

**SECTION 02830 - CHAINLINK FENCING AND
GATES PART 1 - GENERAL 1.1 SUMMARY**

A. This Section is a part of the entire set of Contract Documents and shall be coordinated with the applicable provisions of the other parts.

B. Related Sections:

None

1.2 SCOPE

A. The work under this section of the specifications shall consist of furnishing all labor, materials and equipment necessary for a new chainlink fence system as indicated herein and on Contract Documents. Work shall include but not limited to footings, posts, fabric, rails, gates, and all related hardware.

**1.3 QUALITY ASSURANCE AND WARRANTY
GUARANTEE**

A. Reference Standards:

A. American Society for Testing and Materials (ASTM):

ASTM A116 - Standard Specification for

Metallic-Coated, Steel Woven Wire Fence Fabric

ASTM A120 - Standard Specification for Black and

Hot-

Dipped Zinc Coated (Galvanized) Welded Seamless

Pipe

ASTM A491 - Standard Specification for Aluminum
Coated Steel Chain Link Fence Fabric

ASTM C94 - Standard Specification for Ready-Mixed
Concrete

ASTM F567 - Standard Practice for Installation of
Chainlink Fence

ASTMF900 - Standard Specification for Industrial
and Commercial Swing Gates

- B. Weights and tolerances to conform to Federal Specification RR-F-191, dated May 14, 1990. Mill certificates shall be made available at the request of the Architect/Engineer or Owner.
- C. The Contractor and any Sub-Contractor hereunder guarantee their respective work against defective materials or workmanship for a period of one (1) year from the date of filing Certificate of Substantial Completion and as accepted by the Owner.
- D. All material installed under this specification shall be subject to testing by the Owner. Any material so inspected and found to be not in strict conformance with this specification shall be promptly removed and replaced by the Contractor at his expense.

1.4 PROJECT CONDITIONS

- A. Field Measurements: Verify layout information for chainlink fences and gates shown on Drawings in relation to property survey and existing structures. Verify dimensions by field measurements.

1.5 QUALIFICATIONS

- A. Manufacturer: Company specializing in the manufacturing of products specified in this section with a minimum of ten (10) years experience.
- B. Installer: Company specializing in performing work of this section with a minimum of five (5) years experienced. Must have a minimum of two in-house fence installation crews.

1.6 DELIVERY, STORAGE AND HANDLING

- A. Deliver fence fabric and accessories in packed cartons or firmly tied rolls.
- B. Identify each package with manufacturer's name.
- C. Store fence fabric and accessories in a secure and dry place.

1.7 SUBMITTALS

- A. Shop drawings showing plan layout, spacing of components, post foundation dimensions, hardware, gates and schedule of components.
- B. Product Data: Submit product data on fabric pattern, posts, accessories, fittings, hardware.

PART 2 - PRODUCTS 2.1 MATERIALS

- A. Framing Steel: ASTM F1083 Schedule 40 galvanized steel pipe weighing three and sixty-five one-hundredths (3.65) lbs. per lineal foot or SS-30 galvanized steel pipe weighing three and sixty-five one-hundredths

(3.65) lbs. per lineal foot. Pipe shall utilize flow coat or inline galvanization process.

- B. Fabric Wire: ASTM A392 Class 1 zinc coated steel wire or aluminized steel wire.
- C. Concrete: ASTM C94; Portland Cement 3,500 psi strength at 28 days. Refer to Specification Section

2.2 COMPONENTS

- A. Chain Link Fabric: The general chain link fabric shall be 2" mesh, 9 gauge. Top and bottom selvage shall have knuckle finish. Fabric shall be free from barbs, icicles or other projections resulting from the aluminizing process, and any fabric not free thereof will be rejected even though erected. Bottom of fence fabric shall be 3/4" plus or minus 1/4" above grade.
- B. Line Posts: Line posts shall not be splice welded in such a manner that the weld appears above the grade line. All line posts shall have an outside diameter of 2 1/2". The chain link fabric shall be tied to the line posts with No. 9 gauge annealed galvanized steel tie wire. Fence fabric shall be secured to line posts no more than 18" O.C., with excess wire cut off and turned down.
- C. Terminal and Gate Post: Terminal and gate posts shall not be splice welded in such a manner that the weld appears above the grade line. End, corner and gate posts shall have an outside diameter of 3" and weight of not less than five and seventy-nine one-hundredths (5.79) lbs. per lineal foot. Post caps at terminal posts shall be securely fastened to prevent removal.
- D. Terminal and Gate Post Fittings: Terminal and gate post fittings including tension bands, brace connections and

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top rail connections shall be No. 11 gauge. Hot-dipped iron or pot metal fittings will be accepted as equals or substitutes. Top rail, brace and truss bands shall not be less than one inch (1") wide, secured by five-sixteenths inch (5/16") diameter carriage bolts and nuts.

- E. Top and Bottom Rails: Rails shall meet the same specifications of quality as line and terminal posts. The top and bottom rails shall have an outside diameter of one and five-eighths inches (1-5/8") and weigh two and twenty-seven one-hundredths (2.27) lbs. per lineal foot. An outside sleeve-type coupling measuring not less than 6" in length shall be provided at each interval of twenty feet (20'). The chain link fabric shall be tied to the top rail at intervals of twenty-four inches (24") with No. 9 gauge annealed galvanized steel tie wire. Rail(s) shall be securely fastened by means of suitable malleable iron or pressed steel connections. The terminal ends of all top, bottom, mid and bracing rails shall utilize hardware that prevents insects from gaining access into top rails or rails will be filled with a polyurethane insulation, a minimum 6" depth.
- F. Braces and Terminal Gate and Gate Posts: Terminal and gate posts shall be strengthened and reinforced by braces meeting the same specifications of quality as line and terminal posts. Braces shall be installed midway between top rail and grade and extend from each terminal post to the first adjacent line posts. Braces shall be securely fastened to posts by heavy pressed steel connections and also be trussed from line posts back to terminal post with a three-eighths inch (3.8") round truss rod complete with tightened unit.
- G. Bottom Tension Wire: Bottom tension wire shall be No. 6 gauge galvanized steel coil tension wire, high carbon or hard drawn, Class II, Aluminum Coated, fastened to the chain link fabric at intervals of twenty-four inches (24") with No. 11 gauge galvanized steel hog rings.

H. Post Spacings and Settings:

1. Gate, terminal and end posts shall be set in concrete foundation not less than twelve inches (12") in diameter and not less than forty-two inches (42") in depth. Concrete shall attain a compressive strength of not less than three thousand five hundred (3,500) lbs. per square inch at the twenty-eighth (28th) day after pouring. Spacing of posts in the line of fence shall be uniform.

See plans for dimensions.

2. Line posts can either be set in concrete foundations as noted or pneumatically driven.
3. Refer to Chart in Section 3.2, A.

I. Gates:

1. Gates shall be 20 feet wide, rolling type.
2. Frames shall be constructed of pipe, having an outside diameter of 1.9" or alternately, being two inches (2") square and weighing two and seventy-two one-hundredths (2.72) lbs. per lineal foot. Gate frames shall be welded, or alternately, shall utilize corner fittings of heavy malleable iron or pressed steel securely riveted to the frame.
3. Fabric matching the system fence fabric shall be installed in the frame by means of tension bars and hook bolts.
4. Frames having corner fittings shall be equipped with adjustable truss rods having a diameter of three-eighths inches (3/8").
5. Gates shall be approved by the Architect/Engineer.

PART 3 - EXECUTION 3.1 EXAMINATION

- A. Examine areas and conditions, with Installer present, for compliance with requirements for a verified survey of property lines and legal boundaries, site clearing, earthwork, pavement work, and other conditions affecting performance of the Work.
- B. Stake locations of fence lines, gates and terminal posts. Indicate locations of utilities, underground structures, benchmarks and property monuments.

3.2 INSTALLATION

- A. All posts shall be set plumb and in accordance with the following table (unless specified otherwise):

1. Corner/Terminal and Bracing Post - General Fence

Spacing	Fabric Height	Post Depth	Dia. of Foundation	Foundation Depth	Max
	0' - 6'-0"	36"	12" min	42"	10'-0"
	6'-1" - 12'-0"	42"	12" min	48"	10'-0"

- B. Post Excavation: Drill or hand-excavate holes for posts to diameters and spacings indicated, in firm, undisturbed soil.
- C. Post Setting: Set posts in concrete at indicated spacing into firm, undisturbed soil.
 - a. Verify that posts are set plumb, aligned and at correct height and spacing, and hold position during setting with concrete or mechanical devices.
 - b. Concrete Fill: Place concrete around posts to dimensions indicated and vibrate or tamp for consolidation. Protect aboveground portion of posts from concrete splatter.
- D. Fence posts shall be installed with maximum 6 inches clear opening from end posts to buildings, fences, property lines or other structures.
- E. Install gates level, plum and secure for full opening without interference. Attach hardware using tamperresistant or concealed means. Adjust hardware for smooth operation and lubricate where necessary.
- F. The fabric shall be installed on the property side of posts. Bottom of fence fabric shall be 3/4" (+/-1/4") above the finished grade. Fabric shall be furnished with selvage knuckled on both ends.
- G. Top of concrete footing shall be left down and topped with surrounding pavings. Cold patch is not acceptable.

3.3 CLEAN UP AND DISPOSAL

- A. Remove from the site all equipment, materials, and debris resulting from construction work included in

this section. Leave work area neat and clean and in a condition acceptable by the Architect/Engineer and Owner. All work shall be complete, ready for use, at the time of final acceptance.

END OF SECTION 02830

PROPOSAL CONTENT AND SUBMITTAL:

Statement of Proposal: Provide a narrative statement of your proposal indicating, through the use of drawings, diagrams or other material the way in which you propose to satisfy the RFP requirements.

Organization Structure: Indicate through the use of organization diagrams and/or narrative statements, the proposed staffing, functioning, and interrelationships with the transit authority during the production and installation of the units in response to this proposal. Identify principal staff personnel by name and qualification. Provide the names and telephone numbers of personnel of your organization authorized to negotiate with the transit Director.

Prior Experience: Include two (2) industry references from the past twenty-four (24) months involving sale and installation of similar projects. Include name, address, and telephone number of the reference's contact person.

Warranty: Describe the length of warranty for parts and service.

Subcontractors: Indicate any portion of the proposal to be performed by subcontract. Include similar information as to qualifications of subcontractors or their employees as is required of the respondent.

Parts and Service: Describe the availability of parts, where they are available, and the timeframe for delivery. Describe the lead time needed for an on-site service call.

Business Organization: State the full name and address of your organization and, if applicable, the parent or subsidiary entity that will perform or assist in performing the work contained in your proposal or will provide any assistance. Indicate whether you operate as an individual, partnership or corporation; if as a corporation, include the state in which you are incorporated. All respondents must indicate their organization's federal identification number.

Proposal Submittal: Email (1) one copy to tcatabus@comcast.net or mail/deliver (3) three copies of proposal to the Twin Cities Area Transportation Authority, Attn: Alexandre Little, Executive Director, C/O Datia King at 275 E. Wall, Benton Harbor, MI. 49022. **The RFP cover page submitted with this proposal must be signed in ink by an official of the organization** authorized to bind the proposer to the RFP provisions and the submitted proposal and must be submitted with the proposal. Proposal shall be marked "Security Fencing Proposal."

Proposals must be received by 5:00 p.m. on November 20, 2018 at the Twin Cities Area Transportation Authority administrative offices, 275 E. Wall, Benton Harbor, MI. 49022.

Late submissions will NOT be accepted.

Questions about this RFP must be submitted in writing by email to tcatabus@comcast.net. Phone calls involving the RFP or related questions will not be accepted. Questions will be answered in writing within five business days of receipt. Questions, answers, and any addendums to the RFP will be sent by email and distributed to every firm sent an RFP, and to every firm who has submitted a question or proposal. All questions and/or comments must be received at least ten (10) business days prior to the proposal due date. Verbal comments are not part of this solicitation.

MODIFICATIONS AND WITHDRAWALS OF OFFERS:

Proposals may be withdrawn by written request at any time prior to the due date and time. No proposal may be withdrawn after the due date. Withdrawn proposals may be resubmitted, with or without modifications, up to the due date and time.

PROPOSAL EVALUATION:

All proposals will be evaluated by the Executive Director and any appropriate staff or other assistance deemed necessary. The Executive Director may be assisted by other technical personnel as deemed appropriate. Representatives from the firms in a competitive range may be invited to interview in person with the Executive Director and demonstrate their product before final selection is made. Original scores of non-price evaluation criteria may be modified based on the interviews. The TCATA reserves the right to waive any informality or minor defects, and to reject any and all proposals for sound, documentable, business reasons. The TCATA reserves the right to award to other than the lowest priced proposal and to the proposal offering the Best Value to The TCATA. The evaluation criteria listed below are equally weighted. Price is less important than the other evaluation criteria as a whole. The criteria are as follows:

Parts and Service: Faster response times will be scored higher.

Warranty: Longer warranties on parts and service will be scored higher.

Price: Price for project will be evaluated using the formula: $\text{Lowest proposal price} / \text{price being evaluated} \times \text{points available} = \text{Points awarded}$. Evaluated price will be the total of purchase, installation and related costs.

TERMS OF PAYMENT:

Vendor will clearly outline deliverables, timeline and associated costs. This will be a firm, fixed price contract. The TCATA will pay for this project on a lump sum basis when project is complete. A per unit price is requested to allow for purchase of additional units of fencing or posts if necessary, with said price to be good for 180 days after this project is completed. No request for payment or reimbursement will be submitted to FTA and/or the State of Michigan for reimbursement until the TCATA verifies that the project meets the RFP specifications.

The vendor will submit an invoice to: TCATA , Attention: Alexandre Little, Executive Director, 275 E. Wall Street, Benton Harbor, MI, 49022. Upon acceptance, the TCATA will place a reimbursement request to the FTA and or State of Michigan and payment

shall be made within thirty (30) days of final acceptance. No payment will be made by the TCATA until the project is accepted as complete. All invoices shall be **itemized**.

The TCATA is exempt from Federal, State, and local taxes. The TCATA will not be responsible for any taxes levied on the respondent as a result of the contract resulting from this RFP.

INDEMNITY PROVISIONS:

The vendor shall indemnify, defend and hold harmless the TCATA's, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorney's fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

- a) the product provided, performance of the work, duties, responsibilities, actions or omissions of the vendor
- b) breach by the vendor or any representation of warranty made by the vendor in the contract
- c) occurrences that the vendor is required to insure against as provided for in this contract
- d) death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the vendor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage
- e) any claim, demand, action, citation or legal proceeding against THE TCATA, its employees and agents which results from an act or omission of the vendor or any of its subcontractors in its or their capacity as an employer or person

ASSIGNMENT:

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed

PROTESTS:

All protests pertaining to the proposal award shall be addressed in writing to the

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TCATA consistent with the TCATA's procurement policy. A copy of this policy is available upon request.

EXCUSABLE DELAY:

The vendor shall be excused from performance under this contract for any period that they are prevented from performing any services as a result of an act of God, war, civil disturbance, epidemic, court order, government act or omission, or other cause beyond their control.

GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan except for matters arising from or concerning indemnification which shall be governed by and construed in accordance with the laws of the State of Michigan.

EXAMINATION OF RECORDS:

The vendor who is awarded the contract agrees that the auditor of the TCATA or an authorized representative from the State of Michigan shall have access to, and the right to examine, audit, excerpt, and transcribe any directly pertinent books, documents, papers, and records of the vendor relating to orders, invoices, or payments of this contract. All records relating to the awarded contract shall be retained for three (3) years after the date of final payment or completion of any required audit.

Compliance with this clause does not relieve a vendor from retaining any records required by other laws or regulations of federal, state, or local government units.

ATTACHMENTS :

**Attachment A - Michigan Department of Transportation 3164
(02/14) MATERIALS AND SUPPLIES LESS THAN \$100,000**

Michigan Department Of Transportation 3164 (02/14)

MATERIALS AND SUPPLIES

LESS THAN \$150,000

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INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by

U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by U.S. DOT, as set forth in the Federal Transit Administration (FTA) Circular 4220.1F, are hereby incorporated by reference.

Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The

{ }, hereafter referenced as “CONTRACTOR” shall not perform any act, fail to perform any act, or refuse to comply with any {Twin Cities Area Transportation }, hereafter referenced as “AGENCY,” requests which would cause AGENCY to be in violation of the FTA terms and conditions.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

(1) The AGENCY 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 AGENCY, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. (2) The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

FALSE OR FRAUDULENT STATEMENTS OR CLAIMS

The CONTRACTOR acknowledges and agrees that:

(1) Civil Fraud. 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 the CONTRACTOR's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in

connection with the Project. In addition to other penalties that may apply, the CONTRACTOR also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the CONTRACTOR the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the CONTRACTOR makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the CONTRACTOR the penalties of 49 U.S.C. § 5323(I), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

ACCESS TO THIRD PARTY CONTRACT RECORDS

The AGENCY agrees to require, and assures that its CONTRACTOR require, their third party contractors and third party subcontractors at each tier to provide to the U.S.

Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The CONTRACTOR further agrees to require, and assures that its subcontractors require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

CHANGES TO FEDERAL REQUIREMENTS

The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between AGENCY and FTA, as they may be amended or promulgated from time to time during the term of this contract. The CONTRACTOR's failure to so comply shall constitute a material breach of this contract in compliance with 49 CFR Part 18.

TERMINATION (For projects over \$10,000)

a. 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 Government's best interest in compliance with 49 U.S.C. Part 18/FTA Circular 4220.1F. 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. If the CONTRACTOR has any property in its possession belonging to the AGENCY, the CONTRACTOR will account for the same, and dispose of it in the manner the AGENCY directs.

b. 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 only be paid 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.

c. 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 ten (10) days 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 ten (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.

d. 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 term, covenant, or condition of this Contract.

e. 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 Government'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.

f. 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 CONTRACTOR.

g. 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.

h. Termination for Default (Construction) If the CONTRACTOR refuses or fails to prosecute the work or any separable part, with the diligence that will insure 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 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. 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 the CONTRACTOR 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 the AGENCY, acts of another CONTRACTOR in the performance of a contract with the CONTRACTOR, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the CONTRACTOR, within [10] days from the beginning of any delay, notifies the AGENCY in writing of the causes of delay. If in the judgment of the AGENCY, the delay is excusable, the time for completing the work shall be extended. The judgment of the AGENCY shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

a. 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 the CONTRACTOR.

i. Termination for Convenience or Default (Architect and Engineering) The AGENCY may terminate this contract in whole or in part, for the CONTRACTOR'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 Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the CONTRACTOR, the 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 the CONTRACTOR.

j. Termination for Convenience of 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 the 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 the 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, such as strike, fire, flood, events which are not the fault of and are beyond the control of the CONTRACTOR, 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.

CIVIL RIGHTS (For projects over \$10,000)

The CONTRACTOR agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

- a. Nondiscrimination in Federal Public Transportation Programs. The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- b. Nondiscrimination – Title VI of the Civil Rights Act. The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., and with U.S. DOT regulations, “Nondiscrimination in Federally- Assisted Programs of the Department of Transportation – Effectuation of Title VI of the

Civil Rights Act,” 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the CONTRACTOR agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” and any other applicable Federal directives that may be issued.

c. Equal Employment Opportunity. The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the CONTRACTOR also agrees to follow all applicable Federal EEO directives that may be issued.

Accordingly:

(1) General. The CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as “construction,” the CONTRACTOR agrees to comply and assures the compliance of each subcontractor, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq.; with implementing Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

d. Nondiscrimination on the Basis of Sex. The CONTRACTOR agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., and with implementing U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

e. Nondiscrimination on the Basis of Age. The CONTRACTOR agrees to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and with implementing 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, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

f. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the CONTRACTOR agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 et seq., the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

g. Access to Services for Persons with Limited English Proficiency. The CONTRACTOR agrees to facilitate compliance with the policies of Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005, except to the extent that

FTA determines otherwise in writing.

h. Environmental Justice. The CONTRACTOR agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

i. Other Nondiscrimination Laws. The CONTRACTOR agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

DISADVANTAGED BUSINESS ENTERPRISE

To the extent authorized by Federal law, the CONTRACTOR agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subcontractor, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

(1) The CONTRACTOR agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The CONTRACTOR agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal

assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26.

The CONTRACTOR agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the CONTRACTOR's DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative agreement for the Project. The CONTRACTOR agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. Upon notification by U.S. DOT to the CONTRACTOR of the CONTRACTOR's failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 et seq., or both.

DEBARMENT AND SUSPENSION (For projects over \$25,000)

The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement

Suspension and Debarment,” 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180. The CONTRACTOR agrees to, and assures that its subcontractors, lessees, third party contractors, and other participants at any tier of the Project will, review the “Excluded Parties Listing System” at <https://www.sam.gov/portal/public/SAM/> before entering into any subagreement, lease, third party contract, or other arrangement in connection with the Project.

CARGO PREFERENCE REQUIREMENTS (FOR PROPERTY TRANSPORTED BY OCEAN VESSEL)

Use of United States-Flag Vessels - The CONTRACTOR agrees in compliance with 46 U.S.C. 1241/46 CFR Part 381:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding

paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to MDOT (through the CONTRACTOR in the case of a subcontractor's bill-of- lading.)

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.

FLY AMERICA (FOR FOREIGN AIR TRANSPORT OR TRAVEL)

The CONTRACTOR understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

ENERGY CONSERVATION

The CONTRACTOR agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 et seq., except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the CONTRACTOR agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA

assistance, as provided in FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. Part 622, Subpart C.

PREFERENCE FOR RECYCLED PRODUCTS (CONTRACTS FOR ITEMS DESIGNATED BY EPA, WHEN PROCURING \$10,000 OR MORE PER YEAR)

To the extent applicable, the CONTRACTOR agrees to comply with the U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the CONTRACTOR agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND

STANDARDS (For all ITS projects)

To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

ACCESS FOR INDIVIDUALS WITH DISABILITIES

The CONTRACTOR agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The CONTRACTOR also agrees to comply with all applicable provisions of section 04 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; 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 individuals with disabilities; 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 individuals with disabilities;

and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the CONTRACTOR agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- (1) U.S. DOT regulations, “Transportation Services for

Individuals with Disabilities (ADA),” 49 C.F.R. Part 37;

(2) U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board

(U.S. ATBCB)/U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36;

(6) U.S. General Services Administration (U.S. GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;

(7) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F;

(9) U.S. ATBCB regulations, “Electronic and Information

Technology Accessibility Standards,” 36 C.F.R. Part 1194;

(10) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and

(11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

STATE, TERRITORIAL, AND LOCAL LAW

Should a Federal law pre-empt a State, territorial, or local law, regulation, or ordinance, the CONTRACTOR must comply with the Federal law and implementing regulations. Nevertheless, no provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement requires the CONTRACTOR to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law, regulation, or ordinance. Thus if compliance with any provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement violates or would require the CONTRACTOR to violate any State, territorial, or local law, regulation, or ordinance, the CONTRACTOR agrees to notify FTA immediately in writing. Should this occur, FTA and the CONTRACTOR agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project expeditiously.

TWIN CITIES AREA TRANSPORTATION AUTHORITY (TCATA)
OCTOBER 2018 FENCING BID PACKAGE