

# **Twin Cities Area Transportation Authority (TCATA)**



**275 East Wall Street  
Benton Harbor, MI 49022**

**Invitation To Bid:  
Facility Renovations**

**Due: September 5, 2025 by 5pm est.**

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## **INVITATION TO BID – TWIN CITIES AREA TRANSPORTATION AUTHORITY**

TWIN CITIES AREA TRANSPORTATION AUTHORITY will be accepting Sealed Bids for Facility Renovations located at 275 E. Wall St., Benton Harbor, MI 49022.

A site visit will be conducted on August 13, 2025 @10am at Twin Cities Area Transportation Authority located at 275 E. Wall St., Benton Harbor, MI 49022. Please e-mail Operations Manager Nick Fort to RSVP at [nfort@tcatabus.org](mailto:nfort@tcatabus.org). Bids should be e-mailed to Mark Epps, Procurement Manager at [mepps@tcatabus.org](mailto:mepps@tcatabus.org) by September 5, 2025 no later than 5pm EST

A copy of this solicitation can be found on Twin Cities Area Transportation Authority website. If you are a licensed contractor interested in bidding on this work, you can obtain a bid packet by visiting TCATA website at <https://www.mywaythere.org/tcatabusiness.asp>.

Certified Disadvantaged Businesses Enterprises (DBE) are encouraged to submit proposals. Proposers are required to document whether the individual is a DBE. TCATA, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C §§ 2000b to 200b-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, will afford disadvantaged business enterprises full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Twin Cities Area Transportation Authority reserves the right to reject any and all bids not prepared and submitted in accordance with the provisions of this Advertisement and/or the Specifications contained in the Bid Packet. The following pages contain the Bidder Information and Requirements, Specifications, Bid Form, and Acknowledgement of Receipt Form.

## **BIDDER INFORMATION AND REQUIREMENTS**

### **General**

Sealed bids, subject to the conditions, specifications, and instructions below and as attached, will be accepted until 3pm local time, September 5, 2025. Bids will be posted on TCATA website <https://www.mywaythere.org/tcatabusiness.asp>

All bids are to be submitted on and in accordance with the attached Bid Form. The form must be signed by an authorized representative of the bidder and dated in the appropriate space.

Additional information or clarification of any of the instructions or information contained herein may be obtained from the Procurement Manager via e-mail at [mepps@tcatabus.org](mailto:mepps@tcatabus.org)

Specifications are based on TCATA needs and standards to meet specific TCATA requirements. Specifications are not established arbitrarily to limit competition or to exclude otherwise competitive bidders.

In case of disputes as to whether the service quoted or delivered meets specifications, the decision of the TCATA shall be final and binding on all parties.

### **Bidder's Responsibility to the TCATA**

The TCATA will hold each bidder responsible for compliance with all specifications and compliance with all federal, state, and local laws and regulations applicable to this bid and any subsequent contract.

### **Contract Period**

The successful bidder will have 90 days from the date the contract is signed to complete the project.

### **Pricing or Bid Amounts**

Throughout the term of the contract(s), the bid prices may not be changed.

### **Addenda**

Any bidder(s) finding discrepancy in or omission from the specifications, in doubt as to their meaning, or believing that the specifications are discriminatory shall notify the TCATA, in writing, a minimum of five (5) working days before the scheduled bid opening. Clarifications or changes in these specifications will be issued, in writing, only by the TCATA authorized representative. All inquiries should be directed to the Mark Epps, Procurement Manager at [mepps@tcatabus.org](mailto:mepps@tcatabus.org). Exceptions, as taken by the bidder(s), in no way obligate the TCATA to change the specifications.

### **Taxes**

TCATA is a tax-exempt organization. Please do not include taxes in your bid.

### **Submission of Bids**

The submission of a bid shall be considered an agreement by the bidder to all the terms, conditions, and specifications provided herein and in the various bid documents. Any bidder may withdraw his or her bid either in person or in writing at any time prior to the opening of bids.

### **Bid Evaluation Bases**

Contractor shall have minimal of three (3) years of experience in General Contracting.

Bids which show any omission, irregularity, and alteration of forms, conditional or unconditional additions not called for, unresponsive bids, or bids obviously unbalanced may be rejected.

**The TCATA reserves the right to reject any and all bids.**

### **Award of Contract**

Before awarding any contract, the TCATA shall have the right to require a bidder to submit evidence of his or her qualifications concerning financial and technical resources to guarantee responsiveness to the contract. Failure of any bidder to demonstrate to TCATA officials the ability to be responsive shall be grounds for rejecting the bid.

Bidder must have experience in Electrical Vehicle Charging Stations Installation and Electrical Vehicle Infrastructure. Bidder shall provide three (3) references of comparable work.

The TCATA reserves the right to award alternate contracts when the first contractor cannot perform the work within the timetable specified by the TCATA.

All bids will be judged on the basis of best buy to the TCATA, compliance with all instructions, and conformance with the specifications.

The TCATA reserves the right to award contracts in such a way as to be in the best interest of the TCATA.

A condition of any contract shall be the disclosure of any subcontractors to be used in the performance of the contract.

### **Insurance**

Each successful bidder shall maintain, as specified in the contract, insurance to protect himself/herself or company and the TCATA from any claims that may arise while performing work under this contract.

Each successful bidder will provide proof of workers' compensation insurance if requested. Each successful bidder shall ensure that its owners, officers, and employees observe and exercise all necessary caution and discretion to avoid injury to person or damage to property of any and all kinds.

### **Subcontracting**

Contractors may utilize the services of subcontractors only with prior approval of the TCATA. Contractors may not use any subcontractor that is delinquent in any payments owed to the TCATA. Contractors shall verify proposed subcontractors are in good standing with the TCATA prior to entering into any agreements.

Contractors shall be held responsible for the performance and quality of work of all subcontractors.

All work performed by subcontractors shall be listed on the contractor's invoices, to include the subcontractor's name, work performed, and amount owed/paid. No more than 49% of invoiced amounts may be performed by subcontractors, without additional prior approval of the TCATA. Otherwise, the agreement between the TCATA and the contractor may be voided.

### **Payment**

Contractors shall submit to the TCATA an itemized invoices during the progression of work. Said invoice is to include specific information as required by the TCATA for the services.

Upon satisfactory completion of the work and acceptance of the invoice by the TCATA, payment will be made within Thirty (30) calendar days.

Within fifteen (15) calendar days of receiving payment from the TCATA, contractors shall provide proof of payment to any subcontractors, who performed work billed on that invoice, or the contractor(s) shall provide, in writing to the TCATA and subcontractor, why said subcontractor was not paid.

### **Termination**

The TCATA reserves the right to terminate any contract immediately in the event the contractor(s) discontinues or abandons operations; is adjudged bankrupt or is reorganized under any bankruptcy law; fails to keep in force any required insurance policies; or fails to pay, in a timely fashion, any subcontractor.

Failure of the contractor(s) to comply with any section or part of the bid or subsequent contract will be considered grounds for immediate termination of the contract.

The contract may be terminated by either party by giving fifteen (15) calendar days written notice to the other party.

If the TCATA uses the termination clause, the contractor will be paid for all work completed satisfactorily up to the termination date

**Specifications or Scope of Work**

**FACILITY RENOVATIONS:** This Project includes the Repair/Replacement of Lateral Wall Columns and Exterior Caulking Replacement

(See Drawings)

**Terms and Conditions**

Comply with all applicable federal, state, and local laws, ordinances, and regulations governing safety. Provide all safeguards needed for employees and equipment, and secure any and all permits and licenses that may be required.

Provide proper insurance coverage to indemnify the TCATA and to hold the TCATA harmless against all loss, expenses, or injury to person or property. Furnish evidence to the TCATA that public liability insurance is carried on all equipment and on all employees in the following amounts: Property - \$1,000,000 per occurrence; Personal - \$1,000,000 per occurrence; Aggregate - \$ 2,000,000 per occurrence, and Workers' Compensation - \$1,000,000 per occurrence.

Maintain this insurance coverage at all times and notify the TCATA of any changes or additions that may occur in the Coverage.

Bidders are expected to inspect the project where work is to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the contract to the extent that such information is reasonably attainable. In no event shall a failure to inspect the project constitute grounds for a claim after award of contract.

**Equipment**

Contractor will provide all equipment necessary for Facility Renovations.

**Inspection**

All supplies, equipment, and services shall be subject to inspection or tests prior to acceptance. In the event supplies, equipment, or services are defective in material or workmanship or otherwise not in conformity with specified requirements, the TCATA shall have the right to reject the items or services or require acceptable correction at the Contractor's expense.

**Subcontractors**

The Contractor shall notify the TCATA of any planned use of subcontractors in regards to the resulting contract.

All payments will be made directly to the Contractor.

The Contractor shall ensure that all subcontractors comply with all applicable Federal, State, and Local laws, regulations, mandates, and terms of this solicitation and resulting contract.

Additionally, the Contractor shall not contract with any subcontractor that utilizes the services of illegal immigrants.

### **Cancellation of this Solicitation**

This Solicitation may be cancelled at any time or for any reason, or all bids rejected if it is determined in writing that such action is in the best interest of the TCATA. Receipt of an offer by the TCATA or submission of a bid to the TCATA confers no rights upon the Offeror nor obligates the TCATA in any manner.

### **ITB Evaluation Criteria**

The TCATA intends to award a contract to the Contractor, whose offer, conforming to the solicitation, is the most advantageous on the basis of “best value” for all products, services, and requirements contained herein.

### **Award of Contract**

The TCATA reserves the right to reject any offers and to waive informalities and minor irregularities in offers received.

### **Project Scope**

#### **This Project includes the Repair/Replacement of Lateral Wall Columns and Exterior Caulking Replacement**

The successful contractor(s) will save, protect, defend, and hold harmless the TCATA, their officers, and agents against any suit for damages or judgment that may be rendered in the execution of the scope of work associated with this request for bids.

The contractor(s) will be responsible for strict compliance with EPA, ANSI, OSHA, federal, state, and local regulations applicable. All prices must include compliance with the above regulations.

The owner will not be responsible for the cost of and proper disposal of debris and any hazardous or special waste materials. No items may be salvaged or diverted for private use.

### **Wages**

This successful bidder must comply with Davis-Bacon wage regulations.

### **Davis-Bacon Act Contract Provisions**

***The Davis Bacon Act (DBA) shall apply to contracts in excess of \$2,000 for the construction, alteration, or repair (including painting, decorating, replacement of doors/windows, landscaping, playground installation and other similar work) of facilities/buildings.***

**The Contractor needs to comply with the following DBA requirements:**

(1) Laborers and mechanics employed on a project funded by a federal grant must be paid the minimum prevailing wage for that area in which the work is being done including bona fide fringe benefits. (2) Apprentices or trainees may be paid at less than the prevailing wage rates only when the apprenticeship program are registered with or with a state apprenticeship agency recognized by the Department of Labor.

(3) A Certified Payroll available on the DOL website (<https://www.dol.gov/whd/forms/wh347.pdf>) must be submitted (Form WH-347) with payment request.

**Following are the typical violations of the DBA provisions:**

1. Misclassification of laborers and mechanics
2. Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours).
3. Inadequate recordkeeping, such as not counting all hours worked or not recording hours worked by an individual in two or more classifications during a day.
4. Failure of to maintain a copy of bona fide apprenticeship program and individual registration documents for apprentices.

Failure to comply with the DBA provisions will result to contract payments withheld in sufficient amounts to satisfy liabilities for underpayment of wages and for liquidated damages for overtime violations under the Contract Work Hours and Safety Standards Act (CWHSSA).

In addition, violations of the Davis-Bacon contract clauses are grounds for contract termination, contractor liability for any resulting costs to the federal government and debarment from future contracts.

**Berrien County Michigan Davis Bacon rates can be located at:**

[https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/WAGE-HOUR/Rates\\_2022/Berrien.pdf?sc\\_lang=en&rev=4f77ec2aadeb4a66b07e37f5ee726ca6&hash=E970E58B2EA829E05B112450E8512478](https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/WAGE-HOUR/Rates_2022/Berrien.pdf?sc_lang=en&rev=4f77ec2aadeb4a66b07e37f5ee726ca6&hash=E970E58B2EA829E05B112450E8512478)

**Timetable for Project**

ITB Released	August 4, 2025
Pre-Bid Conference-Site Inspection	August 13, 2025
Deadline for Questions submittals	August 20, 2025
Response to all questions	August 27, 2025
Bids Due	September 5, 2025
Interviews (If needed)	September 9, 2025
Award	September 12, 2025

The contract deadline for this project is 90 days from the date the contract is signed at which time all work and documentation must be submitted to the TCATA. Contract must be executed no later than two weeks after award of the bid.

The successful bidder will have 90 days from the date the contract is signed to complete EV Infrastructure and Charging Installations. The Contract must be executed no later than two weeks after award of the bid.

## **CONTRACTOR'S BOND FOR PUBLIC BUILDINGS OR WORKS**

Act 213 of 1963 AN ACT to provide a procedure for bonding contractors for public buildings and public works of governmental units; and to repeal certain acts and parts of acts. History: 1963, Act 213, Eff. Sept. 6, 1963. The People of the State of Michigan enact: 129.201 Bonds of principal contractor on public building, work, or improvement; irrevocable letter of credit. Sec. 1. Before any contract, exceeding \$50,000.00 for the construction, alteration, or repair of any public building or public work or improvement of the state or a county, city, village, township, school district, public educational institution, other political subdivision, public authority, or public agency hereinafter referred to as the "governmental unit", is awarded, the proposed contractor, hereinafter referred to as the "principal contractor", shall furnish at his or her own cost to the governmental unit a performance bond and a payment bond which shall become binding upon the award of the contract to the principal contractor. However, if the principal contractor is a common carrier as defined in section 3 of Act No. 300 of the Public Acts of 1909, as amended, being section 462.3 of the Michigan Compiled Laws, or the designated operator of a state subsidized railroad, the principal contractor may provide an irrevocable letter of credit from a state or national bank or a state or federally chartered savings and loan association instead of the bonds. Neither the invitation for bids, nor any person acting, or purporting to act, on behalf of the governmental unit shall require that the bonds be furnished by a particular bank or surety company, or through a particular agent or broker, or through a bank, company, agent, or broker in any particular locality

## BID FORM

**Twin Cities Area Transportation Authority**

**Facility Renovations**

**DUE NO LATER THAN 9/5/2025 by 5PM EST**

**All quotations must be delivered VIA EMAIL to the following address:**

**MEPPS@TCATABUS.ORG**

**Name of Firm:** \_\_\_\_\_

Having carefully examined the Bid requirements including the General Conditions, and the Invitation for Bid for FACILITY RENOVATIONS, any addenda, and conditions affecting the work, the undersigned proposes to provide the required materials, services, warranties, and delivery of specified in the attached Quotation for the total sum not to exceed:

**BID PRICE:** \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Address of Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Name and Title of Vendor's Representative who will service contract:

\_\_\_\_\_

Address and Telephone Number of Vendor's Representative:

\_\_\_\_\_

\_\_\_\_\_

E-mail address of Vendor's Representative who will service contract:

\_\_\_\_\_

**ATTACHMENT A**

**STATEMENT OF FIRM'S QUALIFICATIONS**

**Name of FIRM:** \_\_\_\_\_

Please Provide Three References

**REFERENCE 1**

**NAME:** \_\_\_\_\_

**ORGANIZATION:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**AFFILIATION:** \_\_\_\_\_

**PHONE NUMBER:** \_\_\_\_\_

**REFERENCE 2**

**NAME:** \_\_\_\_\_

**ORGANIZATION:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**AFFILIATION:** \_\_\_\_\_

**PHONE NUMBER:** \_\_\_\_\_

**REFERENCE 3**

**NAME:** \_\_\_\_\_

**ORGANIZATION:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**AFFILIATION:** \_\_\_\_\_

**Please provide a brief explanation of the company's history and project experience.**

Please provide the IRS W-9 form: <https://www.irs.gov/pub/irs-pdf/fw9.pdf>

## **ATTACHMENT B**

### **DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION REQUIREMENTS**

for Contracts over \$25,000. This contract is a covered transaction for purposes of 49 CFR Part 29.

As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. The bidder or proposer certifies as follows:

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, TCATA may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to TCATA if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "Quotation," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact TCATA for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this Quotation that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by TACATA.
5. The prospective lower tier participant further agrees by submitting this Quotation that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration. TCATAFTA Certifications
7. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, TACATA may pursue available remedies including suspension and/or debarment. Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Contracts over \$25,000). The contractor certifies, that neither it nor its "principals" as defined

in CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any governmental department or agency.

Date \_\_\_\_\_

Print Name of Authorized Official \_\_\_\_\_

Title \_\_\_\_\_

Signature of Authorized Official \_\_\_\_\_

Company Name \_\_\_\_\_

Company Address \_\_\_\_\_

**BUY AMERICA CERTIFICATION**

**BUY AMERICA CERTIFICATE**

(For Procurement of Steel, Iron, or Manufactured Products) (EXCLUDES ROLLING STOCK)

*Certificate of Compliance with TITLE 49 USC § 5323(j)(1)*

The applicant hereby certifies that it will comply with the requirements of Title 49 USC § 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Authorized Signature /Date

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Title

*Certificate of Non-Compliance with TITLE 49 USC §. 5323(j)(1)*

The Applicant hereby certifies that it cannot comply with the requirements of Title 49

USC § 5323(j)(1) and 49 CFR 661.5, but it may qualify for an exception pursuant to Title 49 USC § 5323(j)(2)(A), 5323(j)(2)(B) or 5323(j)(2)(D), and the regulations in 49 CFR 661.7.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Authorized Signature /Date

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Title

**SWORN AND NOTARIZED AFFIDAVIT OF COMPLIANCE IRAN ECONOMIC SANCTIONS ACT**

Michigan Public Act No. 517 of 2012 All bidders must submit the following certification statement in compliance with Public Act No.517 of 2012 (the "Iran Economic Sanctions Act") and attach this form to the bid; bidders may file a certification statement with the TCATA that confirms compliance for all bids submitted in fiscal year 2025. By submitting this form to the TCATA, you are confirming that you are in compliance with the Act in relation to the submitted bid(s). The TCATA shall not accept a bid unless, and until, this sworn and notarized certification statement is submitted to the TCATA either as an attachment to a given bid, or, as filed with the TCATA to confirm compliance during fiscal year 2025. A certification statement filed with the TCATA for fiscal year 2024 will only be effective for bids submitted and dated from 10/01/2024 to 9/30/2025. The completed form will be kept on file in the purchasing department. The undersigned, the owner or authorized officer of \_\_\_\_\_ (the "Bidder"), pursuant to the compliance certification requirement provided in the County of Berrien Request for Proposal, hereby certifies, represents and warrants that the Bidder (including its officers, directors and employees) is not an "Iran linked business" within the meaning of the Iran Economic Sanctions Act, and that in the event the Bidder is awarded a contract as a result of the aforementioned Request for Proposal, the Bidder will not become an "Iran linked business" at any time during the course of performing the work or any services under the contract. The Bidder further acknowledges that any person who is found to have submitted a false certification is responsible for a civil penalty of not more than \$250,000.00 or 2 times the amount of the contract or proposed contract for which the false certification is made, whichever is greater, the cost of the County of Berrien's investigation, and reasonable attorney fees, in addition to the fine. Moreover, any person who submitted a false certification shall be ineligible to bid on a request for proposal for three (3) years from the date it is determined that the person has submitted the false certification.

BIDDER: \_\_\_\_\_

Name of Bidder By: \_\_\_\_\_

Its: \_\_\_\_\_ Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ ) COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_,

Notary Public \_\_\_\_\_

County, \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Acting in the County of: \_\_\_\_\_

## **ATTACHMENT C**

### **APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING – REQUIRED FOR CONTRACTS OVER \$100,000 Certification for Contracts, Grants, Loans, and Cooperative Agreements**

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

☐ No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

☐ If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

☐ The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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Signature of Authorized Representative

---

Date

---

Printed Name and Title

---

Phone Number / Email Address

## Wilbert Brown Public Transportation Facility

Project Address: 275 E. Wall St  
Benton Harbor, MI 49022

Date: July 29, 2025

To: Mark Epps  
Twin City

Cc: Area Transportation City

Prepared By: Tabitha Niziolek & Lee Fritz

Reviewed By: Meyer Borgman Johnson  
1 N LaSalle Street, Suite 3250  
Chicago, IL 60602

Jonathan Clark (CSBD)



MBJ Comm. No: C25.308

*Please contact Lee Fritz at 630.631.4266 or lfritz@mbjeng.com if you have questions regarding this report.*

### SCOPE OF WORK

The structural scope includes an in-person observation of existing steel elements and repair or replacement recommendations. Local building code was reviewed to determine original design criteria and available site observations along with photographs of the existing building were reviewed to determine structural systems utilized. This report documents the observations, outlines observed deterioration of existing building elements, and provides repair recommendations.

### BACKGROUND

The project site is an existing 1-story building located in Benton Harbor, Michigan. This project consists of the evaluation of the existing steel backup framing along the exterior wall line which exhibits deterioration in the form of rust.

On-site observations were performed on 6/13/2025, by Lee Fritz of Meyer Borgman Johnson. This in-person visit included a visual inspection of exposed existing steel elements and structural conditions. Similar backup conditions are assumed to be present behind finishes and not available for visual observation. Overall layout of the building is sketched in the attached SK-1 including our own definition of grid locations following the main structural bays. The following observations summarize typical defects noted in the structure, with corresponding bold-faced recommendations:

### OBSERVATIONS & RECOMMENDATIONS

During the site visit the following observations were made: The primary building structure is a well-defined system with wide flange columns painted red and a joist roof system with metal roof deck. Primary building structure appears to be in good condition.

The exterior walls of the building include concrete knee walls, window walls, and insulated metal panels. The metal panels appear to be gravity loaded at the base, and backed up with a series of steel HSS tube members. Overall the HSS substructure is good condition, but the base of HSS posts exhibits varying levels of deterioration in the form of rust. It appears that the deterioration of the metal panel joints has allowed water into the building, and the slope of the top of concrete knee wall toward the metal panels has held the water in place behind the flashing, resulting in standing water with long term exposure to the steel backup system. The steel is painted, so rust has developed underneath the paint and is exhibited through staining and bubbling of the paint as rust builds up. The recommendation to mitigate this slope is to add a leveling compound to introduce positive drainage away from the metal panels.

The conditions detailed below pertain to the secondary structure and the extent of visible deterioration. For reference, sketch SK-1 illustrating the repair details and locations of the images mentioned are provided in the appendix. It is also important to note that these observations were based solely on the exposed posts that were visible. Some posts were hidden within walls or other finishes, and we did not have access to them. CSBD used a camera to access and capture images of the elements behind those wall panels and noted that the posts he observed appeared to be in good condition without deterioration matching the exposed post conditions. Deterioration at the post bases

We categorized the observed deterioration as three levels of damage to help define repair extent recommendations. The three levels of observed damage and associated recommendations follow.

## **Level 1**

The HSS post and angles appear to be intact or only show superficial damage such as minor scratches, light surface and paint deterioration, or superficial rust staining without evidence of steel section loss. There are no significant signs of deterioration or loss of structural capacity in these areas. Therefore, there is no immediate concern for its safety or stability. However, it is important to note that superficial damage can sometimes be an early indicator of future degradation, so monitoring is still advised.

**Continue regular visual inspections to ensure no hidden structural issues develop over time. Any minor surface damage should still be addressed by removing visible rust and repainting to prevent further corrosion or wear.**



Figure 1. The angle seems to be intact, and only slight rusting is visible. (Level 1)



Figure 2: There is no visible deterioration on the HSS column. There is slight rusting on the angle. (Level 1)

## **Level 2**

The angle appears to have some deterioration, with localized rusting observed on the HSS. The anchor's engagement is somewhat compromised, indicating the connection may not be fully secure. There is minor corrosion along the edges of the angle and anchor points. Damage is recommended to be addressed to avoid further amplified deterioration. The HSS post does not exhibit structural section loss.

**The deteriorated angle and anchor into the concrete knee wall should be replaced. Refer to sketch SK-1. Angle is recommended to be elevated on a grout pad thus lifting the components out of the direct path of moisture and other environmental conditions. All rust should be removed locally. Steel finish to be repainted. Clip angles for metal panel attachment may need to be reset maintain alignment and secure the structure properly. Continued visual inspection of these locations is also advised.**



Figure 3. The angle shows deterioration and the HSS shows localized rusting. (Level 2)



Figure 4: The angle shows slight deterioration and the HSS shows rusting. (Level 2)

### **Level 3**

The HSS and angles are showing significant deterioration with noticeable damage and steel section loss that may compromise the overall strength and stability of the structure. The angle has experienced severe corrosion, and the HSS shows visible section loss that cannot be repaired with surface treatments. The current configuration may not be able to bear the required load or resist environmental impacts effectively.

**The deteriorated angle should be replaced. Refer to sketch SK-1. A taller vertical leg angle or bent plate will be used in place of the current angle to ensure that the component is elevated above the degraded area, preventing any further structural compromise. Careful attention should be given to the alignment and secure fastening of the new materials to ensure long-term performance and stability.**



Figure 5: Significant deterioration of the angle and HSS section loss observed up to 7" high. (Level 3)



Figure 6: Significant deterioration of the angle and HSS section loss observed beginning above 3" from bottom. (Level 3)

## CONCLUSIONS

The primary structure of the building is in good condition and the structural integrity of the components is largely intact. While there are some isolated areas of deterioration, most of the exterior structure also remains in good condition as there are only some localized issues that require attention. It is important to address the observed issues promptly to prevent further damage and maintain the strength and reliability of the system. Regular maintenance and inspections should continue as scheduled, and preventive measures will help extend the life of the structure. At all bases plates, the bubbled paint and evident rust should be removed and replaced with high performance paint (even at Level 1 conditions). It is also recommended that the top of the concrete knee wall should be sloped to avoid ponding. Ensuring that all recommendations are followed will help mitigate future risks and keep the system in optimal working condition.

## LIMITATIONS

The professional engineering opinions and recommendations contained in this report exclusively concern structural elements, based on visual observation of accessible areas as defined by the limits of the scope of investigation and documents available to us at the time of this report. This assessment does not constitute a warranty or guarantee of performance, including future or latent conditions of the structure, nor does it provide verification of original structural design capacity, occupancy loading requirements or other code compliance, or compliance with existing documents, except where explicitly noted.

We appreciate the opportunity to prepare this report for your use. If you have any questions, please do not hesitate to contact us.

Sincerely,

**MEYER BORGMAN JOHNSON**

A handwritten signature in black ink, appearing to read 'Lee Fritz', with a stylized, flowing script.

Lee Fritz  
Principal

## FIGURE APPENDIX



Figure 7: North facade metal panel exterior.



Figure 8: Noticeable plan offset between the concrete wall and metal panel on the exterior wall.

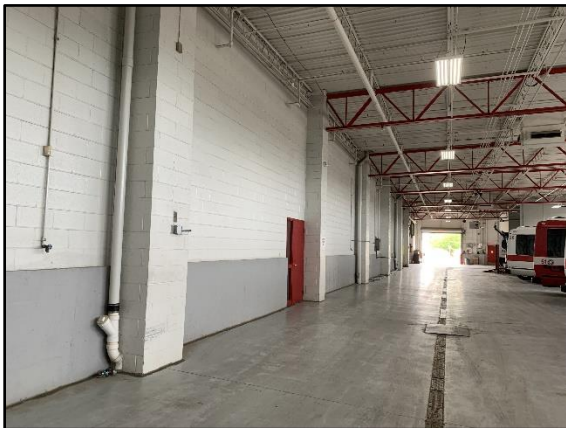


Figure 9: Interior of loading bays with CMU partition and primary roof structure (facing west).



Figure 10: Relative positioning of HSS and angle with respect to a steel column in the interior of the facility.

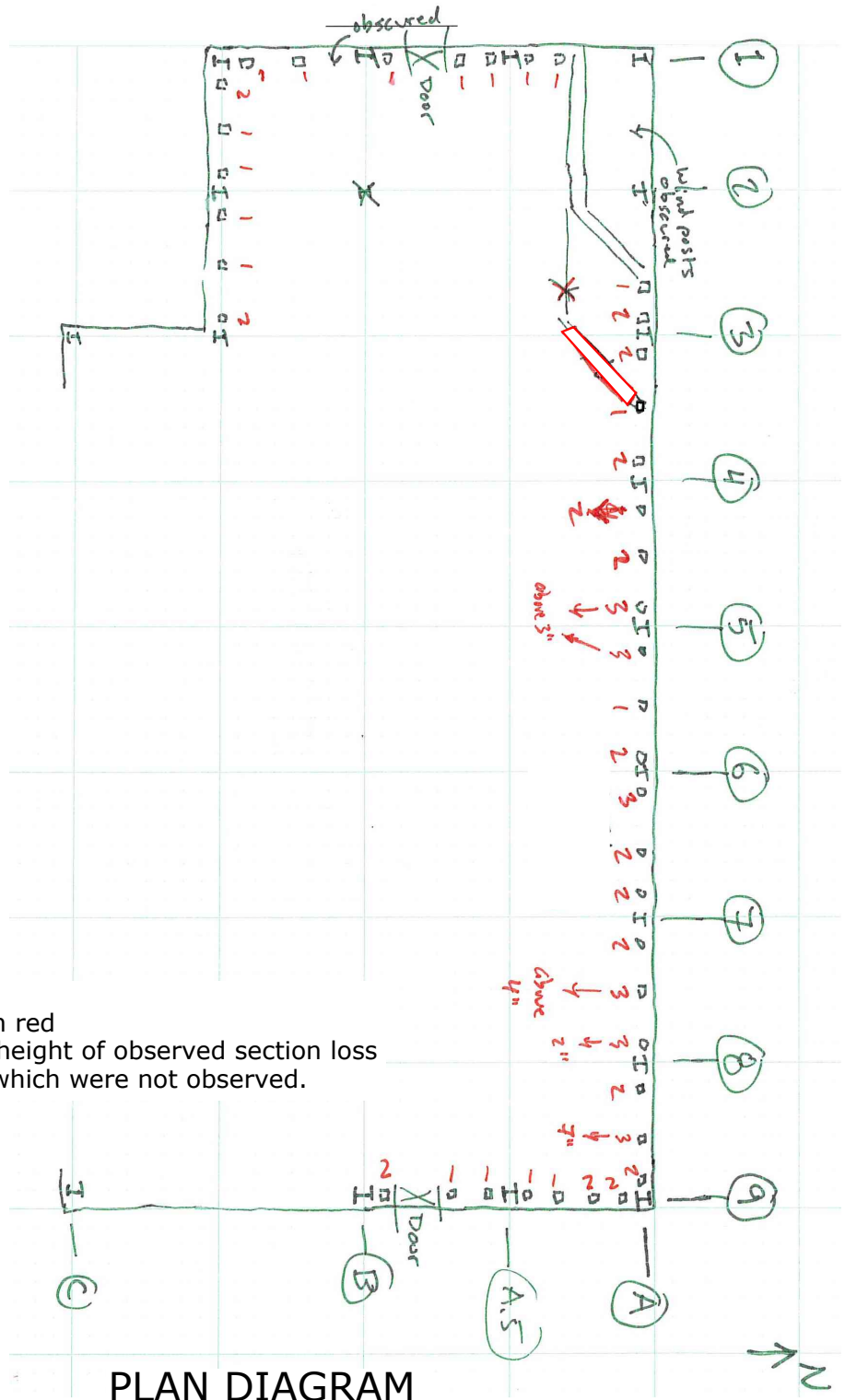
## FIGURE APPENDIX



Figure 11: Base of a red painted steel column and base plate anchored to a concrete pier foundation in good condition.



Figure 12: Observed Level 2 condition. Deteriorated angle and localized rusting observed on the HSS.



NOTES:

1. Deterioration level noted in red
2. Level 3 conditions include height of observed section loss
3. Obscured locations noted which were not observed.

PLAN DIAGRAM

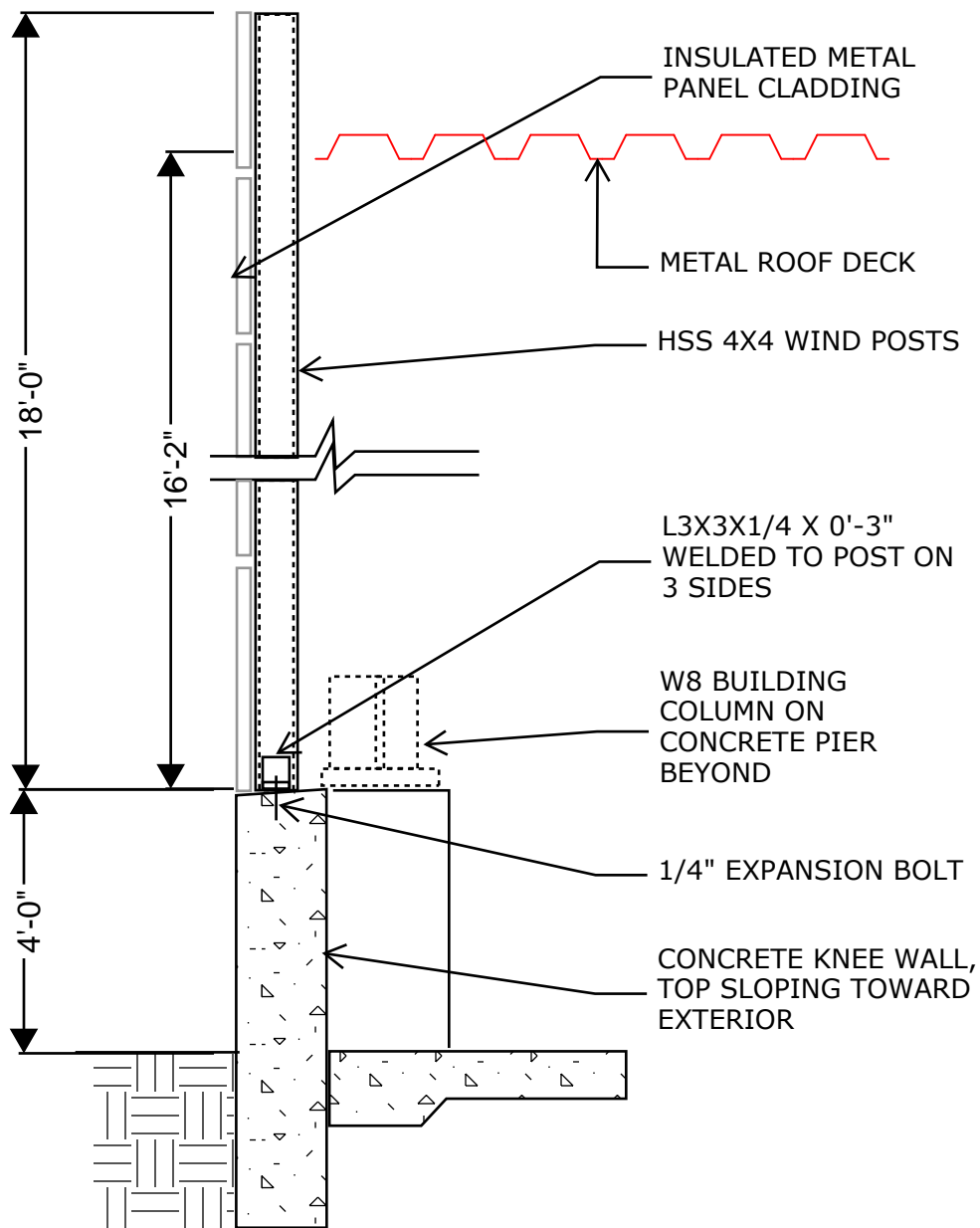
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**TYPICAL EXISTING  
WALL SECTION**

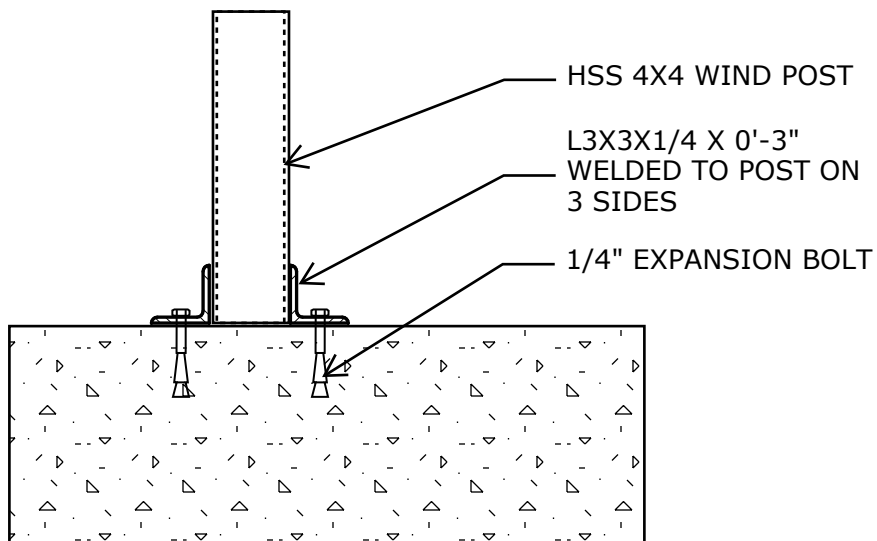
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**NOTES:**

1. Introduce positive slope away from top of concrete knee wall with leveling compound or as proposed by contractor.
2. Remove observed rust and refinish angle and HSS post with high performance paint.

## LEVEL 1 REPAIR

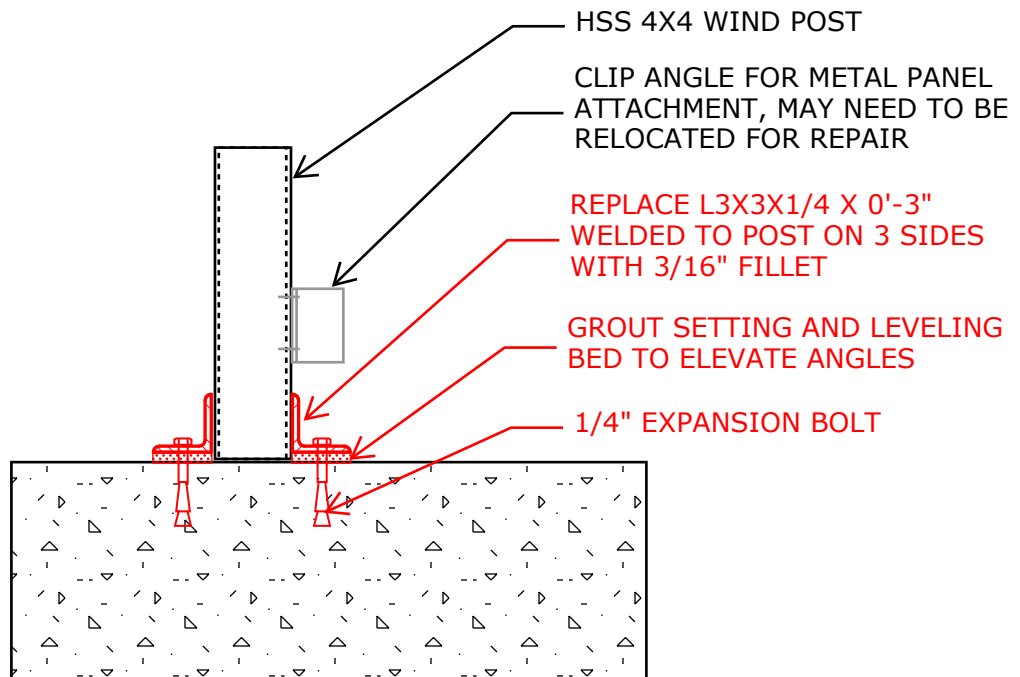
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**NOTES:**

1. Introduce positive slope away from top of concrete knee wall with leveling compound or as proposed by contractor.
2. Remove observed rust and refinish angle and HSS post with high performance paint.
3. Red notes and annotations indicate new or replacement elements

## LEVEL 2 REPAIR

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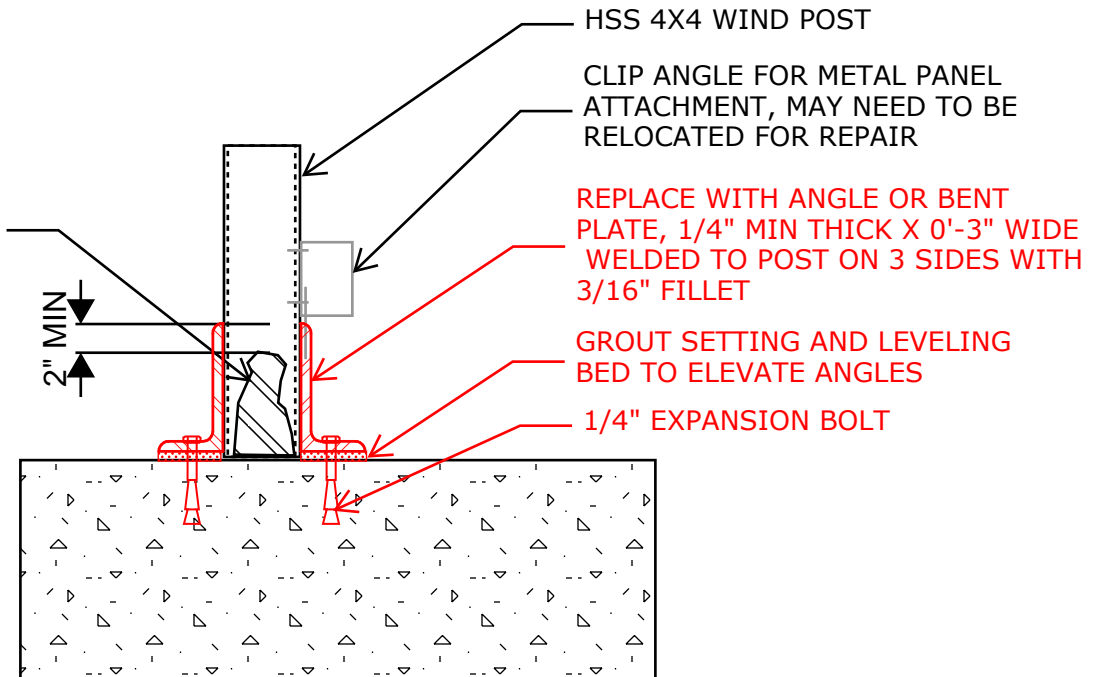
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SK-1d

HSS 4X4 SECTION  
LOSS FROM WATER  
DETERIORATION,  
SEE PLAN FOR  
OBSERVED HEIGHT



**NOTES:**

1. Introduce positive slope away from top of concrete knee wall with leveling compound or as proposed by contractor.
2. Remove observed rust and refinish angle and HSS post with high performance paint.
3. Red notes and annotations indicate new or replacement elements

## LEVEL 3 REPAIR

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SK-1e

## **FTA CLAUSES**

### **ACCESS TO RECORDS AND REPORTS**

1. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records. (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

3. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information, including such records and information the contractor or its subcontractors may regard as confidential or proprietary, related to performance of this contract in accordance with 2 CFR § 200.337.

4. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

### **AMERICANS WITH DISABILITIES ACT(ADA)**

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

### **CARGO PREFERENCE REQUIREMENTS**

The contractor agrees:

a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United

States-flag commercial vessels, if available. 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 CFR Part 381.

b. to furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and

c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## **CHANGES TO FEDERAL REQUIREMENTS**

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient’s Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

## **CIVIL RIGHTS LAWS AND REGULATIONS**

The following Federal Civil Rights laws and regulations apply to all contracts.

The Contractor and any subcontractor agree to comply with all the requirements prohibiting discrimination on the basis of race, color, or national origin of the Title VI of the Civil Rights Act of 1964, as amended 52 U.S.C 2000d, and U.S. DOT regulation “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of the Title VI of the Civil rights Act,” 49 C.F. R. Part 21 and any implementing requirement FTA may issue.

**1 Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:

a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation), disability, or age, and prohibits discrimination in employment or business opportunity.

b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21, and 49 U.S.C. § 5332, prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin.

**2 Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

**3 Nondiscrimination on the Basis of Age.** The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

**4 Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### **Civil Rights and Equal Opportunity**

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

**1. Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**2. Equal Employment Opportunity.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements, without regard to their race, color, religion, national origin, or sex (including sexual orientation). In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**3. Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.

**4. Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal

transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**5. Federal Law and Public Policy Requirements.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination; and the Recipient will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law.

## **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.

b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.

c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

### Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or

permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

## **DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT**

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

## **DEBARMENT AND SUSPENSION**

Debarment and Suspension (Executive Orders 12549 and 12689). A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Recipient agrees to include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:

(1) Complies with federal debarment and suspension requirements; and

(2) Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

The contractor 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 C.F.R. 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 Agency 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. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

## **ENERGY CONSERVATION**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

## **FLY AMERICA**

a) Definitions. As used in this clause—

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to

disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

## **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to

include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

## **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- 1) Procure or obtain covered telecommunications equipment or services;
- 2) Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or
- 3) Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.

(b) As described in section 889 of Public Law 115-232, “covered telecommunications equipment or services” means any of the following:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment;

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country;

(c) For the purposes of this section, “covered telecommunications equipment or services” also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(d) In implementing the prohibition under section 889 of Public Law 115-232, heads of executive agencies administering loan, grant, or subsidy programs must prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.

(e) When the recipient or subrecipient accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The recipient or subrecipient is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.

(f) For additional information, see section 889 of Public Law 115-232 and 200.471.

## PROMPT PAYMENT

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

## RESTRICTIONS ON LOBBYING

### Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

### Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,

**Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.**

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

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

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

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

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding \$100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,

(4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

**Shall file a certification, and a disclosure form, if required, to the next tier above.**

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or

disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

## **SAFE OPERATION OF MOTOR VEHICLES**

### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## **SEISMIC SAFETY**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

## **SOLID WASTES (RECOVERED MATERIALS)**

(a) A Recipient or subrecipient that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(b) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This

may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

## **SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents:

- (1) applications for federal assistance,
- (2) requests for proposals or solicitations,
- (3) forms,
- (4) notifications,
- (5) press releases,
- (6) other publications.

## **TERMINATION**

### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case,

the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

#### Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

#### Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

#### Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

#### Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

#### Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails

to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency

#### Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the

Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

## **VETERANS HIRING PREFERENCE**

Veterans Employment - Construction contracts of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

## **FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

(1) The contractor certifies that it:

(a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

(2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

## **SEVERABILITY**

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

## **TRAFFICKING IN PERSONS**

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.