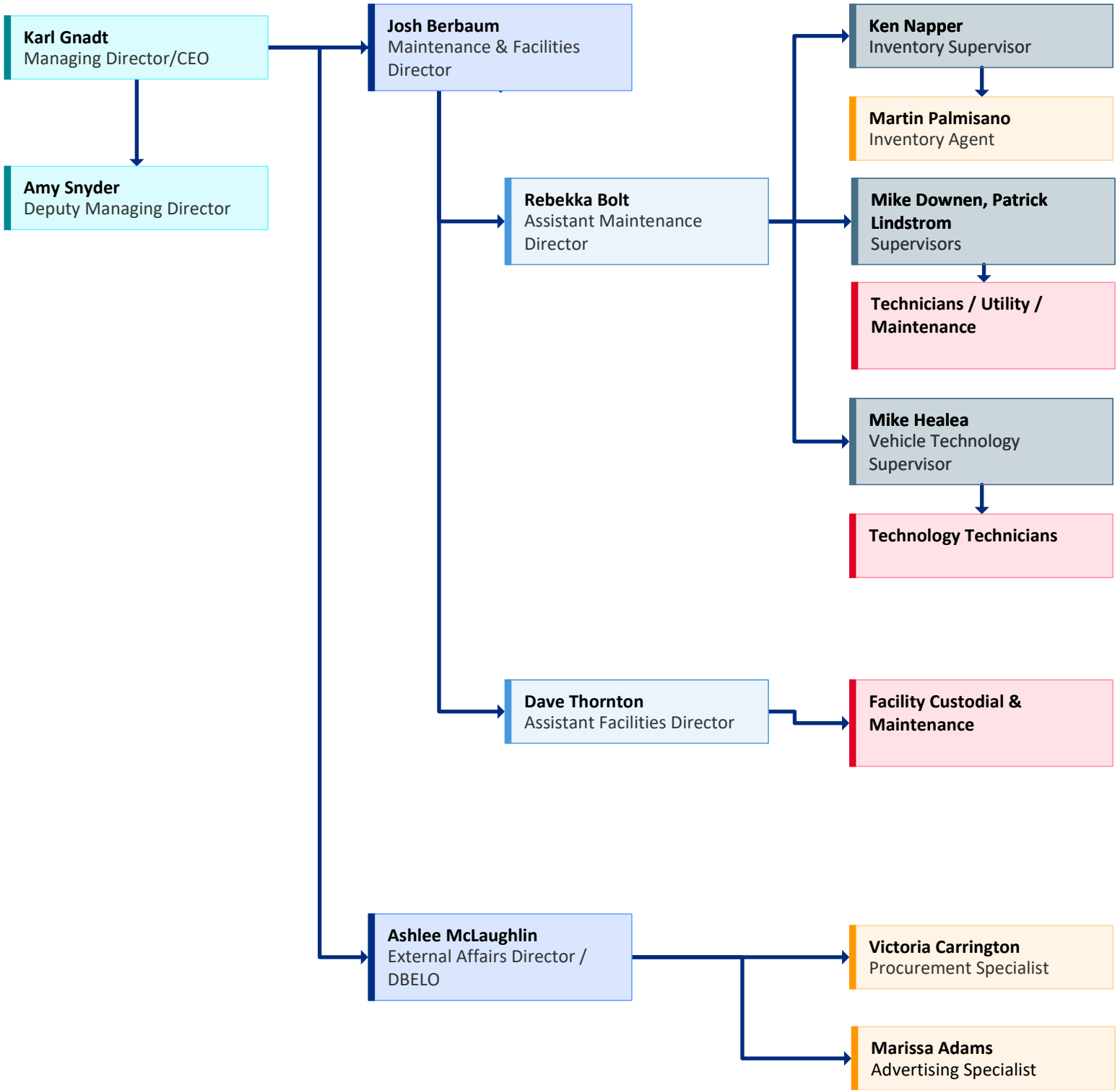
EXHIBIT #2

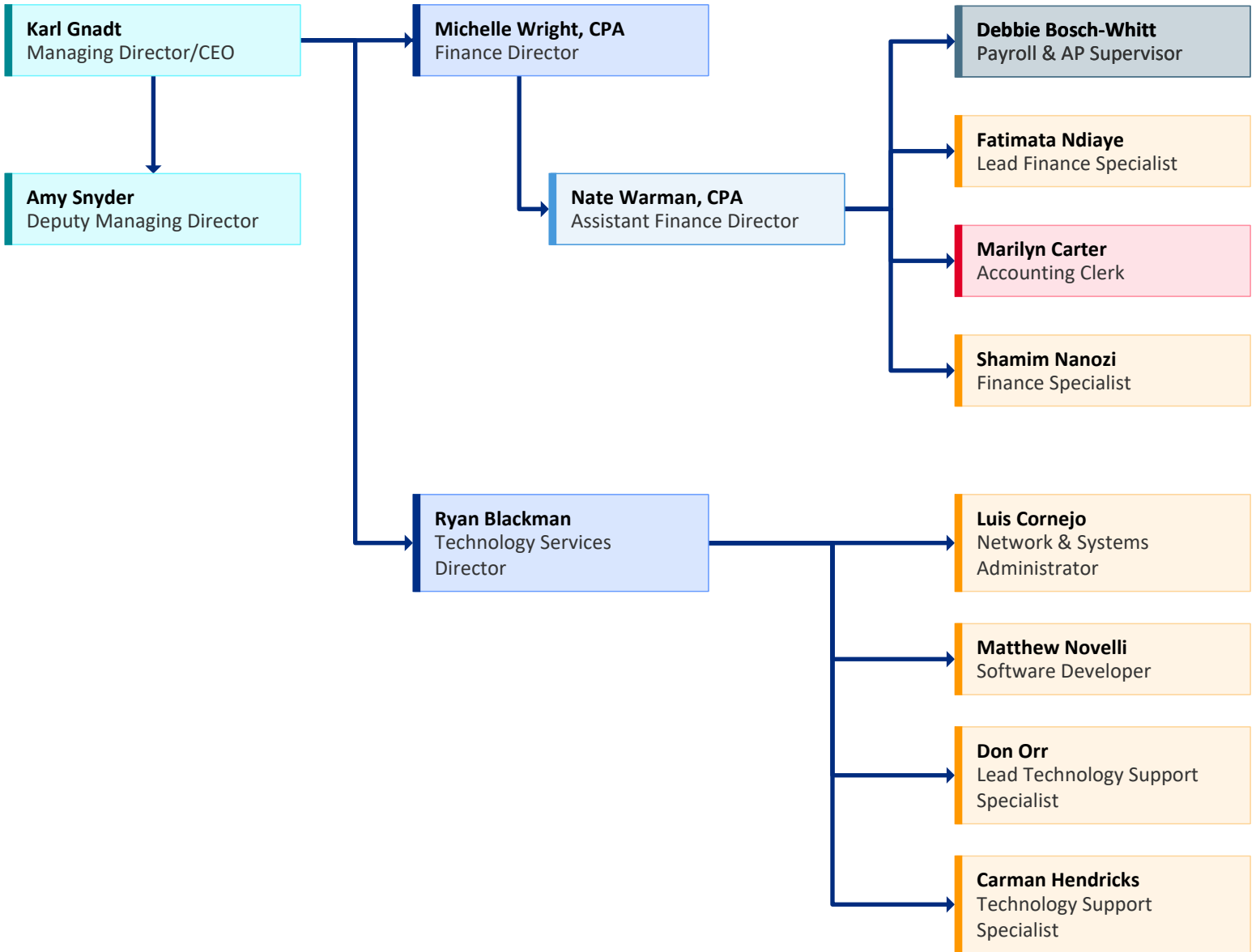


Departments

Revised: February 14, 2025





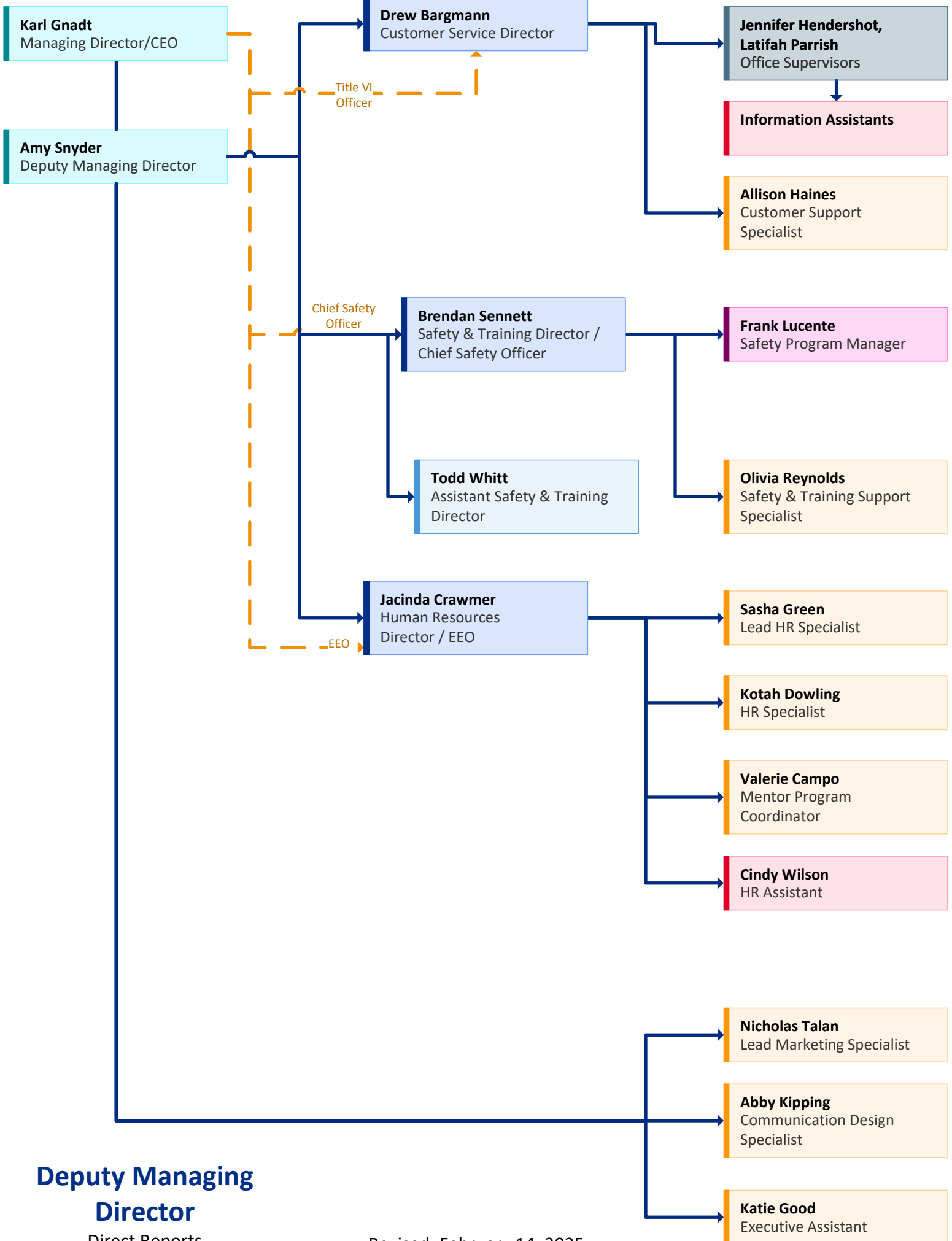


Managing Director

Direct Reports (Cont.)

Revised: February 14, 2025

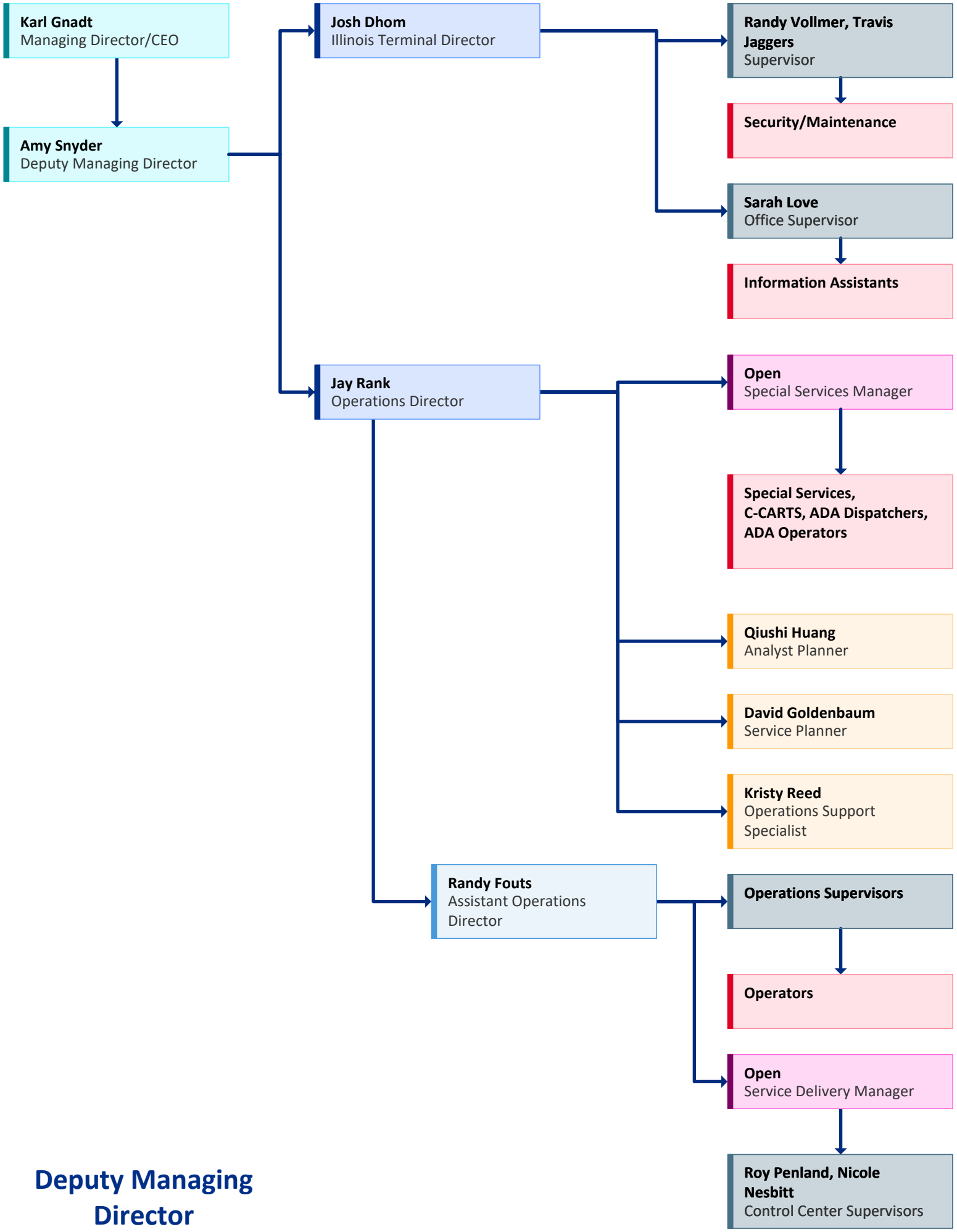




Deputy Managing Director

Direct Reports

Revised: February 14, 2025



Deputy Managing Director

Direct Reports (Cont.)

Revised: February 14, 2025

Executive

Manager

Hourly

Director

Supervisor

Assistant Director

Staff / Specialist

—————→ Direct Report

- - - - -→ Indirect Report

Key

Revised: February 14, 2025





EXHIBIT #3

| | |
|-------------|---------------|
| Originated | Revision |
| J. Sullivan | V. Carrington |
| 8/7/19 | 1/23/25 |

Appx. 2.5f

Prompt Payment Form

This form shall accompany each payment application with the exception of the first payment application and completed based on payments for all work performed on the previous payment application.

The Prime Contractor shall make all payments, including retainage, owed to the subcontractors for satisfactory completion of accepted work within 30 days of receipt of payment from MTD. The Prime Contractor will not be reimbursed for work performed by subcontractors unless and until Prime Contractor ensures that subcontractors are promptly paid for the work performed on all previous payment applications.

Project: _____ Prime Contractor: _____

Previous Payment Application #:

Current Payment Application #:

Period of Work:

Period of Work:

Date Payment Received by Prime:

Prompt Payments

| Subcontractor | Subcontract Total \$ | Work Performed Previous Period \$ | Amount Paid This Period \$ | Date Payment Received by Sub | Total Paid to Date \$ | Subcontract Balance to Finish \$ | Retainage Withheld % | Retainage Withheld \$ |
|---------------|----------------------|-----------------------------------|----------------------------|------------------------------|-----------------------|----------------------------------|----------------------|-----------------------|
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Notes

Prime Contractor

MTD

Certification

I hereby certify that to the best of my knowledge and with the exception of those subcontractors or suppliers listed above, all subcontractors and suppliers have been paid for satisfactory work performed and any retainage withheld on such work in accordance with the contract (within 30 days of receiving payment from MTD for satisfactory work performed during the previous payment application period of work listed above) and the provisions of 49 CFR Part 26.

Prime Contractor Signature: _____ Date: _____

EXHIBIT #4



| Originated | Revision #1 |
|-------------|---------------|
| J. Sullivan | V. Carrington |
| 3/15/19 | 1/31/25 |

Appx. 2.5g

DBE Termination Request

This form must be completed by the Contractor when requesting the termination or replacement of a DBE subcontractor. The Contractor must provide valid justification, supporting documentation, and obtain prior written consent from MTD before proceeding with any termination or substitution. Failure to comply with 49 CFR Part 26 requirements is a material breach of contract.

Project: _____ Contractor: _____

DBE Firm Name: _____ Date: _____

Reason for Request

Check all that apply and provide supporting documentation for each selected reason:

- DBE has failed or is unwilling to execute the subcontract
- DBE has failed or refuses to perform the work in a manner consistent with industry standards
- DBE has failed or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements
- DBE has become bankrupt, insolvent, or exhibits credit unworthiness
- DBE has become ineligible to work on public works projects due to debarment or suspension
- DBE has provided notice of voluntary withdrawal from the project
- DBE is unable to perform the work due to lack of capacity or resources
- DBE has become decertified as a DBE
- DBE's work is found to be unsatisfactory, non-compliant, or substantially delayed for reasons within control
- Other: _____

Supporting Documentation

Check all that apply and attach all applicable documents for each item selected:

- Written notice of intent to request termination issued to DBE
- DBE's response received five (5) days of receipt of Contractor's notice of termination
- Evidence of non-compliance by DBE firm
- Correspondence between the Contractor and the DBE firm
- Documentation reflecting incapacity, ineligibility, or decertification

Certification

Affidavit of Contractor

I, the undersigned, certify that the information provided is accurate and that this termination request complies with 49 CFR Part 26. By signing this document, I declare and affirm under penalty of perjury that the contents of the foregoing documents are true and correct, and no material facts have been omitted, and that I am authorized on behalf of the Contractor to make this Affidavit.

Contractor Signature: _____ Date: _____

Determination

To be completed by MTD's DBELO or authorized representative

- Approved - The request for termination/substitution is granted. The Contractor shall make good faith efforts to engage a replacement DBE firm (if applicable).
- Denied - The request for termination/substitution is rejected. The Contractor shall utilize the DBE firm as originally committed. The Contractor may provide additional justification and supporting documents for reconsideration.

MTD Signature: _____ Date: _____