

CONSTRUCTION



INVITATION FOR BID
FOR
SUPER STOP WAITING SHELTERS

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1. NOTICE TO BIDDERS

1.1 Notice: VIA Metropolitan Transit ("VIA"), San Antonio, Texas, solicits bids for the construction of Super Stop Waiting Shelters.

1.2 Introduction: VIA is a Metropolitan Transit Authority created according to Chapter 451, Texas Transportation Code ("VIA") to provide public transportation services for the citizens of Bexar County. The system's legal name is VIA Metropolitan Transit (VIA). VIA is a Political Subdivision of the State of Texas and governed by a Board of Trustees who are appointed by its County and Municipal Governments. VIA provides fixed route transit service, paratransit service for mobility-impaired customers, special event and park and ride service. San Antonio, along with other municipalities and all incorporated areas of Bexar County, are included in VIA's service area. In total, VIA's service area is 1,233.78 square miles.

VIA's Mission Statement: "To enhance the community's environment and quality of life by providing regional and customer-oriented public transportation that is dependable, cost effective, and enticing to more riders."

1.3 Procurement Schedule:

1.3.1 Summary of Salient Dates: Following are the salient dates of the procurement process:

<u>Date</u>	<u>Time*</u>	<u>Event</u>
<u>March 18, 2011</u>		Invitation for Bids Issued.
<u>March 24, 2011</u>	<u>10:00 AM</u>	Pre-Bid Conference in the Procurement Bid Room, at the address shown under "Inquiry and Questions" below.
<u>April 5, 2011</u>		Last Day to Submit Request for Clarifications and/or Modifications to the bid/contract Documents.
<u>April 8, 2011</u>		VIA's Response to Requests for Clarifications and/or Modifications.
<u>April 18, 2011</u>	<u>2:00 PM</u>	Deadline for submitting bid package and date and time of bid opening in the Procurement Bid Room, at the address shown under "Inquiry and Questions" below.

*Unless a specific time is indicated, the time shall be 2:00 (VIA's close-of-business).

1.3.2 Inquiry and Questions: Bids should be submitted to, and any requests and all questions should be directed to:

Procurement Department
VIA Metropolitan Transit
Attn: Vanecia Noland
1720 N. Flores
P.O. Box 12489
San Antonio, Texas 78212
Phone: (210) 362-2414
Fax: (210) 362-2588
E-mail: vanecian.noland@viainfo.net

1.3.3 Pre-bid Conference: A Pre-bid Conference shall be held at the date and time and place as indicated above. All prospective bidders are encouraged to attend.

1.3.4 Request for Clarification and/or Modifications: The Invitation for Bid/contract document and specifications can only be modified in writing. The deadline to submit requests for clarifications

and/or modifications is 4:45 p.m., on the date indicated above. Those requests may be faxed to (210) 362-2588. VIA will respond by regular mail to those requests no later than the date indicated above. VIA assumes no responsibility for delayed or lost responses. Bidders should contact the Contract Administrator if they believe a response is missing or lost.

- 1.3.5 Submission of Bid:** Prior to the time and date indicated above, (in the section entitled, "Summary of Salient Dates") all bids shall be delivered to the Contract Administrator at the address indicated above, (in the section entitled "Inquiry and Questions"). Bids received after the above time and date shall not be considered, except as provided in the section entitled "Late Submissions." The bid shall be in a sealed envelope properly labeled on the outside with the project name and number and the bid opening date. Unless specifically authorized in writing by VIA, no telegraphic or telefaxed bids will be considered. Bids will be publicly opened and read aloud on the date and time indicated in the section entitled "Summary of Salient Dates."

1.4 Pre-bid Provisions:

1.4.1 Preparation of Bid:

1.4.1.1 Examination of Documents: Each bidder should carefully examine these documents and take such other steps as may be reasonably necessary to ascertain the contract performance requirements. Bidders must examine the construction documents to coordinate tasks between the Architect/Engineer plans (architectural, civil, mechanical, electrical, plumbing, structural, etc.) to determine the contract performance requirements. Bidders will be responsible for all tasks, including those of the subcontractor, to be furnished and installed for a complete project.

1.4.1.2 Site Visit: Each bidder should visit the site, carefully examine these documents and take such other steps as may be reasonably necessary to ascertain the nature and location of the work, and the general and local conditions, including visible and existing utilities and structures (i.e. water lines, telephone poles & overhead lines, power lines, meters, railroad tracks, etc.) which can affect the work or the cost thereof. Each bidder shall make themselves aware of local labor availability, means of transportation, local weight restrictions, laws, codes, wage scales, local tax structure, contractor's license and permit requirements, availability of required responsibility for estimating property the difficulty or cost of successfully performing the work. Extra compensation will not be allowed for conditions which are determinable by examining these documents or the work site.

1.4.1.3 Bid Form: A bid shall be submitted on the forms furnished, or copies thereof, completed in ink or by typewriter and shall be manually signed. If erasures or other changes appear on the forms, the person signing the bid shall initial each erasure or change.

1.4.1.4 Contact Address: The address and telephone number to which communications regarding the bid are to be directed shall be shown.

1.4.1.5 Alternative Bid(s): The bid form may provide for submittal of a price or prices for one or more items, which may be lump sum bids, alternative prices, scheduled items resulting in a bid on a unit of construction or a combination thereof. Where the bid form explicitly requires that the bidder bid on all items, failure to do so may disqualify the bid. When submittal of a price on all items is not required, a bidder shall insert the words "no bid" in the space provided for any item on which no price is submitted. Unless permitted by VIA in writing, or otherwise called for, alternative bids will not be considered.

1.4.1.6 Documents/Forms to be submitted with the Bid: The following documents/forms, attached hereto in the sections indicated, are to be completed by the Bidder and must be submitted with the bid:

- 9.1.1 Offer and Certifications Form
- 9.1.2 Acknowledgment of Addenda
- 9.1.3 List of Similar Contracts/References
- 9.1.4 Certifications of Restrictions on Lobbying

- 9.1.5 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- 9.1.6 Business Questionnaire
- 9.1.7 Conflict of Interest Questionnaire
- 9.1.8 Schedule of Participation
- 9.1.9 DBE Participation Certification
- 9.1.10 DBE Unavailability Certification

1.4.2 Bidders' Requests:

1.4.2.1 Appointments: Bidders may make appointments with the Contract Administrator to discuss any question a Bidder may have concerning the specifications which may impact upon bid submission.

1.4.2.2 Pre-bid Approvals: The Contract Administrator's written approval must be obtained prior to bid submission for:

- (a) any clarification of the specifications; or
- (b) any brand name or product proposed as equal to the one specified, unless the technical specifications explicitly permit approval after award; or
- (c) any sample or engineering detail which the technical specifications require to be submitted before bidding, including substitution of any required bid or contract form; or
- (d) any modification to the specifications which the Bidder maintains are restrictive and which the Bidder proposes be altered, amended or changed.

1.4.2.3 Submission: Submissions under the section (above) entitled, "Pre-Bid Approvals," must be in writing and received by the Contract Administrator no later than the date specified in the section entitled "Summary of Salient Dates," Requests for Clarifications and/or Modifications, herein; and

- (a) supported by evidence such as technical data, test results, and/or other pertinent information that demonstrates that the substitute offered is equal to or better than the specification requirement; or
- (b) in the instance of submission of a request for modification of the specifications, must contain a draft of the recommended language relating to the specification(s) which is/are proposed to be altered, amended or changed.

1.4.2.4 Appeal: Any appeal of the Contract Administrator's determination in response to a request for pre-bid approval must be submitted in writing and received by the Contract Administrator within five (5) working days of the date of issuance of the Contract Administrator's determination.

1.4.2.5 Final Ruling: After receipt of an appeal, if any, a final ruling will be issued by the Contract Administrator and provided contemporaneously to all Bidders. Bidders may protest a final ruling under this section, "Bidders' Requests," as provided in the section entitled, "Bidders' Protest Procedure," herein.

1.4.2.6 Withdrawal: A Bidder may withdraw a request or an appeal at any time prior to the Contract Administrator's issuance of a final ruling. There will be no further review by the Contract Administrator of a request or an appeal after a final ruling is issued.

1.4.2.7 Denial: Any pre-bid request for approval is denied unless such request is approved by the Contract Administrator in writing prior to bid submission.

1.4.3 Amending Materials: VIA reserves the right to amend this Invitation for Bid. Any amending material issued by VIA pertaining to the bid solicitation documents (including, without limitation, clarifications,

equals, and corrections) shall be set forth in an addendum and sent to all parties who are on record as having obtained a copy of the bid solicitation documents.

1.4.4 Amendment and/or Postponement. VIA reserves the right to postpone, for its own convenience, the deadline for submitting bids. Further, VIA reserves the right to unilaterally revise or amend the scope of services up to the time set for submitting bids. Such revisions and addenda, if any, shall be announced by addenda to this solicitation. Copies of such addenda shall be furnished to all prospective bidders. The deadline for submitting bids shall be at least five (5) working days after the last addendum and the addenda shall include an announcement of the new date, if applicable, for submitting bids. Any Bidder whose bid has already been submitted to VIA when the decision to postpone is made shall be afforded the opportunity to revise or withdraw their bid.

1.4.5 Samples, Brand Names and Equals:

1.4.5.1 Samples: Samples, when required, must be submitted for pre-bid approval no later than the date specified in the section entitled "Summary of Salient Dates," Requests for Clarifications and/or Modifications, herein, or within the time specified in the Technical Specifications, at no expense to VIA. If not destroyed or used up during testing, samples will be returned upon request at the Bidder's expense.

1.4.5.2 Brand Names: It should be understood that specifying brand names, components, and/or equipment in this specification shall not relieve the supplier/Contractor from the responsibility to produce the product in accordance with the performance warranty and contractual requirements. The supplier/Contractor is responsible for notifying VIA of any inappropriate brand names, components and/or equipment that may be called for in the specifications, and to propose a suitable substitute for consideration, no later than the date specified in the section entitled "Bidders' Requests," above.

1.4.5.3 Equals: Whenever a material, article or piece of equipment is identified on the Plans or in the Specifications by reference by manufacturers' or vendors' names, trademarks, catalog numbers, etc., it is intended merely to establish a standard; and any material, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of the Contract Administrator, of equal substance and function. It shall not be purchased or installed by the Contractor without the Contract Administrator's prior written approval, as provided in the section entitled, "Bidders' Requests," above.

1.5 Bid Submission Provisions:

1.5.1 Bid Guarantee:

1.5.1.1 Amount: The Bidder shall submit a bid guarantee with the bid, equivalent to 5 % of the total bid amount.

1.5.1.2 Form of Guarantee:

1.5.1.2.1 Cashier's Check: An unconditional cashier's check for the amount described above, payable to the order of VIA Metropolitan Transit; or

1.5.1.2.2 Bid Bond: A bid bond for the amount described above, using the form entitled "Bid Bond" provided herewith, issued by a corporate surety authorized to transact such business in the State of Texas. The Bidder may, with VIA's approval, use any other bid bond form provided that such form contains all the information required by VIA's bid bond form and also contains the surety's address and telephone number. Approval of a substitute bid bond form must be obtained as provided in the section entitled "Bidders' Requests," above.

1.5.1.3 Condition or Limitation: Any condition or limitation placed upon the check, or bid bond, or imperfection in its execution may, at the option of VIA, cause the rejection of the bid.

1.5.1.4 Applicability: The check or bid bond shall be a guarantee that the bidder:

- (a) if awarded the Contract, will furnish bonds and certificates of insurance, as required herein, within ten (10) calendar days of the date of Notice of Award or such additional time as may be allowed by VIA;
- (b) will comply with requirements of the Disadvantaged Business Enterprise Special Provisions, including, without limitation, the submission of completed forms and required documentation;
- (c) will accomplish all other requirements of the bid documents, as required of the bidder.

1.5.1.5 Non-compliance: If the Bidder fails to comply with any of the requirements of the above section entitled, "Applicability," the money and proceeds from the bid guarantee shall be forfeited to and retained by VIA as liquidated damages for such failure of the successful Bidder. The amount of the bid guarantee shall not constitute any limitation upon VIA's right to recover additional damages VIA may suffer due to such failure.

1.5.1.6 Return: The checks or bid bonds of all but the three lowest bidders will be returned promptly after the bids have been opened and evaluated by VIA. The check or bid bond of the successful Bidder and the next two lowest bidders will be returned after the later of five days after award of the Contract with the successful Bidder, submission of all required documentation, and the approval of other required bonding.

1.5.1.7 Waiver: By submission of a bid the Bidder represents and warrants that the amounts and prices stated in the proposal are a complete and correct statement of Bidder's intended bid price and thereby waives any claim for return of the bid guarantee, if, for any reason, the Bidder should refuse or fail to fulfill the Contract.

1.5.2 Late Submissions:

1.5.2.1 Receipt Prior to Award: Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:

- (a) was sent by registered or certified mail and postmarked not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been postmarked on or before the 15th); or
- (b) was sent by courier service which guaranteed delivery by the time of bid opening; or
- (c) is the only proposal received.

1.5.2.2 Postmark: The only acceptable evidence to establish the postmark date of a proposal or modification sent by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service.

1.5.2.3 Courier Delivery Date: The only acceptable evidence to establish the courier service guaranteed delivery date is a receipt or other documentary evidence which will establish that the proposal or modification was sent by a courier service to be timely delivered.

1.5.2.4 Time/date Stamp: The only acceptable evidence to establish the time and date of receipt at VIA is the time/date stamp on the proposal wrapper or other documentary evidence of receipt maintained by VIA.

1.5.3 Modification or Withdrawal of Bid: A bid may be modified or withdrawn by written notice received in the office designated in the section entitled "Inquiry and Questions," not later than the exact time set for opening of bids. A bid may be withdrawn in person by a Bidder or his authorized

representative provided his identity is made known and he signs a receipt for the bid if the withdrawal is prior to the exact time set for opening of bids.

1.5.4 Bid Acceptance Period: All bids shall remain in effect ninety (90) calendar days from the date of bid opening.

1.5.5 Responsiveness: In order for a Bidder to be eligible to be awarded the Contract, the Offer must be responsive to the Invitation for Bid, and VIA Metropolitan Transit must be able to determine that the bidder is responsible to perform the Contract satisfactorily. Responsive Offers are those complying in all material aspects of the solicitation. Offers which do not comply with all the terms and conditions of this solicitation may be rejected as non-responsive. A Bidder may, at any time after the submission of the Offer, be requested to submit further written evidence verifying that the firm(s) meet the criteria necessary to be determined a responsible Bidder. Refusal to provide requested information may result in the Bidder being declared non-responsive, and the Offer may be rejected.

1.6 Post Bid Provisions:

1.6.1 Canvas of Bid: At the hour specified in the section entitled "Summary of Salient Dates," the Contract Administrator or his designee will publicly open, examine, declare and record all bids received. Bidders, their representatives, and others interested, are invited to be present at the opening of bids.

1.6.2 Qualifications for Award:

1.6.2.1 Preliminary Qualifications: The Bidder must be a person, firm or corporation that:

- (a) can assure satisfactory completion of the construction within the time specified under this Contract by possessing the necessary personnel, equipment and resources, or has a contractual arrangement with a person, firm or corporation who has in possession the necessary personnel, equipment and resources, or has the capability to possess the necessary personnel, equipment and resources to assure satisfactory completion of the construction within the time specified under this Contract;
- (b) has the necessary financial resources, or has the capability to obtain such financial resources, to complete the Contract in a satisfactory manner within the required time.

1.6.2.2 Determination of Responsibility: The bidder may be required upon request to present evidence to the satisfaction of the Contract Administrator of responsibility, including evidence of adequate financial resources, capability to perform the Work under the Contract in accordance with the construction schedule, satisfactory integrity and business ethics and qualifications under any applicable laws and regulations.

1.6.2.3 Pre-award Survey: VIA shall have the right to conduct a pre-award survey of each Bidder.

1.6.3 Single Bid:

1.6.3.1 Price/Cost Analysis: In the event a single bid is received, VIA will, at its option and pursuant to 49 CFR 18, "Third Party Contracting Guidelines," conduct a price, cost, and/or profit analysis of the bid and make the award by negotiation or reject the bid.

1.6.3.1.1 Price Analysis: A price analysis is an evaluation of a proposed price (bid) that does not involve an in-depth evaluation of all the separate cost elements and the profit factors, that comprise a Bidder's price proposal (bid). Price analysis includes, but is not limited to:

- (a) a comparison of competitive price quotations submitted to VIA;
- (b) a comparison of prior quotations and contract prices with current quotations for the same or similar construction requirements; and

- (c) a comparison of proposed prices with independent estimates of cost developed within VIA's construction department.

1.6.3.1.2 Cost Analysis: A cost analysis is a more detailed evaluation of the cost elements in the potential contractor's bid. It is conducted to form an opinion as to the degree to which the Bidder's proposed costs represent what the Bidder's performance should cost. A cost analysis is conducted to determine whether the Bidder is applying sound management in proposing the application of resources to the contracted effort and whether costs are proper, allowable, and allocable. Cost analysis includes verification of cost data, evaluation of specific elements of cost, and projection of these data. Cost analysis includes, but is not limited to, such factors as:

- (a) Reasonableness of amounts estimated for necessary costs;
- (b) Extent of uncertainties of contract performance and realism of any allowances for contingencies; and
- (c) Basis for allocation of overhead costs.

1.6.4 Bond(s): The following bond requirements apply to each work order. All bonds must be provided by a Treasury listed bonding company.

1.6.4.1 Performance Bond: Within ten (10) calendar days after the date of Notice of Award, the Contractor shall furnish a Performance Bond issued by a corporate surety authorized to transact such business in the State of Texas. Said bond shall be in the amount of one hundred percent (100%) of the contract amount and shall be on a form customarily used by the surety industry or the form approved by VIA. The Contractor shall pay the premium.

1.6.4.2 Additional or Substitute Bond: If at any time VIA, for reasonable cause, shall be or become dissatisfied with the Surety or Sureties for the Performance and/or Payment Bonds, the Contractor shall within five (5) calendar days after notice from VIA to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other Surety or Sureties as may be satisfactory to VIA. The Contractor shall pay the premiums on such bond. No further payments shall be deemed due nor shall payments be made until the new Surety or Sureties have furnished an acceptable bond to VIA.

1.6.4.3 Payment Bond: Within ten (10) calendar days after the date of Notice of Award, the Contractor shall furnish a Payment Bond issued by a corporate surety authorized to transact such business in the State of Texas. Said bond shall be in the amount of fifty percent (50%) of the contract amount and shall be on a form customarily used by the surety industry or on a form approved by VIA. The Contractor shall pay the premium.

1.6.4.4 Warranty Bond: The Contractor shall furnish a Warranty Bond in an amount equal to one hundred percent (100%) of the final contract amount, issued by a corporate surety authorized to transact such business in the State of Texas, on a form customarily used by the surety industry or on a form approved by VIA. Said bond shall be submitted within ten (10) calendar days after the date of Notice of Award, (together with the Payment and Performance Bonds) and shall be effective upon Final Acceptance by VIA. Said bond shall warrant that, for a period of one (1) year from the date of Final Acceptance of the work, the work performed conforms to the contract requirements and is free of any defect of equipment, material, workmanship performed by the Contractor or any of the subcontractors or suppliers. The Contractor shall pay the premium.

1.6.4.5 Duplication of Bond(s): The Performance Bond, Payment Bond and/or Warranty Bond as required herein, may be furnished by the Contractor and incorporated into one (1) document as long as evidence of the monetary limit of authority of the attorney-in-fact executing said bond(s), together with such respective bond(s) amount(s) is contained therein and a certified and current copy of the attorney-in-fact's power-of-attorney is attached thereto.

1.6.5 Rejection of Bids: VIA reserves the right to reject any and all bids which are not responsive or unreasonably priced, or impose modifying conditions. VIA may reject the bid of any party who has been determined to be non-responsible in any former contract with VIA. VIA reserves the right to reject any or all bids, and to waive technical defects as the interest of VIA may require. Each Bidder shall be notified if all bids are rejected.

1.7 Disadvantaged Business Enterprise Goal/Target:

The DBE goal for this procurement is 25%. Please see the section entitled "Disadvantage Business Enterprise" or contact VIA's DBE office at 210-362-2077 for information regarding VIA's DBE program.

1.8 Custody of Bid Documentation. Once bids are opened, the apparent lowest responsive and responsible bidder will be required to submit legible copies of bid documentation used to prepare the bid for this project. This documentation will be placed in custody of VIA and preserved according to the terms in this section.

1.8.1 Submittal and Return of Bid Documentation. Bid documentation must be submitted within 48 hours of VIA's request. The apparent lowest responsive and responsible bidder shall submit the bid documentation in a sealed package. The package shall be clearly marked "Bid Documentation" and shall state the bidder's name and address, the date of submittal and the project number. VIA will return sealed packages of unsuccessful bidders within seven (7) calendar days after contract award.

1.8.2 Affidavit. In addition to the bid documentation, the bidder shall submit an affidavit, signed under oath by a representative of the bidder authorized to execute bidding proposals, listing each bid document by the author, date, nature, and subject matter.

The affidavit shall attest (1) that the affiant has personally examined the bid documentation, (2) that the affidavit lists all the documents relied upon by the bidder in preparing its bid for the project, and (3) that all such bid documentation is included in the sealed package submitted to VIA.

1.8.3 Duration and Use. After execution of the Contract, VIA will secure the sealed package in a locked cabinet or other secure device.

1.8.4 Refusal or Failure to Provide Bid Documentation. Failure to provide bid documentation shall render the bid non-responsive.

1.8.5 Confidentiality of Bid Documentation. The bid documentation and the affidavit in VIA custody are, and shall remain, the property of the Contractor. VIA has no interest, or right to ownership of the bid documentation. However, at VIA's option, VIA may open and review the documentation for the purpose of negotiating change orders or contract modifications, including Value Engineering Change Proposals (VECPs), with the Contractor. These materials and all copies made by VIA will be returned to the Contractor at contract completion. VIA will make every reasonable effort to protect the confidentiality of the documentation.

1.8.6 Preparation Costs: All costs related to responding to this requirement shall be the sole responsibility of and shall be borne by the bidder.

2. SCOPE OF WORK, TERMS AND CONDITIONS

2.1 Contract.

Indefinite Quantities Contract. It is specifically understood that this is an "indefinite quantities" requirements contract and that work to be performed hereunder may be assigned by VIA, in its sole discretion, by documents referred to herein as "Work Orders." It is further understood that this is a non-exclusive contract, and that VIA is under no obligation to assign work to the Contractor, even if the work falls under the scope of this contract (except to the extent of the minimum compensation specified herein). VIA reserves the right to assign similar work to any other Contractor at VIA's sole discretion.

Submission of a bid constitutes an offer to perform the work specified and to be bound by the terms contained or referenced herein. Upon acceptance of the offer, and upon award of the Contract to the successful offeror. If any, this procurement solicitation document (entitled "Invitation for Bid ") together with the completed and executed forms required herein, and all attachments hereto, together with the documents listed below (incorporated into this Contract by reference) shall collectively constitute the Contract. In case of any conflict among these documents where the intended resolution is not clear, the order of precedence shall be:

- 1) Change Orders or Contract Modifications
- 2) Addenda to the IFB
- 3) Scope of Work, Terms and Conditions

2.2 Scope of Work: The work shall consist generally of supplying and installing super stop waiting shelters, more particularly described in Part 10, Technical Specifications. Following contract award, VIA will issue work orders for shelters and installation in lots of one (1). Work orders will be issued on a requirements basis. This contract is for a maximum of fifty (50) super stop waiting shelters.

2.2.1 Pricing: Unit pricing will be held firm for the period of no less than 1-year from the date of contract commencement. Following the initial 1-year contract term, and at each 1-year anniversary of the contract (excluding option years) the contractor may request an increase in the unit price. The request must include documentation verifying the contractor's costs. Escalation will only be allowed in the event the contractor has experienced an increase in materials. Any increase in the unit price must be approved in writing by VIA. Escalation will not be allowed for option years

2.3 Contract Term: The term of the contract is two years. Following the initial two year term, VIA may, at its' option, extend the Contract two additional 1-year terms. The Contract will not exceed four (4) years. The specific Contract term (beginning to end) will be determined by VIA at the time of Contract award.

PARTS 2.4 THROUGH 2.7 APPLY SPECIFICALLY TO EACH AUTHORIZED WORK ORDER ISSUED UNDER THIS CONTRACT

2.4 Contract Period:

2.4.1 Contract Commencement Date: The Contract commencement date shall be the award date in Part 9 Page 4. VIA may issue a Work Order to the Contractor within a reasonable time after the Contractor has delivered the required certificates of insurance, shop drawings, color samples and any other required data. Any preliminary work started or materials ordered or purchased before receipt of a Work Order shall be at the risk and expense of the Contractor.

2.4.2 Time for Completion:

2.4.2.1 Contract Completion: The Contract shall be fully completed as evidenced by Final Acceptance by VIA, within 30 calendar days from the date of the Notice to Proceed or Purchase Order, as applicable.

2.4.2.2 Time Period: The date of beginning and the time for completion as specified herein are reasonable and ESSENTIAL CONDITIONS of this Contract, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. Further, time is of the essence of each and every portion of this Contract for which a definite length of time is fixed, and where under the Contract additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract.

2.4.2.3 Diligent Work: The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified.

2.4.2.4 Delay Consideration: If the Contractor notifies VIA in writing within ten (10) calendar days from the beginning of a delay specified in the section entitled, "Eligible Delays," below, and if VIA (within its sole discretion) after ascertaining the facts and considering them, notifies the Contractor of VIA's determination regarding the cause and extent of any acceptable delay, then to that extent the Contractor shall not be charged with liquidated damages or any excess cost.

2.4.2.5 Eligible Delays: The Contractor may request VIA to waive delays under the section entitled, "Delay Consideration," above, when the delay in completion of the work is due solely:

- (a) To any preference, priority or allocation order duly issued by the Government;
- (b) To unforeseeable cause beyond the control and wholly without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of VIA that a reasonable contractor would not provide for, acts of another contractor in the performance of a contract with VIA if VIA's liquidated and other damages attributable to the delay are paid by the other contractor, injunctions, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and adverse weather conditions;
- (c) To any delays of the Contractors' subcontractors or suppliers occasioned by any of the causes specified above; and
- (d) To causes, not including the fault of the Contractor, for which the Contractor's reasons are acceptable to VIA.

2.4.3 Liquidated Damages:

2.4.3.1 Amount per Day: The Contractor agrees that VIA will be substantially damaged in amounts that will be difficult or impossible to determine if the work is not completed within the time allowed. Therefore, if the Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by VIA, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to VIA Liquidated Damages, at the rate of one hundred fifty dollars (\$150.00) for every calendar day the contract work is not completed beyond the time specified in the section entitled, "Contract Completion," above, or as amended by Change Order. VIA and Contractor agree that the liquidated damages rate is reasonable and that the payment by Contractor of liquidated damages is in lieu of actual damages for such failure to complete the work and not as a penalty. In consideration thereof, Contractor waives any defense as to the validity of any liquidated damages agreed to herein as they may appear on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages. Further, Contractor agrees that VIA may withhold accrued liquidated damages from final payment.

2.4.3.2 Subsequent Delay: It is further agreed that Contractor's payment of, or agreement to pay, liquidated damages and VIA's acceptance of such payment or acceptance of the agreement to pay liquidated damages for any specific period of delay, as Contractor and VIA may agree, shall in no way affect VIA's rights to terminate the Contract for default for any subsequent delay or to otherwise pursue any available legal remedies and recovery of damages, such rights being expressly reserved.

2.4.4 Weather and Unavoidable Delay:

2.4.4.1 Extensions for Adverse Weather: Extension of time for adverse weather conditions not reasonably able to be anticipated as provided in the section entitled, "Eligible Delays," above, may be granted for any work only to the extent that the number of days of precipitation (.01 inches or more) exceeds the mean for that month. Time extensions may be granted for adverse weather days in any month when the total amount of adverse weather days exceeds the number expected as shown on the Adverse Weather Days Table (below) provided the adverse weather prevented the execution of planned/scheduled major items of work on that particular normal working day and provided that other work may not be adequately substituted during the period of adverse weather.

<u>MONTH</u>	<u>AVERAGE RAIN DAYS</u>
January	8
February	8
March	7
April	7
May	8
June	6
July	4
August	5
September	7
October	7
November	7
December	7

2.4.4.2 No Damages for Delay: SHOULD VIA BE PREVENTED OR ENJOINED FROM PROCEEDING WITH WORK OR FROM AUTHORIZING ITS PROSECUTION EITHER BEFORE OR AFTER ITS PROSECUTION, THE CONTRACTOR SHALL NOT BE ENTITLED TO MAKE OR ASSERT A CLAIM FOR DAMAGE BY REASON OF SAID DELAY, BUT TIME FOR COMPLETION OF THE WORK MAY BE EXTENDED TO SUCH REASONABLE TIME AS VIA MAY DETERMINE WILL COMPENSATE FOR TIME LOST BY SUCH DELAY. ANY SUCH DETERMINATION BY VIA WILL BE AT ITS SOLE DISCRETION AND SET FORTH IN WRITING.

2.4.4.3 Protection of Work and Materials: In the event of temporary suspension of work, or during inclement weather, or whenever the Contract Administrator shall direct, the Contractor will, and will cause his subcontractors to, protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Contract Administrator, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of his subcontractors to so protect his work, such materials shall be removed and replaced at the expense of the Contractor.

2.5 Warranty:

2.5.1 One (1) Year Warranty Period: In addition to any warranties contained elsewhere in this Contract or implied by law, the Contractor and each subcontractor warrant that, for a period of one year from the date of Final Acceptance, the work performed by this Contract conforms to the contract requirements and is free of any defect of equipment, material, and workmanship performed by the Contractor or any of the subcontractors or suppliers. The Contractor or any subcontractor shall remedy, at their own expense, any such failure to conform or any such defect.

2.5.2 Warranty Bond: The One (1) Year Warranty Period described above, shall be ensured by a warranty bond furnished by the Contractor to VIA. Neither the final certificate of payment nor any provision in the Contract nor partial or entire occupancy of the premises by VIA shall constitute an acceptance of work not done in accordance with the Contract or relieve the Contractor of liability in respect to any expressed warranties or responsibility for faulty material or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting there from, which

shall appear within the periods specified. VIA will give notice of observed defects with reasonable promptness.

- 2.5.3 Warranty of Title:** Contractor shall warrant and hereby does warrant to VIA, its successors and assigns, that the title to the material, supplies or equipment covered by the Contract, when delivered to VIA or to its successors or assigns, shall be free from all liens and encumbrances.

2.6 Specific Terms and Conditions:

2.6.1 Project Meetings:

2.6.1.1 Pre-construction Conference: After receipt of Notice of Award of the Contract, and prior to the start of construction, the Contractor or his representative and his principal subcontractors shall attend a pre-construction conference with representatives of VIA. The conference will serve to acquaint the participants with the general plan of contract administration and requirements under which the construction operation is to proceed, and will inform the Contractor, in detail, of the obligations imposed on him and his subcontractors by, among other things, state and federal statutes and regulations.

2.6.1.2 Periodic Construction Conferences: The Contractor shall attend, along with his principal subcontractors, periodic construction conferences called by the Contract Administrator or Contracting Officer, for the purpose of reviewing and expediting construction progress, coordination activities of mutual concern, and otherwise resolve problems. The Contractor may, of his own volition, request such a meeting to take place. Construction conferences shall deal only with procedural matters requiring coordination of all parties concerned and shall not relieve the Contractor's responsibility in full charge of prosecution of the work.

2.6.1.3 Meetings with Property Owners and Public Officials: The Contractor may be required to participate in meetings with property owners and public officials for the purpose of coordinating construction, business and municipal activities that will be carried out simultaneously at the job site.

- 2.6.2 Land and Right-Of-Way:** Prior to the start of construction, unless otherwise expressly provided for in this Contract, VIA shall obtain all land and rights-of-way necessary for the carrying out and completion of work to be performed under this Contract.

- 2.6.3 Surveys, Permits and Regulations:** Unless otherwise expressly provided for in this Contract, the Contractor will be responsible for all surveys necessary for the execution of the Work under the Contract. The City of San Antonio Right of Way permits will be provided by VIA. The Contractor will procure and pay for all permits, licenses and approvals necessary for the execution of the Work under the Contract. The Contractor shall comply with all laws, ordinances, rules, orders and regulations relating to the performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

2.6.4 Sales Tax Exemption:

2.6.4.1 Sales to VIA Exempt: VIA is a political subdivision of Texas organized under 451, Texas Transportation Code. Sales to, rental to, or use by VIA of otherwise taxable items are exempt from sales tax under Section 151.309 of the Texas Tax Code. Purchases by the Contractor for resale to VIA may be exempt from sales tax as well, as described in the sections entitled "Certificate" and "Purchase of Materials Incorporated into Finished Work," below.

2.6.4.2 Certificate: After award and upon the request of the Contractor, VIA will issue Certificates of Exemption to the Contractor.

2.6.4.3 Purchase of Materials Incorporated into Finished Work: If the Contractor states an amount for "materials incorporated into finished work" in the Offer and Certifications Form, separate from the costs of labor and performance of service and if these materials are finally incorporated into VIA's realty, then the purchase of these materials may be exempt from taxation under Section

151.056(b) of the Texas Tax Code, and the Contractor may choose to issue a resale certificate to his supplier under Section 151.151 of the Texas Tax Code.

2.6.4.4 Materials Used up During Construction: If the Contractor states an amount for "materials transferred to VIA and used up during construction" in the Offer and Certifications Form, and if the Contractor labels the materials "Public Property (VIA)" when feasible, then the Contractor's purchase of these materials may be exempt under Day & Zimmermann, Inc. v. Calvert 519 SW2d 106, Tex. 1975. The Contractor may choose to issue a resale certificate to his supplier under Section 151.151 of the Texas Tax Code. To facilitate this exemption and in consideration of VIA's separate specified payment, VIA will take title to the materials immediately after receipt by the Contractor and will furnish the materials to Contractor for use during construction. If the materials are to be used in repair or remodeling (rather than new construction), the Contractor must transfer the care, custody, and control of the materials to VIA to qualify for this exemption under Section 151.302(b) of the Texas Tax Code, and VIA will offer reasonable cooperation in this transfer. If for any reason the materials purchased by VIA under this section are in any way deficient or excessive for the completion of the work, then the Contractor is responsible for remedying the deficiency or disposing of the excess at his expense.

2.6.5 Asbestos Requirements:

2.6.5.1 Certification of No Asbestos: Contractor warrants that no material containing asbestos will be incorporated into the Work. References to "material containing asbestos" means any material containing any amount of asbestos (including less than 1%). Refer to the section entitled "General Definitions" for a definition of "asbestos." Contractor further warrants that no building materials containing asbestos will be brought on the Project Site, during the course of performance under this Contract. Any material containing asbestos found at any time, including after contract completion or other termination, to have been brought onto the Project Site or incorporated into the Work, in violation of this section, shall be removed and disposed of in accordance with the then current governmental regulatory standards, at Contractor's expense. Further, VIA shall be entitled to pursue other remedies and recover damages to which it may be entitled.

2.6.5.2 Quality Assurance: If VIA suspects the presence of any building materials containing asbestos, VIA shall have the right to require the Contractor to accomplish a materials test for asbestos following the standard testing procedures for asbestos. Testing will be accomplished in accordance with State and Federal laws and be accomplished at a Texas Department of Health licensed laboratory. Sampling will be accomplished by a State of Texas licensed inspector selected by VIA. The inspector will have the responsibility for the chain of custody for the materials and provide a written report to VIA with the testing results. The costs of this testing will be the responsibility of the Contractor, however, if materials are determined not to contain asbestos, VIA will pay all associated costs, unless Contractor has failed to provide building material documentation as required herein (see "Submittals of Mandatory Documentation," below).

2.6.5.3 Submittals of Mandatory Documentation:

2.6.5.3.1 Non-use of Asbestos Affidavit: At least 10 days prior to Final Acceptance, the Contractor will provide to VIA a fully executed Affidavit of Non-Use of Asbestos, in the form to be provided by VIA. This Affidavit certifies compliance with the section entitled "Certification of No Asbestos," above.

2.6.5.3.2 Material Safety Data Sheets (MSDS): At least 10 days prior to Final Acceptance, Contractor shall supply VIA or VIA's representative with Material Safety Data Sheets (MSDSs) for all building materials used under this Contract. These MSDSs shall be supplied in a bound document using the Library of Specification - Sections, latest addition, and separated into applicable divisions.

2.6.5.4 Failure to Provide Building Material Documentation: In the event the required Affidavit of Non-Use of Asbestos and/or MSDSs are not provided, all costs for an asbestos inspection, testing and certification shall be borne by Contractor, regardless of test results. Final Acceptance, payment

and/or retainage may be withheld until the above described Affidavit and/or information are received and approved.

2.6.6 Coordination:

2.6.6.1 Mutual Responsibility of Contractors: If, through acts of neglect on the part of the Contractor, any other contractors or any subcontractor shall suffer loss or damage to work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration if such other Contractor or subcontractor will so settle. If such other Contractor or subcontractor shall assert any claim against VIA due to any damage alleged to have been sustained, VIA shall notify the Contractor, who shall indemnify and save harmless VIA against any such claim.

2.6.6.2 Architect/Engineer Authority: The Architect/Engineer with approval of the Contract Administrator, or the Contracting Officer, shall give all orders and directions contemplated under this Contract and specifications relative to the execution of the work. The Architect/Engineer with approval of Contract Administrator, or the Contracting Officer, shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this Contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Architect/Engineer's estimates and decisions, or in the case of the Contract Administrator, shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Architect/Engineer, or in the case of the Contract Administrator, shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this Contract affected in any manner or to any extent by such questions.

2.6.6.3 Superintendence by Contractor:

2.6.6.3.1 Representative on Site: The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent hereinafter designated his representative, satisfactory to the Contract Administrator, on the work site at all times during progress, with authority to act for the Contractor. Before starting work, the Contractor shall designate in writing the name, title, qualifications, and experience of this proposed representative and scope of his authority for approval by the Contract Administrator. A facsimile of the designated representative's signature shall be submitted to the Contract Administrator.

2.6.6.3.2 Change of Representative: The Contractor shall notify the Contract Administrator, in writing, when the Contractor desires to change his representative, and shall follow the procedures specified above (see, "Representative on Site") regarding the new proposed representative.

2.6.7 Contractor Participation: The Contractor shall perform on the Project Site, with his own employees, at least ten percent (10%) of the total amount of labor at the Project Site (in accordance with the work described in Technical Specifications at Attachment "A," and the Plans), measured by hours of labor. Work performed by supervisory personnel and subcontractors shall not be counted toward the 10%.

2.6.8 Damage or Defect: Any supplies, material or equipment damaged or defective at the time of delivery or installation or prior to Final Acceptance shall be repaired, replaced or corrected by the Contractor at the Contractor's cost without additional cost to VIA. If the Contractor shall fail to comply promptly with any order of the Contract Administrator to repair, replace or correct damaged or defective work, then the Contract Administrator shall, upon written notice to the Contractor, have the authority to deduct the cost thereof together with any costs reasonably related thereto, from any compensation due, or to become due to the Contractor (including, but not limited to retainage). Nothing in this Section shall limit or restrict the provisions of the warranties as set forth herein, or any warranties that may arise by implication or by law.

2.6.9 Inspection and Testing of Materials:

2.6.9.1 Access to Facility and/or Work Site: VIA and its representatives shall have access to the manufacturing facility or Project Site and shall have the right to inspect all Work.

2.6.9.2 Conformance with Intended Purpose: Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing established in conformance with specifications and suitability for VIA's intended purpose.

2.6.10 Additional Instructions and Detail Drawings:

2.6.10.1 Additional Instructions: The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the Contract.

2.6.10.2 Coordination with Contract Documents: The additional drawings and instructions thus supplied to the Contractor shall be incorporated into the Contract as "Plans" in the order of priority under the section entitled "Contract," under "Scope of Work, Terms and Conditions." The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Architect/Engineer will prepare jointly:

- (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Architect/Engineer in accordance with said schedule, and
- (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies, and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of the Work.

2.6.11 Shop Drawings.

(a). The Contractor shall keep on the work site, specifications and drawings and shall at all times give the Engineer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of a difference between drawings and the specifications, the matter shall be promptly submitted to the Engineer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at his own risk and expense. The Engineer shall furnish from time to time such detail drawings and other information as considered necessary.

(b). The Contractor shall coordinate all shop drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate his approval thereon as evidence of such coordination and review. Shop drawings submitted to the Engineer without evidence of the Contractor's approval may be returned for resubmission. The Engineer will indicate his approval or disapproval of the shop drawings and if not approved as submitted shall indicate VIA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Engineer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Contract, except with respect to variations described and approved in accordance with paragraph (c) below.

(c). If shop drawings show variations from the Contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves such any variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

(d). The Contractor shall submit to the Engineer for approval one (2) set of sepias and four (4) sets of blue line prints (unless otherwise indicated herein) of all shop drawings as called for under the various headings of these specifications. One (1) blue line set will be returned to the Contractor.

(e). Omissions from the drawings or specifications or the mis-description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or mis-described details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(f). The Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify the Engineer of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large scale drawings shall in general govern small scale drawings. The contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

2.6.12 Project Site:

2.6.12.1 Project Sign: VIA may require the Contractor to furnish, erect and maintain project signs at the Project Site. If so required, detailed drawings for such signs will be included as part of the Plans and Technical Specifications. Upon completion of the project, the Contractor will remove and deliver the signs to VIA.

2.6.12.2 Barricades, Traffic Detour and Street Usage: Contractor shall provide any and all barricades, traffic detouring and street signs, at Contractor's sole expense, which are required and/or necessary to safely carry out the construction activities. Contractor shall ensure that all barricades, traffic detouring and street signs have been properly placed and maintained, and that they will be removed upon completion and Final Acceptance by VIA. Bidders shall include all costs necessary for barricading, traffic detouring, street usage and maintenance of a clean and safe construction site.

2.6.12.3 Use of Premises and Removal of Debris: The Contractor expressly undertakes at his own expense:

- (a) To take every precaution against injuries to persons or damage to property;
- (b) To store his apparatus, materials, supplies and equipment in such orderly fashion at Project Site as will not unduly interfere with the progress of the work or the work of any other contractors;
- (c) To place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;
- (d) To clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the Project Site shall present a neat, orderly and workmanlike appearance;
- (e) Before Final Acceptance, to remove all surplus material, false work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, and to put the site in a neat, orderly condition;
- (f) To effect all cutting, fitting or patching of the work required to make the same conform to the Plans and Technical Specifications and, except with the consent of the Contract Administrator, not to cut or otherwise alter the work of any other contractor; and

- (g) To compensate VIA, either by a deduction from payments due Contractor or by direct payment to VIA, for any reasonable expense incurred by VIA in curing any failure by Contractor to diligently carry out items (a) through (f) above.

2.6.12.4 Protection of Work and Property - Emergency:

2.6.12.4.1 VIA Property: The Contractor shall at all times safely guard VIA's property and the Project Site, in general, from injury or loss in connection with this Contract. Contractor shall at all times safely guard and protect his/her/its own work, and that of adjacent property, from damage. The Contractor shall replace or make good any such damage.

2.6.12.4.2 Case of Emergency: In case of an emergency which threatens loss or injury of property and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Contract Administrator, in a diligent manner. He shall notify the Contract Administrator immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Contract Administrator for consideration.

2.6.12.4.3 Instruction by VIA: Where the Contractor has not taken action but has notified the Contract Administrator of an emergency threatening injury to persons or damage to the work or any adjoining property, he shall act as instructed or authorized by the Contract Administrator.

2.6.13. Differing Site Conditions:

2.6.13.1 Notice: The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contract Administrator of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Contract.

2.6.13.2 Investigation: The Contract Administrator or his designee shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for performing any part of the work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract modified in writing accordingly.

2.6.13.3 No Adjustment Unless Timely Notice: No request by the Contractor for an equitable adjustment to the Contract under this clause shall be allowed, unless the Contractor has given the written notice required; *provided*, that the time prescribed above for giving written notice may be extended by the Contract Administrator in his/her sole discretion.

2.6.13.4 No Adjustment After Final Payment: No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

2.7 Value Engineering: The Contractor is encouraged to develop, prepare and submit Value Engineering Change Proposals ("VECP") voluntarily. The Contractor shall share in any savings realized from accepted, implemented VECPs.

2.7.1 VECP Preparation: At a minimum, the Contractor shall include the following information in each VECP:

2.7.1.1 Description: A description shall be supplied, of the difference between the existing contract requirement and that proposed; the comparative advantages and disadvantages of each; a justification when an item's function or characteristic is being altered; and the effect of the change on the end item's performance.

2.7.1.2 List and Analysis: A list and analysis shall be supplied, of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

2.7.1.3 Cost Reduction Estimate: A separate detailed cost estimate shall be supplied, for (1) the affected portions of the existing contract requirement and (2) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development cost, including any amount attributable to subcontractors.

2.7.1.4 Implementation Cost Estimate: A description of the cost VIA may incur in implementing the VECP shall be supplied, such as test and evaluation and operation and support cost.

2.7.1.5 Collateral Cost Estimate: A prediction of any effects the proposed change would have on collateral cost to VIA, shall be supplied.

2.7.1.6 Time Estimate: A statement of time by which a contract modification or Change Order implementing the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule, shall be supplied.

2.7.1.7 Examples: Provide examples of previous submissions of the VECP, including dates submitted, the agencies to which it was submitted, and the results.

2.7.2 Submission: The Contractor shall submit VECPs (if any) to VIA's Contract Administrator.

2.7.3 VIA Action:

2.7.3.1 Receipt: VIA will notify Contractor of the status of the VECP within 45 days after receipt by the Contract Administrator. If additional time is required, VIA will notify Contractor and provide the reason for the delay and the expected date of the decision. VIA will attempt to process VECPs expeditiously; however it shall not be liable for any delay in acting upon a VECP.

2.7.3.2 Acceptance/Rejection: VIA may, in its sole discretion, refuse to accept the VECP for any reason. If the VECP is not accepted, VIA will notify Contractor in writing. The Contractor may withdraw any VECP, in whole or in part, at any time before the date of acceptance (if any) by VIA. VIA may withdraw acceptance in its sole discretion, for any reason, prior to issuance of a contract modification or Change Order implementing the VECP. Following issuance of a contract modification or Change Order implementing the VECP (if any) the Contractor shall provide written notification to VIA, before proceeding with work under the VECP. Until a contract modification or Change Order is issued, implementing the VECP, Contractor shall perform in accordance with the existing Contract, not in anticipation of implementation of the VECP.

2.7.4 Cost Savings:

2.7.4.1 Rates: VIA's share of savings shall be 55%.

2.7.4.2 Payment: Payment of any share due to the Contractor for use of an accepted VECP shall be applied by (1) reduction of the contract price or estimated cost, by the amount of savings; (2) crediting Contractor's share of savings by adding the amount calculated **(after deducting VIA's costs of implementation and collateral costs)**, to the contract price.

2.7.5 Rights in VECP: If a VECP is accepted and implemented, the Contractor hereby grants to VIA the unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, VIA shall have the rights specified in the contract modification or Change Order implementing the VECP and shall appropriately mark the data.

2.8 Schedules:

2.8.1 Schedule Submittal: The contractor shall prepare and submit to the Contracting Officer copies of

the CPM schedule for the work of this contract in accordance with the specification requirements. If the Contractor fails to submit a schedule within the time prescribed or if the schedule fails to comply with the specified requirements, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

2.8.2 Supplementary Schedule: If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to VIA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

2.8.3 Sufficient Diligence: Failure of the Contractor to comply with the requirements of the Contracting Officer under this Article shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the Work, or any separable part of it, in accordance with the default terms of the Contract.

2.9 Contractor Representative:

2.9.1 Notification of Primary and Alternate Representatives: Prior to start of Contract performance, the Contractor shall advise VIA in writing of the primary and alternate representative *(including phone number) who will have management responsibility for the total Contract effort to receive and act on technical matters and resolve problems of a contractual nature.

3. GENERAL TERMS

- 3.1 Relationship and Work in General:** Contractor, an independent contractor, covenants and agrees to perform for the stated compensation, all of the services described in Part 2, entitled "Scope of Work, Terms and Conditions" of this Contract. Contractor agrees to complete the work in a professional and workmanlike manner with a high degree of care to ensure the accuracy and timeliness thereof.
- 3.1.1 Assignment of Personnel:** Contractor agrees to assign qualified staff members including a Project Director who shall be responsible for the task administration and work performance.
- 3.1.2 Employment of Personnel:** Contractor agrees to employ, at its own expense, all personnel required in performing the services under this contract. Personnel employed by Contractor shall not be employees of, nor have any contractual relationship with VIA. All personnel engaged in the work shall be fully qualified and shall be authorized or licensed to perform such work as required.
- 3.1.3 Subcontracts:**
- 3.1.3.1 Use of Subcontractors:** The Contractor may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.
- 3.1.3.2 Written Approval of VIA:** No work or services under this Contract shall be subcontracted without the prior written approval of VIA and then only by written contract or agreement. To obtain approval, Contractor must submit to VIA a written statement concerning the proposed award to the subcontractor that includes, at a minimum, the following:
- (a) A description of the supplies or services to be called for by the subcontract; and
 - (b) Identification of the proposed subcontractor.
- 3.1.3.3 Responsibility for Subcontractor(s) Acts:** VIA's approval of a subcontract notwithstanding, VIA shall not be obligated to any third party, including any subcontractor retained by Consultant, for payment of any work or services performed under this Contract, or to provide any work or services as compensation for any work or services performed under this contract. The Contractor is and shall be fully responsible to VIA for acts and omissions of Contractor's subcontractors and any person directly or indirectly employed by the subcontractor
- 3.1.3.4 Binding of Subcontractors:** Unless specific waiver is granted in writing by VIA, subcontractor shall be subject to each and every relevant and applicable provision of this Contract. Compliance by subcontractors with this Contract shall be sole responsibility of the Contractor.
- 3.1.3.5 Lack of Privity:** Nothing contained in this contract shall create any contractual relation between any subcontractor and VIA.
- 3.1.3.6 Consent Not Acceptance of Price or Waiver:** Neither consent by the Contract Administrator to any subcontract nor any provisions thereof nor approval of the Contractor's procurement system shall be construed to be a determination of the acceptability of any subcontract price or of any amount paid under any subcontract or to relieve the Contractor of any responsibility for performing this contract, unless such approval or consent specifically provides otherwise.
- 3.1.3.7 Cost-Plus Subcontract:** The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost-basis.

3.1.3.8 Substitution of Subcontractors: Any Subcontractor receiving approval in accordance with this paragraph 3.1 must be utilized by the Contractor for the portion of the Work for which they were approved. VIA will generally not entertain substitutes for any such Subcontractor in the absence of compelling circumstances to do so.

3.1.3.9 INDEMNITY: BY SUBMISSION OF A BID/PROPOSAL/STATEMENT OF QUALIFICATIONS (AS THE CASE MAY BE) THE CONTRACTOR AGREES THAT HE/SHE/IT WILL INDEMNIFY AND SAVE VIA HARMLESS FROM ALL CLAIMS GROWING OUT OF THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES, INCLUDING COMMISSARY, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. THE CONTRACTOR SHALL, AT VIA'S REQUEST, FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED BE PAID, DISCHARGED, OR WAIVED. IF THE CONTRACTOR FAILS TO DO SO, THEN VIA MAY, AFTER HAVING SERVED WRITTEN NOTICE, DIRECT, OR WITHHOLD FROM THE CONTRACTOR'S UNPAID COMPENSATION A SUM OF MONEY DEEMED REASONABLY EFFICIENT TO PAY ANY AND ALL SUCH CLAIMS UNTIL SATISFACTORY EVIDENCE IS FURNISHED THAT ALL LIABILITIES HAVE BEEN FULLY DISCHARGED WHEREUPON PAYMENT TO THE CONTRACTOR SHALL BE RESUMED, IN ACCORDANCE WITH THE TERMS OF THIS CONTRACT, BUT IN NO EVENT SHALL THE PROVISIONS OF THIS SENTENCE BE CONSTRUED TO IMPOSE ANY OBLIGATIONS UPON VIA TO EITHER THE CONTRACTOR OR HIS SURETY.

3.2 Termination of Contract:

3.2.1 Termination for Convenience: VIA may terminate this contract, in whole or in part, at any time without cause and solely for the convenience of VIA by giving 30 days written notice to the Contractor. The Contractor shall be paid fees and expenses for work performed up to and including the time of termination. The Contractor shall promptly submit its termination claim. If the Contractor has any property in its possession belonging to VIA, the Contractor will account for the same and dispose of it in the manner VIA directs.

3.2.2 Termination for Default:

3.2.2.1 Default: In the event that the Contractor breaches the terms or violates the conditions of the Contract, and does not within ten (10) days of written notice from VIA cure such breach or violation. VIA may immediately terminate the Contract, and shall pay the Contractor only its allowable cost to date of termination.

3.2.2.2 Notice: Termination shall be effected by depositing a written notice of termination in the U.S. Mail addressed to the Contractor at Contractor's last known address setting forth the manner in which the Contractor is in default.

3.2.2.3 VIA Options: In case of default on the part of the Contractor, the Contract may be terminated and in such event:

- (a). VIA may complete such contract without further liability to the Contractor for compensation for any labor, supplies or materials furnished by the Contractor under the contract, or
- (b). VIA may direct the Contractor to remove any equipment delivered and/or installed by the Contractor and to refund to VIA any amounts paid by VIA to the Contractor, and VIA shall have no further liability to the Contractor.
- (c). VIA may contract to acquire supplies or services similar to those terminated.

(d). VIA may assert its rights under the Performance Bond.

3.2.2.4 Compensation & Liability: 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. The Contractor and the Contractor's surety or sureties shall be liable to VIA for all excess costs, loss or damage incurred for supplies or services to complete the contract, which VIA may suffer on account of the Contractor's failure to complete the contract.

3.2.2.5 Excuse: If it is later determined by VIA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, or events which are not the fault of or are beyond the control of the Contractor, VIA, after setting a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

3.3 Breaches and Dispute Resolution:

3.3.1 Disputes: Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Contracting Officer. This decision shall be final and conclusive unless within ten (10) working days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Vice President of Fiscal Management. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Vice President of Fiscal Management shall be binding upon the Contractor and the Contractor shall abide by the decision.

3.3.2 Performance During Dispute: Unless otherwise directed by VIA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

3.3.3 Remedies: Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between VIA Metropolitan Transit and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Texas.

3.3.4 Rights and Remedies: The duties and obligations imposed by the Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by VIA Metropolitan Transit or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

3.4 Inspection of Work: VIA shall have the right to review and inspect the progress of the work described herein at all times.

3.5 Copyright: No reports, maps, or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the Contractor. All reports, maps, and other documents produced under this contract shall become the property of VIA. The Contractor shall, at its expense, defend all suits or proceedings instituted against VIA and pay any award of damages assessed against VIA in such suits or proceedings, insofar as the same are based on any claim that materials furnished or work performed under the contract constitutes an infringement of any patent, trade secret, copyright, or any other proprietary right.

3.6 Proprietary Rights: Contractor agrees not to release data or information about the results of the project to any person outside of VIA without first obtaining written authorization to release such information from VIA.

3.7 INDEMNIFICATION: CONTRACTOR covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS**, VIA and its the Board of Trustees, employees, officers and representatives, individually or collectively, from

and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal bodily injury, death and property damage, made upon VIA, directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement, all without, however, waiving any governmental immunity available to VIA under Texas law and without waiving any defenses of the PARTIES under Texas law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF VIA, THE BOARD OF TRUSTEES, EMPLOYEES, OFFICERS, AND/OR REPRESENTATIVES OF VIA, UNDER THIS AGREEMENT.** The provisions of this INDEMNITY are solely for the benefit of the PARTIES hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall promptly advise VIA in writing of any claim or demand against VIA or CONTRACTOR known to the CONTRACTOR related to or arising out of CONTRACTOR'S activities under this Agreement and shall see to the investigation and defense of such claim or demand at CONTRACTOR'S cost. VIA shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph. **IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION 3.7, IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY, PROTECT AND HOLD HARMLESS VIA FROM THE CONSEQUENCES OF VIA'S OWN NEGLIGENCE, PROVIDED HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF VIA IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF VIA IS THE SOLE ACTIVE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. CONTRACTOR FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF VIA AND IN THE NAME OF VIA, ANY CLAIM OR LITIGATION BROUGHT AGAINST VIA AND ITS BOARD OF TRUSTEES, EMPLOYEES, AGENTS, OFFICERS, AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS HEREIN SET FORTH.**

- 3.8 Ownership of Documents:** VIA retains ownership of all plans, specifications, and related documents.
- 3.9 Contracting Authority Protection:** Any and all of the employees of Contractor while engaged in the performance of any work required by VIA under this agreement shall be considered employees of Contractor only and not of VIA, and any and all claims that may arise from the Workers Compensation Act on behalf of said employees while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of Contractor's employees while so engaged in any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of Contractor. Contractor indemnifies, saves, and holds harmless VIA against all claims, demands, actions, or causes of action of whatsoever nature or character, as permitted by law, arising out of or by reason of the execution or performance of the work provided for herein and further agrees to defend, at its sole cost and expense, any action or proceeding commenced for the purpose of asserting any claim of whatsoever character arising hereunder.
- 3.10 Maintenance of Records:** Contractor must maintain records to show actual time involved in performance of the Work, or each Task Order issued (if this is an Indefinite Quantities Contract) by VIA and costs incurred.
- 3.11 Progress Records:** Monthly progress reports shall be provided to VIA by the Contractor.
- 3.12 Effect of Extensions of Time:** Granting of or acceptance of extensions of time to complete the work or furnish the labor or materials will not operate as a release to the Contractor from the covenants and conditions of the Contract.

3.13 Changes and Modifications:

3.13.1 Changes by Contractor: If, during the performance of Work under the Contract, the Contractor finds it impracticable to comply strictly with the specifications, the Contractor will notify the Contract Administrator immediately in writing.

3.13.2 Written Acceptance by VIA: Any proposals by Contractor that vary or add to this Contract shall be construed as additional terms or modifications and shall not become part of the Contract unless accepted in writing, by the Contract Administrator.

3.13.3 Change Orders/Contract Modifications: All changes in the work contemplated herein shall be made only with the prior approval of the Contracting Officer and only by appropriate written Change Order or Contract Modification as appropriate. The Contracting Officer may, at any time, by a written Change Order or Contract Modification, and without notice to the Surety (if any), make changes within the general scope of this Contract. If the change affects the Contractor's costs, then the Contracting Officer shall also make an equitable adjustment in the Contractor's compensation, after compliance by the Contractor with the Price Request procedure provided below. Charges or credits for the work covered by such approved Change Orders or Contract Modifications shall be determined by one or more, or a combination, of the following methods:

- (a) Unit prices previously approved.
- (b) An agreed lump sum.
- (c) The actual cost of:
 - 1) Labor, including foremen;
 - 2) Materials entering permanently into the work;
 - 3) The ownership or rental cost of construction plant and equipment during the time of use on extra work;
 - 4) Power and consumable supplies for the operation of power and equipment;
 - 5) Insurance;
 - 6) Social Security and old age and unemployment contributions;
 - 7) An equitable allowance for profit.

3.13.4 Field Changes: The Construction Manager and Project Manager can direct the Contractor to accomplish work that is outside the general scope of this contract. However, these types of directives can only be issued in an effort to avoid work stoppage, diffuse emergency situations, or resolve circumstances that compromise safety. Once a directive is given, the Contracting officer shall negotiate an equitable adjustment in the Contractor's compensation in time and money for the change. The results of such negotiation will be captured in a formal written Change Order or Contract Modification.

3.13.5 Price Requests: Where the Contracting Officer foresees issuing a Change Order affecting Contractor's costs, a Price Request will be issued to the Contractor. Unless otherwise specified therein, the Contractor shall fully respond to the Price Request within 10 days of issuance.

The Contractor shall furnish a price breakdown itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. All costs claimed are subject to negotiation, however, markup (including administrative overhead, extended overhead, profit and bonds) shall not exceed.

- (a) Fifteen percent (15%) total on work performed by the prime contractor, nor

- (b) Twenty percent (20%) total – fifteen percent (15%) for the subcontractor + five percent (5%) for the prime contractor when work is to be performed by subcontractors.

Justification shall be furnished for any proposed extension in the period of performance. The proposal, together with the price breakdown and period of performance extension justification, shall be furnished by the date specified by the Contracting Officer.

- 3.14 Assignment:** The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the whole or any part of this Contract or his right, title or interest in or to any monies due or to become due under this Contract without VIA's express written consent. If such consent is given, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this Contract.
- 3.15 Extent of Agreements:** The Contract constitutes the whole of the agreement between the parties hereto and neither thereof has been induced to make or enter into the Contract by reason of any promise, agreement, representation, statement, or warranty other than contained herein.
- 3.16 Partial Invalidity:** If any term, provision, covenant, or condition of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- 3.17 Titles and Headings for Convenience Only:** As used throughout this Contract, titles and headings of sections are for convenience only, and shall not be used to aid in interpretation of the provisions contained herein.
- 3.18 Notice, Waiver and Applicable Law:** Notice given to Contractor and VIA shall be given to the parties in writing by certified mail at the respective designated addresses. Waiver by VIA of a breach by Contractor of any provision of this Contract shall not be deemed a waiver of future compliance therewith, and such provision, as well as other provisions hereunder, shall remain in full force and effect. The rights and duties of the parties hereto shall be determined by the laws of the State of Texas, and to that end venue shall lie, and this agreement shall be considered and construed as a contract made and to be performed in Bexar County, San Antonio, Texas.
- 3.19 Compliance With Laws And Regulations** All work performed, materials and supplies and/or construction furnished pursuant to this solicitation and Contract shall be in compliance with the laws and regulations of the State of Texas and the United States of America and local rules and ordinances as may be applicable. Contractor shall, if requested by VIA, supply certification and evidence of such compliance.
- 3.20 Access to Records and Reports:** Contractor agrees to provide VIA access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three 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 Contractor agrees to maintain same until VIA has disposed of all such litigation, appeals, claims or exceptions related thereto.

3.21 General Definitions:

"Appeal" means a formal request for reconsideration of a determination rendered by the Contract Administrator in respect of:

- (a) a request, prior to contract award, as set forth in the section entitled, "Bidders' Requests," herein; or

- (b) a dispute concerning a question of fact, arising after contract award as set forth in the section entitled "Disputes," herein.

"Apprentice" (in the context of construction contracts) means (a) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training or with a State apprenticeship agency recognized by the Bureau; or (b) a person in his first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship council (where appropriate) to be eligible for probationary employment as an apprentice.

"Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite) cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite.

"Authorized Signature" is the written authorization of the person who is executing this Contract on behalf of the Bidder/Contractor and who is authorized to bind the Bidder/Contractor.

"Bidder" is the person or legal entity responding to this procurement solicitation. The term also includes "Proposer," "Offeror" and/or "Contractor."

"Construction Coordinator" (used in the context of construction contracts) is the person who is responsible for the field coordination of a construction project for VIA.

"Construction Manager" is that person who is designated by VIA to provide overall management supervision in the performance of this construction contract. The Construction Manager reports directly to the Project Manager.

"Contract Administrator" is that person designated by VIA to enter into and administer this Contract and make determinations and findings up to his/her level of authority, in regard to the Contract on behalf of VIA. For the purpose of this Contract, the Contract Administrator is the individual identified in the section entitled "Inquiry and Questions" or otherwise designated by VIA.

"Contracting Officer" is that person designated by VIA to make determinations and findings in regard to the Contract on behalf of VIA. The Contracting Officer will be identified at the time of Contract Award.

"Contractor" means the person or legal entity prior to contract award, submitting a response to a procurement solicitation (IFB, RFQ or RFP); it also means the successful Bidder to whom the Contract is ultimately awarded. Any reference to "Bidder," "Proposer," or "Offeror," also applies to Contractor after award. It is generally intended that these terms be interchangeable.

"Day" unless otherwise defined, shall be defined as a calendar day.

"DEO" means Diversity and Economic Opportunity department for VIA Metropolitan Transit.

"Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern --

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

"Final Acceptance" (used in the context of construction contracts) means all provisions of the Contract have been completed to VIA's satisfaction, including punch list items.

"FTA" means Federal Transit Administration a division of the United States Department of Transportation.

"Liquidated Damages" means the amount assessed in lieu of actual damages, for the failure to complete the work in a timely manner and not as a penalty, at the agreed rate per calendar day expressed herein in the section entitled "Liquidated Damages."

"Indefinite Quantities Contract" or "IDQ" refers to those service Contracts providing for a specific term and fixed labor rates, pursuant to which specific Task Orders may be issued as the need arises.

"Invitation for Bid" or "IFB" means the formal procurement issued by VIA (see also, "Procurement") and, where the context allows, also includes "Requests for Proposal" (RFPs).

"Notice of Award" is the written notice sent by VIA notifying the selected Bidder of the award of contract, and acceptance of Bidder's offer to perform under the terms contained herein. In the absence of a formal Notice of Award, the receipt of a Notice to Proceed or Purchase Order issued by VIA shall serve as notice of the award.

"Notice to Proceed" (in the context of construction contracts) is the written notice sent by VIA after the Contractor has complied with the submission of the required DBE information, a Performance Bond, Payment Bond, Warranty Bond and/or Insurance as required by VIA, and which notifies the Contractor to commence performance under the Contract. For contracts not requiring a Performance Bond, Payment Bond, Warranty Bond and/or Insurance, VIA will issue a Purchase Order. Issuance of a Purchase Order shall serve as a Notice to Proceed.

"Plans" (in the context of construction contracts) are the parts of the Contract which show the characteristics and scope of the work to be performed and which have been prepared or approved by the Architect/Engineer and/or Contract Administrator.

"Price Request" means the request issued by VIA to the Contractor for the services, goods, supplies, or work outside the general scope of this contract performed or to be performed by the Contractor.

"Procurement" means the formal solicitation issued by VIA, for services, goods, supplies, or work, and includes Invitations for Bid (IFBs) and/or Requests for Proposal (RFPs), as applicable.

"Project Manager" is that person designated by VIA to act as the technical representative or advisor to the Contract Administrator/Contracting Officer during contract performance and gives directions regarding the technical specifications, to the Contractor.

"Project Site" (in the context of construction contracts) means the physical location for performance of any Work under the Contract.

"Protest" means a formal request contesting:

- (a) a final ruling issued by the Contract Administrator in the case of a request for clarification of the specifications or a request for approval of an equal or modification of the specifications;
- (b) any alleged impropriety or other similar situation arising prior to bid opening; or,
- (c) the award of contract.

"Protest Committee" is the three (3) member group established by VIA for the purpose of reviewing protests submitted by a Bidder or supplier.

"Provide" means to furnish and install completely and ready for use.

"Punchlist" (in the context of construction contracts) refers to the list of known deficient items that must be completed as specified, prior to Final Acceptance and contract closeout.

"Purchase Order" means the written order sent by VIA on its form ordering the equipment or supplies in accordance with the terms and conditions of the Procurement.

"Request for Proposals" or "RFP," see "Procurement."

"Reserved" is a term utilized to delete standard terms and conditions that are not applicable to a specific procurement.

"Site" (see "Project Site").

"Small Business Concern" means a for profit small business as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing the Small Business Act, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$17,420,000 over the previous three fiscal years.

"Socially and Economically Disadvantaged Individuals" (in the context of Disadvantaged Business Enterprise provisions) means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

"South Central Texas Regional Certification Agency" or "SCTRCA" means that agency whose membership consists of various local governmental entities, including VIA; the purpose of which is to provide a unified resource for firms to seek DBE certification and information on doing business with DBE-certified firms. SCTRCA may be reached at (210) 227-4722.

"Specifications" means the written description and statement of necessary requirements of the equipment, construction, services and/or supplies to be provided, including the technical specifications, if any.

"Subcontractor" means any person, firm or corporation supplying services, labor and/or materials under separate contract or agreement with, the Contractor.

"Subject Data" is recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and

related information. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

"Supplier" means any manufacturer, company, or agency providing units, components, or subassemblies for inclusion.

"Task Order" (in the context of Indefinite Quantity Contracts (IDQs)) means the specific scope-of-work for a particular assigned project issued at VIA's discretion.

"Texas Open Records Act" or "TORA" means Chapter 552, Texas Government Code.

"VIA" means VIA Metropolitan Transit, San Antonio, Texas. References to "grantee," "recipient" or "purchaser" shall also mean "VIA."

"Work" is any and all labor, supervision, services, materials, machinery, equipment, tools, supplies, and facilities called for by the Contract and necessary to the completion thereof.

"Work on (at) the Project" means work to be performed at the location of the project including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any subcontractor.

4. GENERAL SOLICITATION POLICY PROVISIONS

- 4.1 Covenant Against Contingent Fees:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, VIA shall have the right to annul this Contract without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- 4.2 Non-Collusive Affidavit:** The Contractor represents and warrants that its proposal is genuine and not sham or collusive or made in the interest or in behalf of any person not therein named, and that the Contractor has not, directly or indirectly, induced or solicited any other person to submit a sham proposal, or any other person, firm, or corporation to refrain from submitting a proposal, and that the Contractor has not in any manner sought by collusion to secure itself an advantage over any other proposer.
- 4.3 Penalty for Collusion:** If at any time it shall be found that the person, firm, or corporation to whom a contract has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable by VIA; and the Contractor shall be liable to VIA for all loss or damage which VIA may suffer thereby.
- 4.4 Covenant Against Gratuities:** The Contractor warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any official or employee of VIA with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of this Contract. For breach of this warranty, VIA shall have the right to annul this Contract without liability and/or employ any other remedy it may have at law.
- 4.5 Code of Ethics:** On July 11, 1995, the VIA Metropolitan Transit Board of Trustees adopted a *Code of Ethics and Conduct Related to Business Transactions*, establishing general standards of ethical conduct for VIA employees, Board members, Contractors and vendors. Contractor agrees to and warrants that it will comply and has complied with the *Code of Ethics and Conduct Related to Business Transactions* and any amendments thereto. For breach of this warranty, VIA shall have the right to annul this Contract without liability and/or employ any other remedy it may have at law. Upon request, a copy of the *Code of Ethics and Code of Conduct Related to Business Transactions* shall be made available to Contractor.

Vendors and Contractors shall pay particular attention to Section IV.C. of the *Code of Ethics and Code of Conduct Related to Business Transactions* (as amended) which prohibits any business contracting or attempting to contract with VIA from communicating with a Board member or VIA employee (other than VIA's Contract Administrator designated for this procurement in the Contract or an individual designated in writing by the Contract Administrator) regarding details of a procurement or other contract opportunity or extension or change to an existing contract.

4.6 Procurement Protest Procedure:

- 4.6.1 Protest:** In the event VIA receives a protest according to the terms referenced herein, specifically 4.6.2. Timeliness, VIA will suspend the procurement process until the protest is resolved. A protest, if any, shall be in writing, received within the time limits set forth below (see "Timeliness") and shall be supported by sufficient information to enable the protest to be considered. Protests containing mere allegations or unsubstantiated expressions of suspicion without actual evidence to support the claim may be considered by VIA to be insufficiently supported. Protests (if any) must be submitted to VIA's Contract Administrator for referral to VIA's Director of Internal Audit, who will determine whether the protest is timely and otherwise meets the minimum requirements of this section and, if so, will transmit the protest for consideration by VIA's Protest Committee. If a protest is deemed by the Director of Internal Audit or the Protest Committee to be insufficient, the protester will be notified. A determination of insufficiency is final and may not be appealed; however, the protest deficiencies may be corrected and the protest re-filed, provided the protest is re-filed in a timely manner (see, "Timeliness," below) and no additional time shall be allowed without good cause shown (such

determination to be in VIA's sole discretion). Protests shall (at a minimum) include the following information:

- (a) name, address, and fax and telephone numbers of the protester;
- (b) solicitation or contract number;
- (c) detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester;
- (d) copies of relevant documents;
- (e) statement as to the form of relief requested;
- (f) all information establishing that the protester is an interested party for the purpose of filing a protest; and
- (g) all information establishing the timeliness of the protest.

A protest, if any, must be based upon one or more of the following:

- (a) substantial allegations of restrictive procedures, alleged improprieties or other similar situations arising prior to bid opening (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, arising prior to contract award;
- (b) substantial allegations of the issuance of an improper or clearly incorrect final ruling relating to requests for changes to or approval of equals, clarifications and modifications of the specifications; or
- (c) substantial allegations of an improper award of contract or alleged impropriety related to the award of the Contract, arising after bid opening (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, arising after contract award.

4.6.2 Timeliness: To be effective, a protest must be submitted so that it is received by the Contract Administrator by the following deadlines:

- (a) a protest based upon substantial allegations of restrictive procedures, alleged improprieties or other similar situations arising prior to bid opening (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, arising prior to contract award, must be submitted so that it is received by VIA's Contract Administrator no later than seven (7) working days prior to the specified bid opening date (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, no later than seven (7) working days prior to the date of contract award, and may only be protested once;
- (b) a protest based upon substantial allegations establishing the issuance of an improper or clearly incorrect final ruling relating to a request for changes to or approval under the specifications must be submitted so that it is received by VIA's Contract Administrator within seven (7) working days following the issuance of the Contract Administrator's final ruling; and
- (c) a protest of an allegedly improper award of contract or alleged impropriety related to the award of the Contract, arising after bid opening (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, arising after the date of contract award, must be submitted so that it is received by VIA's Contract Administrator within seven (7) working days following the earlier of the date (1) on which the Bidder knew, or (2) the date on which a diligent Bidder would have known, of the allegedly improper award or alleged impropriety. Notwithstanding the above, unless allowed by VIA in its sole discretion (upon good cause shown), a protest of an allegedly improper award of contract or alleged impropriety arising

after bid opening (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, arising after the date of contract award, must be filed within seven (7) days after contract award.

4.6.3 Final Determination: VIA's Protest Committee will use its best efforts to issue, within seven (7) working days of receipt, a final determination of the protest.

4.6.4 Withdrawal: A Bidder may withdraw its protest at any time prior to VIA's Protest Committee issuing a final determination. There will be no further review by VIA of a protest after a final determination is issued.

4.6.5 FTA Review: In accordance with 49 CFR 18.36, reviews of protests by the Federal Transit Administration ("FTA") may be requested only after exhaustion of all administrative remedies with VIA and will be limited to:

(i) violations of Federal law or regulations; and/or,

(ii) violations of VIA's protest procedures for failure to review a complaint or protest in accordance therewith.

A copy of any such request for review submitted to FTA must be provided contemporaneously to VIA.

4.7 Release of Information: Contractor agrees and understands that access to government records is governed by the Texas Public Information Act more commonly referred to as the Texas Open Records (TORA). Any proprietary information, trade secrets or confidential commercial and financial information which a Contractor believes should be exempted from disclosure to a third party **shall be specifically identified and marked as such by Contractor at the time Contractor submits its bid.** Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information is not sufficient to establish confidentiality. **The specific proprietary information, trade secrets or confidential communication and financial information must be clearly identified as such.** Upon request for records from a third party regarding this procurement, VIA will notify, in writing, in the manner required under TORA, the Contractor if and only if the information requested was identified by Contractor, as required under this paragraph. VIA may determine in its sole discretion whether sufficient legal justification exists for withholding the records and whether an opinion should be requested from the Texas Attorney General. **TO THE FULLEST EXTENT ALLOWED BY LAW, CONTRACTOR AGREES TO AND HEREBY DOES IDEMNIFY VIA FOR ITS COSTS ASSOCIATED WITH CONTRACTOR'S REFUSAL TO PRODUCE SUCH IDENTIFIED INFORMATION FOR PURPOSES OF TORA. Further, Contractor agrees to fully cooperate with VIA and to provide VIA full and complete access to any and all records requested under TORA regarding this Contract at no cost to VIA.**

4.8 Rejection of Bids: VIA reserves the right to reject any and all bids.

4.9 Discounts: Discounts for early payment shall not be considered in the evaluation of offers, except in the case of a tie bid provided that a minimum of ten (10) days is offered in which to take the discount.

Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the Contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

Time will be computed, for discount computation purposes, from the:

A. Date of delivery to, and acceptance by, VIA.

B. Date a proper invoice is received in the office specified by VIA, if the latter date is later than the date of delivery.

Payment will be deemed to have been made on the date that appears on payment checks.

4.10 Preparation Costs: All costs related to responding to this procurement solicitation, including (if applicable) the cost of any oral presentations required, shall be the sole responsibility of and shall be borne by each bidder.

5. INSURANCE

- 5.1 General Insurance Requirements:** The Contractor and any subcontractors shall purchase and maintain in effect during the entire period of this Contract, including any maintenance period thereof, insurance of the types and with minimum limits of liability as stated below. Such insurance shall protect Contractor from any and all claims and damages, which may arise out of or result from Contractors operations whether such operations are performed by Contractor or by a subcontractor or by anyone for whose acts any of them may be liable. All costs associated with these insurance coverages are the sole responsibility of the Contractor. The Contractor must adhere to the following requirements:
- 5.1.1 Additional Insured:** The Commercial General Liability (Broad Form) and Commercial Automobile Liability policies shall be endorsed to name VIA and its employees as additional insured regarding Contractor's operations in performance of this Contract.
- 5.1.2 Waiver of Subrogation:** The Commercial General Liability, Commercial Automobile Liability and Workers' Compensation and Employer's Liability, shall be endorsed to provide a waiver of subrogation in favor of VIA, its officers, trustees, and employees.
- 5.1.3 Coverage Primary:** Such insurance as is provided therein shall be primary and non-contributing with any other valid and collectible insurance available to VIA. The limits of liability required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total limits of liability available for any one occurrence or accident be less than the amounts required below.
- 5.1.4 No Commencement Without Coverage:** The Contractor shall not commence work at the site under this Contract until he/she has obtained all required insurance and until such insurance has been approved by VIA. Contractor shall not allow any subcontractor to commence work until all similar required insurance has been obtained and approved. Approval of the insurance by VIA shall not relieve or decrease the liability of the Contractor hereunder.
- 5.1.5 Certificates:** Two (2) copies of the certificate of insurance and applicable endorsements evidencing insurance coverage as required, shall be furnished to the Contracting Officer prior to commencement of work and within ten (10) calendar days after the date of Notice of Award. CERTIFICATES and ENDORSEMENTS SHALL BE PROVIDED BY CONTRACTOR AND ANYONE INVOLVED IN THE PERFORMANCE OF WORK UNDER THIS CONTRACT (not otherwise included under Contractor's coverage), INCLUDING ALL SUBCONTRACTORS. All certificates from Contractor and any subcontractors must be issued reflecting VIA Metropolitan Transit as the certificate holder. All Certificates of Insurance shall reflect the VIA project number and the name of the Contracting Officer. Failure to furnish the required certificates of insurance and accompanying endorsements within the time allowed shall not be considered cause for modification of any contractual time limits. All policies of insurance presented as proof of compliance with the above requirements shall be on forms and with insurance companies approved by VIA. All such insurance policies shall be provided by insurance companies having a Best's rating of A- rating or greater, VI or greater (A-:VI) as shown in the most current issue of A.M. Best's Key Rating Guide. Policies of insurance issued by insurance companies not rated by Best's or have a Best's rating lower than A-:VI will not be accepted as complying with the insurance requirements of the Contract unless such insurance companies are approved in writing prior to the award of the Contract. Certificate of Insurance shall contain transcripts from the proper office of the insurer, evidencing in particular those insured, the extent of the insurance, the location and the cancellation clause as required below.
- 5.1.6 No Lapse or Cancellation:** The Contractor and any subcontractor shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance policies shall include a clause to the effect that the policy shall not be canceled, reduced, restricted, or limited until thirty (30) days after VIA has received written notice as evidenced by return receipt of registered or certified letter. In the event of cancellation or lapse of insurance, the Contractor shall notify VIA immediately. In addition to any other remedies VIA may have upon Contractors failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, VIA shall have the right to

order Contractor to stop work hereunder, and/or withhold any payment(s) which become due, to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof. For contracts which require owners and contractors protective liability coverage, there are additional non-cancellation requirements. Refer to the section entitled "Owners and Contractors Protective Liability" for applicability and details.

5.1.7 Breach: Failure to maintain insurance coverage as required herein, shall constitute a material breach and default.

5.1.8 Self Insurance: The Contractor's insurance requirements as outlined herein, may be self-insured as long as the Contractor is in compliance with the State of Texas requirements for self- insurance and subject to approval and review or audit by VIA to verify the Contractor's financial stability. Audited Financial Statements as well as self-insured certificates must be approved by VIA prior to acceptance of self-insurance and prior to commencement of work. The Contractor's liability is not limited by the amount of insurance carried nor by its self-insurance.

5.1.9 Responsibility of Payments: Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement..

5.1.10 Own Equipment and/or Property: Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

5.1.11 Other Obligations: It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

5.2 Specific Insurance Requirements:

5.2.1 Workers' Compensation Insurance: Coverage is required for workers' compensation providing Statutory Benefits in accordance with the Workers' Compensation Act of the State of Texas and/or any other state or Federal law as may be applicable to the work being performed under this Contract.

5.2.2 Employer's Liability Insurance: Coverage is required for employer's liability with limits of liability not less than:

\$500,000	Each Accident
\$500,000	Policy Limit for Disease
\$500,000	Each Employee for Disease

5.2.3 Broad Form Commercial General Liability Insurance: Coverage is required for general liability, including coverage for the following where exposure exists:

- 1) Premises/Operations
- 2) Independent Contractors
- 3) Products/Completed Operations
- 4) Personal Injury
- 5) Contractual Liability
- 6) Explosion/Collapse/Underground Property Damage (where applicable)

\$2,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal Injury per occurrence
\$1,000,000	Each Occurrence

5.2.4 Commercial Automobile Liability Insurance: Coverage is required for automobile liability, covering all owned/leased, hired and non-owned motor vehicles including fuel transports used in connection with the work being performed under the Contract with limits of liability not less than:

\$500,000

Combined Single Limit

5.2.5 Subcontracts: The Contractor shall require subcontractors to provide:

- 1) Insurance with the statutory benefits as specified in the section entitled "Workers' Compensation and Employer's Liability insurance;" and
- 2) Insurance with the same minimum limits as specified in the section entitled "Commercial General Liability;" and
- 3) Commercial automobile insurance with the same minimum limits as specified in the section entitled "Commercial Automobile Insurance."

6. BILLING AND PAYMENT

6.1 Compensation: The Contractor shall be reimbursed by VIA for authorized costs incurred in performance of the work pursuant to each Work Order issued under this Contract, based on the unit prices specifically described in the Price Schedule. The Contractor shall include as part of the Request for Payment a list of all DBE subcontractors and the amounts to be paid to each of the subcontractors from this Request for Payment. This requirement is in accordance with FTA Circular 4716.1. The Contractor will submit a final invoice within 30 days after the completion of work. Invoices submitted after this time will not be honored unless prior arrangements are made and approved in writing by VIA.

6.2 Ceiling Price: The ceiling price established for this Contract is \$2,000,000 over the term of the contract, inclusive of the cost of all work orders issued hereunder. In the event that the ceiling price is exceeded during the course of this Contract, VIA shall have no obligation to pay and Contractor shall only exceed the ceiling price at its own risk, unless the Contractor is notified in writing by the Contract Administrator that additional funds are allocated to the Contract, effectively raising the ceiling price, and that the Contractor is authorized to exceed the ceiling price. VIA may raise the ceiling price at any time in its sole discretion and in the event the ceiling price is raised, Contractor shall be obligated to perform within the terms of this Contract and the new ceiling price.

The right to refuse to allocate additional funds is reserved by VIA in its sole discretion. In the event additional funds are not allocated, VIA may either terminate the Contract or allow the Contract to remain in effect until expiration of the term (in contemplation of the possibility of additional funding allocations); however, VIA shall not be obligated under any circumstance to pay any amount in excess of the ceiling price unless the Contractor is authorized to exceed the ceiling price as provided herein. The Contractor shall not be required to perform further services in excess of the ceiling price unless and until authority is granted to exceed the ceiling price as provided herein. The ceiling price represents VIA's maximum total funds currently allotted to this Contract and shall not be construed as an obligation by VIA to pay any funds or to otherwise incur any costs without the issuance of a work order by VIA, which (the issuance or non issuance of which) shall be solely within the discretion of VIA.

6.3 Minimum Compensation: As consideration for this Contract, the sufficiency of which is acknowledged by Contractor, VIA shall issue (a) Work Order(s) for work which will allow the Contractor to be compensated in (at least) the amount of five hundred (\$500) dollars.

6.4 Method of Payment: Reimbursement shall be made monthly within thirty (30) days after the receipt of Contractor's invoice. Contractor shall submit, during the progress of the work, an invoice by the fifteenth (15th) day of each month for work done or expenses incurred during the previous month. Prior to final payment, an audit of the records supporting the costs claimed by the Contractor shall be made promptly and without cost to the Contractor. If, after final audit, certain previous reimbursement costs are judged ineligible, the Contractor will be responsible to cover the costs and reimburse VIA, if necessary, in the amount of the ineligible reimbursements.

In the event payment is not made within thirty (30) days, the Contractor shall submit a reminder invoice marked "overdue".

6.5 Payments by Contractor: The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each payment from VIA. The Contractor agrees further to release retainage payments to each subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed and submits all required closeout documentation. VIA must acknowledge acceptance of closeout documentation before the firm is in compliance with the requirements. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of VIA. This clause applies to both DBE and non-DBE subcontractors. Prime Contractors not in compliance may be subject to withholding of next payment.

6.6 Expenses. Contractor understands and agrees that all costs and expenses incurred by Contractor under this Contract, including but not limited to labor, supervision of work, report reproduction, typing, insurance, communication, computer access, materials, supplies, subcontractor costs, telephone, stationary, rent and any and all other costs and expenses necessary to complete this Contract, shall be borne by Contractor.

6.7 Statutory Compliance. Notwithstanding any other provision in this Contract, the Parties shall comply with all applicable requirements of V.T.C.A., Government Code, Chapter 2251, as amended.

7. FEDERAL PROVISIONS
[THESE PROVISIONS APPLY TO THE EXTENT APPLICABLE]

- 7.1 Fly America Requirements:** The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international transportation.
- 7.2 Buy America Requirements: (Applies to construction contracts, and acquisition of goods or rolling stock, valued at more than \$100,000).** The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.
- A bidder or offeror must submit to VIA the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification may be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.
- 7.3 School and Charter Bus Requirements: RESERVED.**
- 7.4 Cargo Preference – Use of United States-Flag Vessels: (Applies to contracts involving equipment, materials, or commodities which may be transported by ocean vessels).** The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying 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 VIA (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.
- 7.5 Seismic Safety Requirements:** 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 Seismic Safety Regulations 49 CFR 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.
- 7.6 Energy Conservation Requirements:** 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. 6321).

- 7.7 Clean Water Requirements:** (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Purchaser (VIA) and understands and agrees that VIA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
- 7.8 Bus Testing: (Applies to contracts for acquisition of rolling stock/turnkey). RESERVED.**
- 7.9 Pre-Award and Post Delivery Audits Requirements: (Applies to contracts for acquisition of rolling stock/turnkey). RESERVED.**
- 7.10 Lobbying:** Contractor shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to VIA.
- 7.11 Access to Records and Reports:** Contractor agrees to provide VIA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three 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 Contractor agrees to maintain same until VIA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- 7.12 Federal Changes:** 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 Agreement between VIA and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.
- 7.13 Bonding Requirements: (Refer to section entitled "Guarantees and Bonds").**
- 7.14 Clean Air:** (i) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.* The Contractor agrees to report each violation to VIA and understands and agrees that VIA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (ii) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
- 7.15 Recycled Products: (Applies to all contracts for items designated by the EPA, when procurement is made of \$10,000 or more of one of these items during a fiscal year, using Federal funds).** The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of

40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

7.16 Davis-Bacon and Copeland Anti-Kickback Acts (Applies to construction contracts over \$2,000).

7.16.1 Minimum Wages:

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 7.16 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 7.16. (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 7.16 (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

(ii)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or

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

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

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

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

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

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

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

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

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

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

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

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

7.16.3 Payrolls and Basic Records: (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 7.16 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

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

7.16.4 Apprentices and Trainees: (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid

fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

7.16.5 Compliance with Copeland Act requirements: The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

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

7.16.7 Contract Termination: Debarment: A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR.

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

7.16.9 Disputes Concerning labor standards: Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

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

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

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

7.17 Contract Work Hours and Safety Standards Act: (Applies to construction contracts over \$2,000 and turnkey, rolling stock and operational contracts - excluding contracts for transportation services - over \$2,500).

7.17.1 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.

7.17.2 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 therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 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.

7.17.3 Withholding for Unpaid Wages and Liquidated Damages: VIA 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.

7.17.4 Subcontracts: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (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.

7.18 RESERVED.

7.19 No Government Obligation to Third Parties: (1) VIA 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 VIA, 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.

7.20 Program Fraud and False or Fraudulent Statements and Related Acts: (1) 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 CFR 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. (2) 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. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. (3) 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.

7.21 Termination: (Refer to the section entitled "Termination of Contract").

7.22 Government-Wide Debarment and Suspension:

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.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by VIA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to VIA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7.23 Privacy Act: The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

7.23.1 General: The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

7.23.2 Subcontracts: The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

7.24 Civil Rights Requirements:

7.24.1 Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

7.24.2 Equal Employment Opportunity: During the performance of this Contract, the Contractor agrees as follows:

7.24.2.1 Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at U.S.C. 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. 200e note), and with

any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

7.24.2.2 Age: In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C 623 and Federal transit law at 49 U.S.C 5332, 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.

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

7.24.3 Inclusion of Subcontracts: The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal Assistance provided by FTA, modified only if necessary to identify the affected.

7.25 Breaches and Dispute Resolution: (Refer to "General Terms").

7.26 Patents and Rights in Data: RESERVED.

7.27 Transit Employee Protective Agreements: RESERVED.

7.28 General Disadvantaged Business Enterprise (DBE) Provisions: (Refer to Section 8 for provisions specific to this Contract).

7.28.1 DBE Program: As a condition to financial assistance, VIA has submitted and the DOT has approved, a Disadvantaged Business Enterprise program ("VIA's DBE Program") which VIA has agreed to perform. VIA's DBE Program is incorporated into this Contract by reference and made a part hereof. Failure of the Contractor to comply with such terms will constitute a breach of contract. A copy of VIA's DBE Program may be obtained from VIA's DBE office.

7.28.2 General Policy: It is the policy of VIA that Disadvantaged Business Enterprises "DBEs" as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts. Consequently, the DBE requirements of 49 CFR Part 26, apply to this Contract. If the Contractor is found to have failed to exert good faith efforts (as defined in 49 CFR 26.5) to meet the DBE contract goal, VIA may declare the Contractor noncompliant and in breach of contract.

7.28.2.1 DBE Obligation: Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts under this Contract. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, and VIA's DBE Program, to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

7.28.2.2 Contractor/Subcontractor Obligation: 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 CFR Part 26 in the award and administration of [this] Contract[s]. 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 VIA deems appropriate.

- 7.29 National ITS Architecture Compliance:** The Contractor shall conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by TEA-21 Section 5206(e), 23 U.S.C. Section 502 note, and Federal Transit Administration Notice "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.
- 7.30 Incorporation of Federal Transit Administration (FTA) Terms:** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any VIA requests which would cause VIA to be in violation of the FTA terms and conditions.
- 7.31 Drug and Alcohol Testing: (Applies to operational service contracts involving safety-sensitive functions - 49 CFR 655 and 49 CFR part 40). RESERVED.**
- 7.32 - 7.39 Reserved for future expansion.**
- 7.40 Additional Environmental and Resource Conservation Requirements:**
- 7.40.1 Environmental Protection:** Contractor agrees to comply with the requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*; Section 14 of the Federal Transit Act, as amended, 49 U.S.C. app. 1610; the Council on Environmental Quality regulations, 40 CFR Part 1500 *et seq.*; and the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR Part 771 and 49 CFR Part 622.
- 7.40.2 Air Pollution:** The Contractor agrees to comply with the joint FHWA/FTA regulations, "Air Quality Conformity and Priority Procedures for Use in Federal-Aid Highway and 49 CFR Part 623. The Contractor assures that any facilities or equipment acquired, constructed, or improved as part of the Project are or will be designed and equipped to limit air pollution as provided in accordance with the following EPA regulations: "Control of Air Pollution from Motor Vehicles and Motor Vehicles Engines," 40 CFR Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicles Engines: Certification and Test Procedures," 40 CFR Part 86; and "Fuel Economy of Motor Vehicles," 40 CFR Part 600; in accordance with applicable Federally-approved State Implementation Plan(s) (in particular, the Transportation Control Measures); and in accordance with applicable Federal regulations, directives and other standards.
- 7.40.3 Historic Preservation:** The Contractor agrees to assist the Government to comply with Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, involving historic and archaeological preservation by:
- (a) Consulting the State Historic Preservation Officer on the conduct of investigations, in accordance Properties," 36 CFR Part 800, to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and notifying VIA and the Government (FTA) of the existence of any such properties; and
 - (b) Complying with all Federal requirements to avoid or mitigate adverse effects upon such properties
- 7.40.4 Mitigation of Adverse Environmental Effects:** Should the performance under this Contract cause adverse environmental effects, the Contractor agrees to take all reasonable steps to minimize such effects pursuant to 49 U.S.C. app. 1610, all other applicable statutes, and the procedures set forth in 23 CFR Part 771 and 49 CFR Part 622. The Contractor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreements, and statements required by 49 U.S.C. 303) and with any conditions imposed by the Government as

part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in and made part of this Contract by reference.

7.41 Access Requirements for Individuals with Disabilities: The Contractor agrees to comply with, and assure that any subcontractor, or third party contractor under this Project complies with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.* and 49 U.S.C. 322; section 502(b) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 792(b), (7); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. 1612; and the following regulations and any amendments thereto:

- (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
- (c) U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38;
- (d) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- (e) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- (f) General Services Administration regulations, "Construction and Alteration of Public Buildings," "Accommodations for the Disabled," 41 CFR part 101-19;
- (g) Equal Employment Opportunity Commission (EEOC) "Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- (h) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64 Subpart F;
- (i) FTA regulations, "Transportation for Elderly and Disabled Persons," 49 CFR Part 609;
- (j) Architectural and Transportation Barriers Compliance Board regulations, "Minimum Guidelines and Requirements for Accessible Design," 36 CFR part 1190;
- (k) Architectural and Transportation Barriers Compliance Board regulations, "Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities," 26 CFR Part 1191; and
- (l) Architectural and Transportation Barriers Compliance Board regulations, "Americans With Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles," 36 CFR 1192.

8. DISADVANTAGED BUSINESS ENTERPRISE

- 8.1 Disadvantaged Business Enterprise (DBE) Contract Goal/Target:** The DBE contract goal or target (as the case may be) is indicated under the section entitled "Disadvantaged Business Enterprise Goal" (as applicable) under Part 1 of this Contract. All bidders/offers must submit with their bid/offer the DBE documentation contained in or otherwise referenced in this Part 8 "Disadvantaged Business Enterprise." If this is an Indefinite Quantities Contract, VIA will set contract goals for each Task Order as deemed necessary and Contractor must exert good faith efforts to meet the DBE contract goal set for each Task Order, due to the nature of the Indefinite Quantities Contract.
- 8.2 VIA's Disadvantaged Business Enterprise (DBE) Program dated July 2002:** The Program concerning the utilization of DBEs in VIA contracts is contained in the VIA Disadvantaged Business Enterprise (DBE) Program dated July 2002.
- 8.3 Good Faith Efforts:** Award of this Contract will be conditioned on meeting the requirements of 49 CFR Part 26, Section 26.53, which provides that a contract for which a DBE contract goal has been established shall be awarded only to a bidder/offeror who makes good faith efforts to meet the contract goal. Good faith efforts are established by the bidder/offeror's doing the following:
- (i) Documents that it has obtained enough DBE participation to meet the goal; or
 - (ii) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. See VIA's DBE Program and Appendix A of 49 CFR Part 26 for guidance regarding good faith efforts.
- 8.3.1 Administrative Appeal:** In the event that VIA determines that the bidder/offeror has failed to make good faith efforts to meet the contract goal, bidder/offeror shall have the opportunity for administrative reconsideration by VIA, as described in VIA's Disadvantaged Business Enterprise Program dated July 2002 ("VIA's DBE Program").
- 8.4 Required DBE Information:** Bidders/Offerors shall submit DBE participation information with their bids/proposals. All bidders/offers will be required to submit the following information to VIA:
- (i) The names and addresses of DBE firms that will participate in the Contract ("Schedule of Participation" form);
 - (ii) A description of the work that each DBE will perform ("Schedule of Participation" form);
 - (iii) The dollar and percentage amount of the participation of each DBE firm participating ("Schedule of Participation" form);
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal ("Schedule of Participation" form);
 - (v) Written confirmation from the DBE that it is participating in the Contract as provided in the Contractor's commitment ("DBE Participation Certification" form); and
 - (vi) If the contract goal is not met, evidence of good faith efforts (See VIA's DBE Program and Appendix A of 49 CFR Part 26 for guidance regarding good faith efforts).
- 8.5 Termination of DBE Subcontractor:** The Contractor agrees to comply with 49 CFR Part 26 (Sections 26.53(f)(1) and (2)), which provide: (1) that a Contractor shall not terminate for convenience a DBE subcontractor listed in the Contractor's bid/offer (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with Contractor's own forces or those of an affiliate, without VIA's prior written consent; and (2) when a DBE subcontractor is terminated, or fails to complete its work on the Contract for any reason, the Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established by VIA for the Project. Failure by 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 VIA deems appropriate. In complying with VIA's DBE Program, Contractor shall only utilize DBE subcontractors possessing the requisite knowledge, qualifications and experience for the scope of work to be performed pursuant to that particular subcontract.

8.6 Validity of DBE Participant: The legitimacy of each DBE or DBE-majority joint venture shall be determined by VIA, based on the information submitted by said participant as required by VIA and/or the South Central Texas Regional Certification Agency.

9. FORMS

9.1 Forms to be Submitted with Bid/Offer:

9.1.1 Offer and Certifications Form: The undersigned Bidder/offeror having read and examined the Procurement (see section entitled "Definitions") documents, and which will ultimately comprise the Contract for the above designated Work, and thoroughly familiarized himself/herself with the factors which will affect the execution of the Work and the cost thereof, does hereby offer to furnish all materials and labor to complete the work set forth in this offer. All prices stated herein are firm and shall not be subject to escalation provided this offer is accepted within ninety (90) days after the official opening of the proposal.

Furthermore, the undersigned hereby declares that he/she has thoroughly reviewed all the Procurement documents (which will ultimately comprise the Contract) and has found no discrepancies with the information or accuracy of the documents that might affect either the cost or the time of the work.

The following certifications are made in connection with the bid/offer and the performance of the Contract (the references to "Bidder/offeror" shall also mean and apply to "Contractor" upon acceptance of the Bid/offer):

9.1.1.1 Good Faith Offer: The Bidder/offeror hereby declares that only the persons or firms interested in the offer as principal or principals are named herein and that no other persons or firms then herein mentioned have any interest in this offer or in the contract to be entered into; that this offer is made without connection with any other person, company, or parties likewise submitting a bid or offer; and that it is in all respects for and in good faith.

9.1.1.2 Contractor Compliance with VIA's Drug/Alcohol-Free Workplace Policy: The Bidder/offeror certifies that it will comply with VIA's Policies and Procedures for maintaining a drug and alcohol free work environment, the essence of which is as follows:

1. While operating as a contractor or subcontractor performing work on VIA's premises, neither the Bidder/offeror or its subcontractor(s) will engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conduct of any contracting activity paid for by VIA. (Authority -- 49CFR 29.600 Subpart F)
2. At its sole option, VIA may elect to subject Contractor and/or subcontractor personnel to random testing for the presence of controlled substances when such employees are performing safety sensitive work on VIA's premises. (A copy of VIA's Drug and Alcohol Policy is available upon request.) (Authority -- 49CFR 40.1)
3. Upon determination of one or more confirmed instances of the presence of a controlled substance involving Contractor or subcontractor personnel, VIA may elect to take punitive action against Contractor including, but not limited to Termination for Default.

9.1.1.3 Buy America Certificate: (Strike through the provision that does NOT apply) If neither provision is stricken, Bidder/offeror will be presumed to have chosen "Certificate of Compliance."

Certificate of Compliance: The Bidder/offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) (for steel, iron, or manufactured products) or 49 U.S.C. 5323(j)(2)(C) (for buses, other rolling stock and associated equipment) and the applicable regulations in 49 CFR 661.

OR

Certificate of Non-compliance: The Bidder/offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) (for steel, iron, or manufactured products) or 49 U.S.C. 5323(j)(2)(C) (for buses, other rolling stock and associated equipment) but may qualify for an exception to the requirement pursuant to 49 U.S.C. 5232(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

9.1.1.4 Affidavit of Non-Collusion:

The Bidder/offeror certifies that:

The attached Bid/offer has been arrived at by the bidder independently, and has been submitted without collusion with, and without agreement, understanding, or planned common course of action with, any other vendor of materials, supplies, equipment, services described in the Procurement documents, designed to limit independent bidding or competition; and the contents of the Bid/offer have not been communicated by the bidder or its employees or agents, to any person not an employee or agent of the Bidder/offeror or its surety on any bond furnished with the Bid/offer, and will not be communicated to any such person prior to the official opening of the bid or consideration of the proposal.

9.1.1.5 Certification of Restrictions on Lobbying:

The Bidder/offeror certifies that:

1. No Federally appropriated funds have been 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 any agency, a Member of Congress, an officer or employee 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.
2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence 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 (as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1431 (1/19/96).
3. 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 for making or entering into this transaction imposed by 31 U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

THE BIDDER/OFFEROR CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE BIDDER/OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. 3801 ET. SEQ., APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

9.1.1.6 Bid/offer:

Bidders shall enter prices and amounts for each line item as indicated on this schedule. In the event there is a difference between the price for services, material and rental and the extended total amount, the price for services, materials and rental will be held to be the intended bid and the total of the line item shall be recomputed accordingly. The undersigned offers to furnish VIA Metropolitan Transit all labor, materials, tools, supplies, equipment, transportation and supervision, without exception, to perform all operations necessary to complete the project in strict accordance to all terms of this solicitation package issued by VIA in consideration of payment of the following price or prices

9.1.1.6.1 Bid Schedule

ITEM	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL PRICE
A	Super Stop Waiting Shelters (See Part 10 Technical Specification)	50	\$ _____	\$ _____
B	Solar Lighting Systems (Option) (See Part 10 Technical Specifications)	10	\$ _____	\$ _____

9.1.1.6.2 VIA may choose at the time of award or later, to award the option. However, VIA will include the price of option considered for award in the bid adjudication. Bids will be adjudicated on an "all or none" basis.

9.1.1.6.3 The quantities shown above are estimated quantities. Actual quantities may be more or less than the quantities shown.

9.1.1.6.4 Prompt Payment Discount. The following prompt payment discount is hereby offered for payments made within the period specified after receipt of invoice.

_____ % _____ days

By execution below, the Bidder/Offeror agrees to faithfully and diligently complete the work as bid herein, and as specified in VIA's Procurement documents including those described in the section entitled "Contract" under Part 2, "Scope of Work, Terms and Conditions." Bidder/Offeror understands and agrees that by execution below, it is offering to be bound by the terms contained or referenced in the section entitled "Contract" under Part 2, "Scope of Work, Terms and Conditions" and that, in the event VIA accepts this offer, such documents will form and constitute a legally binding contract.

By execution below, Bidder/Offeror provides all the certifications and assurances described in this Bid/offer, and further certifies that all information provided or otherwise contained in its response to VIA's Procurement Solicitation is true and correct, including but not limited to the information contained in the following forms:

Acknowledgment of Addenda

List of Similar Contracts/References

Certification of Restrictions on Lobbying

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Business Questionnaire

Conflict of Interest Questionnaire

Schedule of Participation

DBE Participation Certification

DBE Unavailability Certification

Signed this _____ day of _____, 20____.

PROPOSED CONTRACTOR (Bidder/offeror)

_____ d/b/a
(name should be the same as the response to question #1 "Business Questionnaire").

By: _____ (individual or officer authorized to sign on behalf of Bidder/offeror)

_____ (title, or legal capacity - attach power of attorney, if any)

ATTEST: (if Bidder/offeror is a corporate entity)

By: _____ [Affix CORPORATE SEAL here]

_____ (title - usually, "corporate secretary")

ACKNOWLEDGED, SWORN TO and SUBSCRIBED before me, the undersigned authority, on this ____ day of _____, 20____, to certify which, witness my hand and seal of office.

Notary Public

AWARDED, executed and effective this ____ day of _____.

VIA Metropolitan Transit

By: _____

9.1.2 ACKNOWLEDGMENT OF ADDENDA

The undersigned acknowledges receipt of the following addenda to the Bidding Documents:

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

NOTE: Failure to acknowledge receipt of all addenda may cause the bid to be considered nonresponsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the bid.

Name of Bidder

Street Address

City State Zip Code

Signature of Authorized Official

Name

Type of Entity

Position and/or Title

Date

9.1.3 LIST OF SIMILAR CONTRACTS/REFERENCES

1. Project:
Contact Person:
Company Name:
Telephone Number:
Fax Number:
E-mail Address:
2. Project:
Contact Person:
Company Name:
Telephone Number:
Fax Number:
E-mail Address:
3. Project:
Contact Person:
Company Name:
Telephone Number:
Fax Number:
E-mail Address:
4. Project:
Contact Person:
Company Name:
Telephone Number:
Fax Number:
E-mail Address:
5. Project:
Contact Person:
Company Name:
Telephone Number:
Fax Number:
E-mail Address:

Name of Bidder

Street Address

City State Zip

Signature of Authorized Official

Name

Type of Entity

Position and/or Title

Date

9.1.4 CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

1. No Federal appropriated funds have been 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 any agency, a Member of Congress, an officer or employee 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.
2. 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 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.
3. 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 the fact upon which reliance is 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 civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 20 _____.

Company Name: _____

By: _____
(Signature of Company Official)

(Title of Company Official)

9.1.5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION (Pursuant to 49 CFR Part 29, Appendix B)

1. By signing and submitting this bid or proposal, the Bidder is providing the signed certification set out below.
2. The certification referred to in this paragraph 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, VIA may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to VIA 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.
4. The terms "*covered transaction*," "*debarred*," "*suspended*," "*ineligible*," "*lower tier covered participant*," "*persons*," "*lower tier covered transaction*," "*principal*," "*proposal*," and "*voluntarily excluded*," as used in this paragraph, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 49 CFR Part 29. You may contact VIA for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by VIA.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and all solicitations for lower-tier covered transactions.
7. 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.
8. 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.
9. Except for transactions authorized under subparagraph 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, VIA may pursue available remedies including suspension and/or debarment.

CERTIFICATION

The prospective lower tier participant certifies, by submission of this offer, that neither it nor its "principals," [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

When the prospective lower tier participant is unable to certify to the statements in this certification, prospective lower tier participant shall attach an explanation to this proposal.

Signature _____
Typed or Printed Name _____
Title _____
Company _____
Date _____

9.1.6 BUSINESS QUESTIONNAIRE: This questionnaire must be submitted for all potential Contractors and subcontractors listed on the Schedule of Participation.

1. Name of Proposed Contractor ("Business," herein): _____

Doing Business As: _____
(other business name, if applicable)

2. Business Mailing Address: _____
City: _____ State: _____ Zip Code: _____ / _____

3. Business Telephone Number: () _____ Fax Number: () _____

4. Business Type: ☐ Individual ☐ Corporation ☐ Partnership ☐ Joint Venture

5. Number of Years in Business: _____

6. Annual Gross Revenue: (M represents Millions)
☐ \$1M or less ☐ \$1M-\$5M ☐ \$5M-\$10M ☐ \$10M-\$16M ☐ \$16M or Over

7. Number of Employees:
☐ 100 or fewer ☐ 101-500 ☐ 501-750 ☐ 751-1,000 ☐ 1,001 or over

8. Is Business Owned by Minority Ethnicity? ☐ Yes ☐ No

9. Ethnic Group: ☐ Black American ☐ Hispanic American ☐ Native American
☐ Asian Pacific American ☐ Subcontinent Asian American ☐ Other

10. Woman Owned? ☐ Yes ☐ No

11. Physically Challenged? ☐ Yes ☐ No

12. Type of Work Performed: ☐ Construction ☐ Wholesale/Distributor ☐ Manufacturing
☐ Professional Service ☐ General/Technical Service ☐ Retail

13. Please provide a brief description of your materials and/or services: _____

14. Is the Business a subsidiary of another entity? ☐ Yes ☐ No

15. Has the Business, or any officer or partner thereof, failed to complete a contract? ☐ Yes ☐ No

16. Is any litigation pending against the Business? ☐ Yes ☐ No

17. Has the Business ever been declared "not responsible"? ☐ Yes ☐ No

18. Has the Business been debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or otherwise disqualified from bidding, proposing or contracting? ☐ Yes ☐ No

19. Has the Business been a defaulter, as principal, surety or otherwise? ☐ Yes ☐ No

20. Has the government or other public entity requested or required enforcement of any of its rights under a surety agreement on the basis of a default or in lieu of declaring the Business in default? ☐ Yes ☐ No

21. Is the Business in arrears upon a contract or debt? ☐ Yes ☐ No

22. Are there any proceedings pending relating to the Business' responsibility, debarment, suspension, voluntary exclusion or qualification to receive a public contract? ☐Yes ☐No
23. Have liquidated damages or penalty provisions been assessed against the Business for failure to complete the work on time or for any other reason? ☐Yes ☐No
24. If a "yes" response is given under questions 14 through 23, please provide a detailed explanation including dates, references to contract information, contacts, etc. (attach additional pages as necessary). VIA reserves the right to inquire further with respect thereto.
- _____
- _____
- _____
25. List the name and business address of each person or legal entity which has a 10% or more ownership or control interest in the Business (attach additional pages as necessary).
- _____
- _____
- _____
26. Name of principal financial institution for financial responsibility reference.
- Name of Bank: _____
- Address: _____
- City and State: _____
- Officer familiar with bidder's account: _____
- Federal Taxpayer I.D. number: _____
27. How were you notified of this solicitation? (Check all that apply—your response to this will help improve our Outreach efforts.)
- | | | |
|--------------------------------------|---|--|
| ☐ Newspaper | ☐ VIA Website | ☐ Other (Identify)_____ |
| ☐ Direct Mail | ☐ E-mail | ☐ VIA Outreach |
| ☐ Telephone | ☐ TX Marketplace | ☐ Networking Event |

I, individually and on behalf of the business named above, do by my signature below certify that the information provided in this questionnaire is true and correct. I understand that if the information provided herein contains any false statements or any misrepresentations: 1) VIA will have the grounds to terminate any or all contracts which VIA has or may have with the business; 2) VIA may disqualify the business named above from consideration for contracts and may remove the business from VIA's bidders list; or/and 3) VIA may have grounds for initiating legal action under federal, state or local law. **Note: This questionnaire is also a certification form; the information requested will be used to determine small business status as per 13 CFR Part 121. Additionally, this information will allow VIA to report the amount of subcontracting activity with all businesses who offer the commodities and services used by VIA.**

Printed Name: _____ Title: _____

Signature of Owner _____ Date: _____
(Owner, CEO, President, Majority Stockholder or Designated Representative)

Questions about this document should be directed to the Contract Administrator

9.1.7 CONFLICT OF INTEREST QUESTIONNAIRE
For vendor or other person doing business with local governmental entity

FORM CIQ

This questionnaire is being filed in accordance with chapter 176 of the Local Government code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person doing business with local governmental entity.

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 **Name of local government officer with whom filer has affiliation or business relationship.**

Name of Officer

This section, item 5 including subparts A, B, C & D must be completed for each officer with whom the filer has affiliation or business relationship. Attach additional pages to this Form CIQ as necessary.

- A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?
- ☐ YES ☐ NO
- B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity?
- ☐ YES ☐ NO
- C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?
- ☐ YES ☐ NO
- D. Describe each affiliation or business relationship.

4 _____
Signature of person doing business with the governmental entity

Date

9.1.8 SCHEDULE OF PARTICIPATION

By the date of the bid opening, DBE firms listed on this Schedule must be certified with VIA in accordance with provisions of Part 8 of this document.

Name of Contractor and Subcontractors	Address	Type of Work to be Performed	Percentage and Dollar Amount of Compensation	DBE Goal Attainment Yes or No

The undersigned may enter into a formal agreement with subcontractors for work listed in this schedule. This Schedule of Participation may be modified at any time prior to the expiration of five working days after bid opening. After that time, the undersigned will enter into a formal agreement with subcontractors for work listed in this schedule conditioned upon execution of a contract with VIA Metropolitan Transit.

(Signature of Bidder/Offeror)

9.1.9 DBE PARTICIPATION CERTIFICATION

I, _____, _____
(NAME) (TITLE)

of _____, certify that we will enter into a formal
(FIRM)
agreement with prime contractor for work listed in the schedule of participation conditioned upon execution of a
contract with VIA Metropolitan Transit.

(Signature)

9.1.10 DBE UNAVAILABILITY CERTIFICATION

I, _____, _____
(NAME) (TITLE)

of _____ certify that on _____,
(FIRM) (DATE)

I contacted the following disadvantaged contractor to obtain a bid for work items to be performed on

VIA's Contract No. _____.

Disadvantaged Contractor	Work Items Sought	Form of Bid Sought (i.e. Unit Price, Materials and Labor, Labor only, etc.)

To the best of my knowledge and belief, said disadvantaged contractor was unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a bid, for the following reasons(s):

Signature

Date

9.2 Other Forms:

9.2.1 Bid Bond Form: (recommended)

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____ as Principal, and _____ as Surety, are hereby held and firmly bound unto VIA Metropolitan Transit, San Antonio, Texas (hereinafter "VIA") as purchaser in the penal sum of _
for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed, this _____ day of _____, 20____. The condition of the above obligation is such that
whereas the Principal has submitted to VIA a certain Bid, attached hereto and hereby made a part hereof to enter into a
contract in writing, for the

NOW, THEREFORE,

- (a) If said Bid shall be rejected, or in the alternate,
- (b) If said Bid shall be accepted and if Principal shall perform all things required by the agreement to be performed prior to a Notice to Proceed and if Principal shall furnish a bond for his faithful performance of said contract and a bond for the payment of all persons performing labor or furnishing materials in connection therewith in accordance with the Invitation for Bids and shall in all other respects perform the agreement created by the acceptance of said Bid,

then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which VIA may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS HEREOF, the Principal and Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

PRINCIPAL

(L.S.)

SURETY

By _____

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

ATTEST:

(Principal)

(Principal) Secretary

(SEAL)

(Witness as to Principal)

(Address)(Address)

(City State Zip Code)

By: _____
(Title)

(City State Zip Code)

(Surety)

ATTEST:

(Surety) Secretary

(Attorney-in-Fact)

(SEAL)

(Witness as to Surety)

(City, State, Zip Code)

City, State, Zip Code

10. TECHNICAL SPECIFICATIONS

10.1 GENERAL: Provide all labor, equipment and materials to furnish and install prefabricated shelters where indicated in the drawings supplied by VIA.

10.2 QUALITY ASSURANCE:

10.2.1 Structures shall be the product of a manufacturer with verifiable experience manufacturing and installing bus patron waiting shelters.

10.2.2 Manufacturers shall submit sufficient architectural and engineering data and drawings with

10.2.3 Manufacturers shall provide necessary pull boxes, flex conduit, pull strings and access points (panels) in the structural members of the shelter for pulling of electrical wiring required to accommodate shelter lighting fixtures and solar power equipment. (See VIA Bus Shelter Project Drawings- January 2011 for location of access panels). Electrical devices factory installed within the shelter shall be UL listed.

10.2.4 Adherence to applicable portions of state and local building codes is the responsibility of the shelter manufacturer.

10.2.5 Shelter manufacturer/installer shall be responsible for coordinating with the VIA's representative and complying with VIA-supplied Right of Way (ROW) permits to assure adherence to the ROW standards.

10.2.6 Structural design shall comply with all applicable building code criteria. Design Loads (including wind loads) shall comply with all applicable building code requirements **that includes the 2009 International Building Code with amendments**. The Manufacturer's Structural Design Engineer shall certify that the anchor bolt system used to fasten the shelter base plates to the shelter slab will be sufficient to meet all design criteria with a minimum 12 foot wide x 34 foot length concrete slab. (See attached Typical Super Stop Shelter 12 foot x 34 foot Concrete Slab Details Drawing).

10.2.7 References – Upon request, the shelter manufacturer shall provide the locations and VIAs of three similar shelters that have been installed more than five years. It will be VIA's prerogative to inspect on site and interview the VIAs concerning quality and maintainability.

10.3 SUBMITTALS:

10.3.1 Upon award of order and prior to fabrication, manufacturer shall prepare and submit detailed copies of shop drawings for the "Super Stop" as required for this project, signed and sealed by a structural engineer licensed in the State of Texas. Drawings shall include (but not limited to) plan and elevation, sections and details of fastening and anchoring, roof; slab requirements, and optional solar lighting system plans and specifications (See VIA Bus Shelter Project Drawings- January 2011 for illustration of drawings required).

10.3.2 Painted color samples on steel and aluminum for color matching and color fastness testing will be provided for approval prior to welding and painting.

10.3.3 Upon approval of the shelter design, provide VIA the following documentation:

a.) Signed and sealed reproducible (on vellum) set of shelter drawings;

b.) Shelter drawings in AutoCAD format version 2008 or 2010

10.4 PRODUCTS CONFIGURATION: (Reference attached VIA Bus Shelter Project Drawings-January 2011)

10.4.1 "Super Stop" Patron waiting shelters shall be open on all sides.

10.4.2 The shelter will have the plan and profile as identified in attached drawings.

- a) The overall length will be 32 foot ±
- b) The shelter width shall be 12 foot

10.4.3 The shelter structure will include 6 vertical columns of circular steel pipe with spacing as shown in the attached VIA Bus Shelter Project Drawings - January 2011.

- a) The columns shall provide the roof structure components with a minimum 8' vertical clearance.
- b) The shelter's design will allow for the columns to be bolted to a 5 inch thick concrete slab (slab provided by others) using anchor bolts (See attached Typical Super Stop Shelter 12 foot x 34 foot Concrete Slab Details). The bidder shall modify the 5 inch slab with grade beams as required by the bidders Structural Engineer otherwise a 5 inch reinforced concrete slab with a perimeter beam will be assumed to be adequate.

10.4.4 The roof module shall be a standing-seam barrel vaulted design, waterproof, and constructed of aluminum; 1/8 inch thick aluminum roof sheets; joint sealing band with batten.

10.4.5 Provide aluminum latticework on the support columns capable of having a VIA logo affixed on the outside columns (See attached VIA Bus Shelter Project Drawings- January 2011).

10.4.6 Provide attached seating benches (one at each column support location) conforming to the Details as shown in the attached VIA Bus Shelter Project Drawings- January 2011.

10.5. PRODUCT CONSTRUCTION: The shelter will be constructed utilizing as a minimum the following materials:

10.5.1 Applicable codes shall include but not be limited to the following: 2003 International Building Code; ASCE 7-02; ACI 318-99; AISC Ninth Edition 1989; AWS D1. 01-98.

10.5.2 Steel pipe shall meet as a minimum ASTM A-36 grade schedule 40, minimum yield strength 36,000 psi.

10.5.3 Aluminum roof shall be a minimum of alloy 6063-T5 grade extrusion with a minimum thickness of 1/8 inch. Aluminum structural members shall be of alloy 6063-T5.

10.5.4 Anchors shall be a minimum 3/4 inch stainless steel.

10.5.5 Members are to be welded or fastened to prevent vandalism.

- a) Steel welding must conform to American Welding Society (AWS) standard D1.1-98. Electrodes must conform to AWS A5.1, Class E70XX.
- b) Aluminum components must be welded in accordance with AWS/SFA 5.1 Class ER4043.
- c) All welding must be performed by certified welders.

10.5.6 Finish – All of the structure's steel metal surfaces shall be painted with a baked polyester powder coat finish with a minimum thickness as stated below. The painting procedure shall be in accordance to the following requirements and Specification 9960 High Performance Powder Coating attached at in Part 10.8. Technical Specification:

- a) Powder coating shall meet as a minimum AAMA 2604 performance requirements
- b) All welds shall be ground to a smooth finish. All weld spatters, burrs, and sharp edges shall be removed.
- c) Sealed Tubing: To avoid entrapment of water or other materials during washing and

pretreatment, locate drain holes to facilitate thorough washing and proper preparation.

- d) Overlapping Metal: complete welds on all four sides, sealing off the area from the environment
- e) The steel shall be shot-blasted to the specification of SSPC-I 0 (shot-blasted to near white condition).
- f) A Zinc Rich Primer shall be applied at .002 inch (2 mils) average to all welded areas on steel (and aluminum) substrates. A Functional Epoxy Primer shall be applied at .003 inch (3 mils) average to 100% of visible steel (and aluminum) substrates.
- g) No welding shall be allowed after the Pretreatment coating has been applied.
- h) Apply Super Durable TGIC or TGIC Free Polyester to be applied at .003 inch (3 mils) average to 100% of visible steel (and aluminum) substrates.
- i) All materials shall be inspected to meet 100% coating, proper cure, film thickness and impact resistance.
- j) Color to be selected from the manufacturer's standard color chart. No wet-coat powder-coat alternative shall be accepted.
- k) Provide to the VIA documentation of quality control procedures to verify compliance meeting AAMA 2604 performance requirements.
- l) Provide sampling tests of adhesion on every powder coat run as part of the quality control to ensure compliance with specified standards and in order to provide a long-term warranty. Monitor and document the finish quality of each production run with a minimum of four sample parts, which are selected for adhesion by both non-destructive and destructive testing according to ASTM D3359-93. Provide additional adhesion testing by boiling water immersion in accordance with AAMA-2604, Section 7.4.1.3, and certify each run, matched to applicable serial numbers. Provide to the VIA a test panel for each powder coat batch/run.
- m) Provide an extended warranty of 3 years against rusting, lifting, peeling or flaking under normal exposure conditions.
- n) All bidders shall provide sample specimens of different parts of the shelter that represents the finished powder coating product. The specimens shall be for the following parts of the shelter: Welded Wire Mesh Dividers; Bench Perforated Panels; Rolled ½" Steel Bar; and Square Tube Framing (1/2 inch & 3/4 inch Steel Square Tubing).

10.6 SOLAR LIGHTING SYSTEM (OPTION):

- 10.6.1** Solar panel with battery designed for 10 night's autonomy, powering light fixture(s) capable of providing 2 foot candles (20 Lux) over the entire area under the 12 foot x 32 foot canopy at the bench seat level from dusk to dawn.
- 10.6.2** System shall have a photocell that will operate the light(s) from dusk until dawn.
- 10.6.3** System will have an adjustable timer that can override the photocell shutting off the light(s) at VIA-determined time before dawn.
- 10.6.4** Light fixture(s) shall be vandal resistant, outdoor rated fixture(s).

10.7 EXECUTION / ERECTION:

- 10.7.1** Contractor will deliver and install shelters as required by the installation schedule, which may be modified, with notice, as required by VIA. The per-delivery quantity of shelters will be established to minimize the shipping costs.

10.7.2 Contractor will be responsible for all personnel, equipment, and materials required for the proper installation of shelters onto VIA-supplied concrete slabs.

a) Installed shelters will be level and aligned with the pad edges.

10.7.3 Contractor will be responsible for abiding by state and city requirements for traffic safety during the installation of each shelter.

10.7.4 Contractor or contractor's installer will make all reasonable efforts to complete the installations within the scheduled timeframe allowed by the VIA-supplied ROW permit.

10.8 HIGH PERFORMANCE POWDER COATING:

10.8.1 This specification describes test procedures and performance requirements for high performance, coatings applied to steel and metal substrates steel such as bus shelters and similar products associated with outdoor exposure.

10.8.2 This specification covers factory applied coatings.

10.8.3 The primary units of measure in this document are metric. The values stated in SI units are to be regarded as the standard. The values given in parentheses are for reference only.

10.8.4 PURPOSE: This specification is intended to specify and obtain factory applied organic coatings which will provide and maintain a high level of performance in terms of film integrity, exterior durability and general appearance over a period of many years.

10.8.5 DEFINITIONS

a) The terms "film" and "coating" are used interchangeably in this specification and are defined as meaning the layer of organic material applied to the surface of the steel or metal profiles.

b) Exposed surfaces are those surfaces which are visible when the coated product is installed. These may include both closed and open positions of operating sash, ventilators, doors or panels.

c) Applied Coating: The process of applying a coating using various application methods on a prepared surface and curing it into a continuous film.

d) Part: Usually references a coated part that can be tested after application on a process line.

e) Specimen: Usually references a panel or part that be subjected to long term testing, or laboratory testing. Specimen is typically associated with manufacturers of coatings.

10.8.6 GENERAL

a) Applied coatings shall be visibly free from flow lines, streaks, blisters or other surface imperfections in the dry-film state on exposed surfaces when observed at a distance of 3 m (10 ft) from the coated surface and inspected at an angle of 90° to the surface.

b) Total dry-film thickness on significantly exposed surfaces, except inside corners and channels, shall be a minimum of 102 microns (4.0 mils) as a single coat application, or 203 - 305 microns (8-12 mils) of total film thickness with a primer and topcoat application.

c) Measurement areas over a single test specimen taken according to ASTM D 4138 shall be evenly dispersed over the significant exposed area. 95% of those measurements shall meet or exceed the minimum film thickness as specified in Section 10.5.6 Finish. In no case shall measurements be below 90% of film thickness specified. Film thickness specified may be increased to be consistent with color selection and type of coating as recommended by the

coating manufacturer. Due to the profile complexities and limitations of application equipment, it may not be possible to achieve minimum recommended dry film thickness on all areas of an extrusion or profile, such as inside corners and channels. Details of these affected areas shall be provided to the VIA by the powder coating manufacturer.

- d) Cleaning and surface preparation shall be as recommended by the coating and substrate suppliers to ensure compliance with the performance requirements.
- e) Minor scratches and blemishes shall be repairable with the coating manufacturer's recommended product or system. Such repair product or system shall match the original finish for color and gloss. Prior to any field repairs during and after installation, a representative should contact Performance Powder, Inc. Sample testing of the repair procedure shall demonstrate adhesion to the original finish when tested as outlined in this section.
- f) The use of any sealant, caulk or adhesive used in contact with an organic coating shall be compatible with the coating. There shall be no evidence of deleterious effects on the coating such as staining, coating separation, lifting, discoloration or loss of adhesion of the coating from the substrate.

10.8.7 TESTS

- a) Color Uniformity Procedure: Check random samples visually under a uniform light source or the North daylight sky. Sample parts must meet minimum dry-film thickness requirements and should be viewed head-on.
- b) Performance: Color uniformity of a cured part or sample shall be consistent with the color range or numerical value as established between the approval source, applicator and the powder coating manufacturer.
- c) Color and finish appearance may vary upon factory application due to differences in equipment, line conditions or day-to-day process variations. Final color approval limits shall be made with actual production line samples or mock-ups, not laboratory prepared color panels. Since flake orientation contributes to color uniformity, pearlescent, mica and metallic flake colors do present the need for more stringent control in application and consideration during project design and installation.

10.8.8 SPECULAR GLOSS

- a) Procedure: Measurement is to be in accordance with ASTM D 523, using a 60° Gloss Meter and using reflective specular included readings (RSIN). Parts must meet the minimum dry film thickness requirements.
- b) Performance: Gloss values on the test part shall be within ± 5 units of manufacturer's recommended values.

10.8.9 DRY FILM HARDNESS

- a) Procedure: Strip wood from Berol Eagle Turquoise Pencil, or equivalent grade H minimum hardness, leaving full diameter of lead exposed to length of 6 mm (1/4 inch) minimum to 10 mm (3/8 inch) maximum. Flatten end of lead 90° to pencil axis using fine-grit sand or emery paper. Hold pencil at a 45° angle to the film surface and push forward about 6 mm (1/4 inch) using as much downward pressure as can be applied without breaking lead. Reference ASTM D 3363.
- b) Performance: There shall be no rupture of the film to substrate.

10.8.10 FILM ADHESION

- a) Procedure: For coatings with a film thickness of 50 microns (2.0 mils) or less, Make 11 parallel cuts, 1 mm (1/16 inch) apart through film. Make 11 similar cuts at a 90° angle to and crossing

first 11 cuts. Apply tape (Permaseal 99, 20 mm (3/4 inch wide) or equivalent) over area of cuts by pressing down firmly against coating to eliminate voids and air pockets. Then, sharply pull tape off at a right angle to plane of surface being tested. Test pieces shall be at ambient temperature approximately 18°C to 27°C (65°F to 80°F). (Reference ASTM D 3359, Method B, Tape Pull with Permaseal 99.). This is a destructive test and should not be conducted on part, profile or extrusion that will be placed into service.

- b) Performance: No removal of film under tape within or outside of cross-hatched area or blistering anywhere on test specimen. Report the loss of adhesion as a percentage of squares affected, i.e., 10 squares lifted as 10% failure.
- c) For coatings with a film thickness between 50 micron (2.0 mils) and higher, space the cuts 2 mm (1/8 inch) apart and make six parallel cuts. Make six similar parallel cuts at a 90° angle to and across the first six cuts. This is a destructive test and should not be conducted on part, profile or extrusion that will be placed into service.
- d) Performance: No removal of film under tape within or outside of cross-hatched area or blistering anywhere on test specimen. Report the loss of adhesion as a percentage of squares affected, i.e., as a percentage of the 25 squares.

10.8.11 WET ADHESION

- a) Procedure: Immerse sample in distilled or deionized water at 38°C (100°F) for 24 hours. Remove and wipe specimen dry. Repeat the adhesion test specified in Section 10.8.10 c & d, within five minutes of the sample being dry. This is a destructive test and should not be conducted on part, profile or extrusion that will be placed into service.
- b) Performance: For coatings of 50 microns (2.0 mils), there should be no removal of film under tape within or outside of cross-hatched area or blistering anywhere on test specimen. Report the loss of adhesion as a percentage of squares affected, i.e., 10 squares lifted as 10% failure. For Coatings with a film thickness between 50 microns (2.0 mils) or higher, there should be no removal of film under the tape with or outside to the cross hatch area or blistering any on the test specimen. Report the loss of adhesion as a percentage of the 25 squares.

10.8.12 CORROSION RESISTANCE

- a) Humidity Resistance Procedure: Expose specimen in a controlled heat-and-humidity cabinet for 1,000 hours at 38°C (100°F) and 100% RH with cabinet operated in accordance with ASTM D 2247 or ASTM D 4585.
- b) Performance: There shall be no formation of blisters to extent greater than "Few" blisters Size No. 8 as shown in Figure No. 4 of ASTM D 714.

10.8.13 SALT SPRAY RESISTANCE

- a) Procedure: Score the film sufficiently deep to expose the base metal using a sharp knife or blade instrument. Expose the sample for 2,000 hours according to ASTM B 117 using a 5% salt solution. Remove and wipe sample dry. Immediately apply take (Permaseal 99 or equivalent, 20 mm (3.4 inch) wide over the scored area by pressing down firmly against the coating to eliminate voids and air pockets. Sharply pull the tape off at a right angle to the plane of the surface being tested.
- b) Performance: Minimum rating of 7 on scribe and a minimum blister rating of 8 within the test specimen field in accordance with Table 1 and Table 2 of ASTM D1654.

10.8.14 WEATHER EXPOSURE

- a) Exposure: Direct of Actual South Florida Exposure at an acceptable site. Test sites and duration for on-fence testing are acceptable as follows: Florida Exposure south of Latitude 27° North ° at

a 45° angle facing south for a minimum of three years. Accelerated outdoor weathering using concentrated natural sunlight with night time wetting (NTW) for 870 MJ TUVR will be an approved alternative to the South Florida testing. The coating shall maintain its film integrity and at a minimum meet the following color retention, chalk resistance, gloss retention and erosion resistance properties. Time elapsed when the coating is off the test fence for evaluation, or other purposes, shall not be counted as part of the exposure minimum. Provide to the VIA data relative to the long-term durability of the color(s) selected. Access to exposure panels must be made available to the VIA upon request.

- 1) Test requirements for accelerated outdoor weathering using concentrated natural sunlight are acceptable as follows: Arizona hot desert exposure at approximately 34 degrees North latitude using Concentrated Natural Sunlight exposure device manufactured, maintained and operated in accordance with ASTM G90 for a minimum of 870 MJ TUVR. To simulate daytime temperatures observed in the summer in South Florida, the daytime black-panel temperature shall be controlled at a set-point of $70 \pm 5^{\circ}\text{C}$, (158°F) with an allowable operational fluctuation of $\pm 5^{\circ}\text{C}$ ($\pm 9^{\circ}\text{F}$) under clear sky conditions. Refer to ASTM G 179 for guidance on the construction, calibration, and maintenance of black- or white- panels. To simulate the South Florida Environment, Cycle 3, consisting of four (4) hourly cycles of spraying with deionized water for three (3) minutes, followed by a dry time of twelve (12) minutes as specified in Table 1 of ASTM G 90, shall be used.

The spray cycle will be performed nightly from 7 PM to 5 AM. The specimens shall be exposed using the non-insulated specimen mounting configuration in accordance with ASTM G 90.

Radiant exposure is measured using the pyranometers, pyrhemometers, and ultraviolet radiometers as described in ASTM G 90, or as otherwise agreed with the VIA. By varying the irradiance to a percentage of the maximum value, lower specimen and black-panel temperatures can be achieved.

10.8.15 COLOR RETENTION

- a) Procedure: After weathering exposure (per 10.8.14), measure the exposed coated surface and the control specimen using a Hunter Lab instrument. The procedure should be in accordance with ASTM D 2244, Section 6.3 and using the reflectance-specular included (RSIN) method. Corresponding values shall be measured on the original retained specimen or the unexposed area of the specimen. A portion of the exposed area specimen may be washed lightly to remove surface dirt only using clear water and a soft cloth. Heavy scrubbing or any polishing to remove chalk formation or restore the surface is not permitted where color measurements are made.
- b) Performance: Maximum of 5 E Units (Hunter) of color change as calculated in accordance with ASTM D 2244, after the minimum 870 MJ TUVR of exposure or the three years of South Florida per Section 10.8.14, 1. Corresponding values shall be measured on the original retained specimen or the unexposed area of the specimen.

10.8.16 CHALK RESISTANCE

- a) Procedure: After weathering exposure (per 10.8.14), evaluate the exposed coated surface per ASTM D 4214, Test Method A and using photographic reference standard No. 1 (Method ASTM D 659). Chalking shall be evaluated on the coated, exposed and unwashed surface of the specimen.
- b) Performance: Chalking shall be no more than represented by a No. 8 rating for colors, No. 6 for whites, based on ASTM D 4214, Test Method A (Method ASTM D 659) after exposure at the test site per Section 10.8.14 a.

10.8.17 GLOSS RETENTION

- a) Procedure: After weathering exposure (per Section 10.8.14), measure 60° gloss of exposed and

unexposed areas of a test site exposure panel following ASTM D 523. The exposure specimen may be washed lightly with clear water and a soft cloth to remove loose surface dirt. Heavy scrubbing or any polishing to restore the surface is not permitted where gloss measurements are made.

- b) Performance: Gloss retention shall be a minimum of 30% after the exposure test per Section 10.8.14 "1" Expressed as: $\% \text{ Retention} = \frac{60^\circ \text{ Gloss Exposed}}{60^\circ \text{ Gloss Unexposed}} \times 100\%$

11. WAGE RATES

GENERAL DECISION: TX20100003 08/13/2010 TX3

Date: August 13, 2010

General Decision Number: TX20100003 08/13/2010

Superseded General Decision Number: TX20080003

State: Texas

Construction Type: Building

County: Bexar County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including 4 stories). (Use current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

Modification Number	Publication Date
0	03/12/2010
1	06/04/2010
2	07/02/2010
3	07/30/2010
4	08/13/2010

ASBE0087-001 01/01/2009

	Rates	Fringes
Asbestos/Insulator Worker (Includes application of all insulating materials, protective coverings, coatings, and finishing's to all types of mechanical systems.).....	\$ 21.17	7.40

BRTX0001-004 05/01/2009

	Rates	Fringes
BRICKLAYER.....	\$ 24.50	1.73

ELEC0060-001 06/01/2010

	Rates	Fringes
CABLE SPLICER.....	\$ 25.20	3.75+12%
ELECTRICIAN.....	\$ 24.95	3.75+12%

ELEC0060-002 06/01/2009

	Rates	Fringes
ELECTRICIAN (Low Voltage including pulling & installing cable through conduit).....	\$ 19.51	8%+4.92

ELEV0081-001 01/01/2010

	Rates	Fringes
Elevator Constructor MECHANIC.....	\$ 33.35	20.235+A

FOOTNOTE; A = UNDER 5 YEARS EMPLOYMENT, 6% BHR; OVER 5 YEARS EMPLOYMENT, 8% BHR. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day, Christmas Day, and Veterans Day.

ENGI0450-001 07/01/2009

	Rates	Fringes
Power equipment operators: Cranes.....	\$ 29.75	8.75

IRON0066-001 06/01/2009		
	Rates	Fringes
IRONWORKER (Excluding metal building erectors)		
Structural.....	\$ 18.50	5.15

MARB0002-001 07/01/2005		
	Rates	Fringes
TILE SETTER.....	\$ 18.50	6.10

PLUM0142-001 07/01/2010		
	Rates	Fringes
Plumbers and Pipefitters (Including HVAC WORK).....	\$ 28.78	9.10

* SFTX0669-001 04/01/2010		
	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 25.40	15.85

SHEE0067-001 04/01/2009		
	Rates	Fringes
Sheet metal worker (Including HVAC Duct Work).....	\$ 25.18	10.75

SUTX1988-002 11/01/1988		
	Rates	Fringes
Acoustical Ceiling Installer.....	\$ 12.26	
CARPENTER (Excluding Acoustical Ceiling Installer		
& Drywall Hanger).....	\$ 10.64	
CEMENT MASON/CONCRETE FINISHER.....	\$ 11.46	
DRYWALL HANGER.....	\$ 11.88	
GLAZIER.....	\$ 10.78	1.40
IRONWORKER (Excluding Metal Building Assemblers)		
Reinforcing.....	\$ 10.19	3.57
Laborers:		
Mason Tenders.....	\$ 8.36	1.78
Mortar Mixers.....	\$ 8.99	
PLASTERER'S TENDERS.....	\$ 8.68	
Unskilled.....	\$ 7.25	
LATHER.....	\$ 15.25	
PAINTER (Excluding		
Tapers/Finishers).....	\$ 8.01	
PLASTERER.....	\$ 15.25	
Power equipment operators:		
Front End Loader.....	\$ 7.36	
Roofers:		
Kettlemen.....	\$ 8.85	
Roofers.....	\$ 8.14	
Waterproofers.....	\$ 7.25	
Sheet Metal Worker		
Other Work.....	\$ 11.62	
Taper/Finisher.....	\$ 7.99	
TRUCK DRIVER.....	\$ 7.25	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		
=====		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on
- * a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION

GENERAL DECISION: TX20100041 03/12/2010 TX41

Date: March 12, 2010

General Decision Number: TX20100041 03/12/2010

Superseded General Decision Number: TX20080041

State: Texas

Construction Types: Heavy and Highway

Counties: Bell, Bexar, Brazos, Comal, Coryell, Guadalupe, Hays, McLennan, Travis and Williamson Counties in Texas. Heavy (excluding tunnels and dams) and Highway Construction Projects (does not include building structures in rest area projects). *NOT TO BE USED FOR WORK ON SEWAGE OR WATER TREATMENT PLANTS OR LIFT/PUMP STATIONS IN BELL, CORYELL, McLENNAN AND WILLIAMSON COUNTIES.

Modification Number Publication Date
0 03/12/2010

SUTX2005-001 01/03/2005

	Rates	Fringes
Air Tool Operator.....	\$ 16.00	0.00
Asphalt Distributor Operator.....	\$ 12.09	0.00
Asphalt paving machine operator	\$ 11.82	0.00
Asphalt Raker.....	\$ 9.96	0.00
Asphalt Shoveler.....	\$ 10.56	0.00
Broom or Sweeper Operator.....	\$ 9.74	0.00
Bulldozer operator	\$ 11.04	0.00
Carpenter.....	\$ 12.25	0.00
Concrete Finisher, Paving.....	\$ 10.53	0.00
Concrete Finisher, Structures.....	\$ 10.95	0.00
Concrete Paving Curbing		
Machine Operator.....	\$ 14.00	0.00
Concrete Paving Finishing		
Machine Operator.....	\$ 12.00	0.00
Concrete Rubber.....	\$ 10.88	0.00
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator.....	\$ 13.66	0.00
Electrician.....	\$ 24.11	0.00
Flagger.....	\$ 9.49	0.00
Form Builder/Setter, Structures	\$ 10.88	0.00
Form Setter, Paving & Curb.....	\$ 9.89	0.00
Foundation Drill Operator, Truck Mounted.....	\$ 15.00	0.00
Front End Loader Operator.....	\$ 11.36	0.00
Laborer, common.....	\$ 9.34	0.00
Laborer, Utility.....	\$ 10.12	0.00
Mechanic.....	\$ 14.74	0.00
Mixer operator, Concrete Paving	\$ 15.25	0.00
Mixer operator.....	\$ 10.83	0.00
Motor Grader Operator, Fine Grade.....	\$ 15.26	0.00
Motor Grader Operator, Rough.....	\$ 12.96	0.00
Oiler.....	\$ 14.71	0.00
Painter, Structures.....	\$ 11.00	0.00
Pavement Marking Machine Operator.....	\$ 11.52	0.00

Pipelayer.....	\$ 10.49	0.00
Planer Operator.....	\$ 17.45	0.00
Reinforcing Steel Setter, Paving.....	\$ 15.50	0.00
Reinforcing Steel Setter, Structure.....	\$ 14.00	0.00
Roller Operator, Pneumatic, Self-Propelled.....	\$ 9.34	0.00
Roller Operator, Steel Wheel, Flat Wheel/Tamping.....	\$ 9.60	0.00
Roller Operator, Steel Wheel, Plant Mix Pavement.....	\$ 10.24	0.00
Scraper Operator.....	\$ 9.93	0.00
Servicer.....	\$ 11.41	0.00
Sign Installer (PGM).....	\$ 14.85	0.00
Slip Form Machine Operator.....	\$ 15.17	0.00
Spreader Box operator.....	\$ 10.39	0.00
Structural Steel Worker.....	\$ 13.41	0.00
Tractor operator, Crawler Type.....	\$ 11.10	0.00
Traveling Mixer Operator.....	\$ 10.04	0.00
Trenching machine operator, Heavy.....	\$ 14.22	0.00
Truck Driver Tandem Axle Semi- Trailer.....	\$ 10.95	0.00
Truck driver, lowboy-Float.....	\$ 15.30	0.00
Truck driver, Single Axle, Heavy.....	\$ 11.88	0.00
Truck driver, Single Axle, Light.....	\$ 9.98	0.00
Wagon Drill, Boring Machine, Post Hole Driller Operator.....	\$ 14.65	0.00
Welder.....	\$ 14.26	0.00
Work Zone Barricade Servicer.....	\$ 11.15	0.00

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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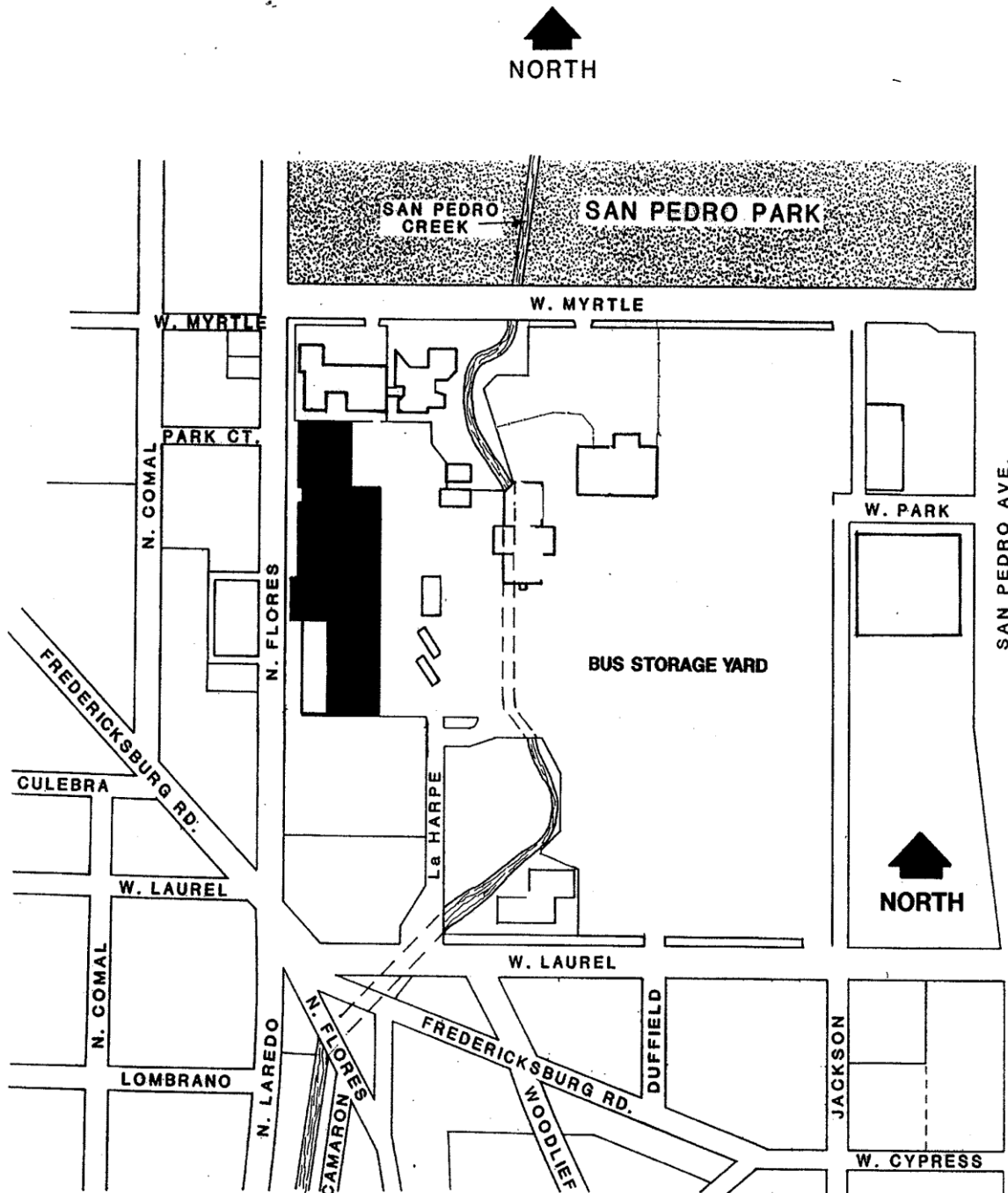
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Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION



VIA Headquarters Site

Prior to the time and date indicated in the bid document, Bids/Proposals are to be delivered to the Contracting Officer at VIA's Procurement Department, VIA Metropolitan Transit, 1720 N. Flores Street, San Antonio, TX 78212. The blackened box on the map denotes the location for bid/proposal

ATTACHMENT "A"
PLANS

VIA Bus Shelter Project

12' - 0" x 32' - 0" Barrel Vault Roof Shelter

Sheet Number	Description
S-1	Index Sheet
S-2	Component List
S-3	Front Elevation
S-4	End Column Elevation
S-5	Anchor Bolt Plan

Parts and Assembly Drawings
S-6 thru S-15

Attachment Drawings
S-10A and S-11A

VIA

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P.O. BOX 12489, 800 WEST MYRTLE
SAN ANTONIO, TEXAS 78212

Sheet 1 of 18

VIA Bus Shelter Project
Index Sheet

Shelter Components:

Color

All Steel and aluminum components will have a Powder Coated Semi-gloss Finish. Fasteners will be painted to match Shelter using Powder Coat compatible paint with semi-gloss finish. GripGard Washprimer #2AFY31284 will be used before the paint finish.

Rolled Standing Seam Roof Panels

MBCI, Craftsman Series Standing Seam
24 Gauge Roof Panels with Galvalume Finish.

Decking Panels

7.2 Panel Decking will be the Underlayment for Standing Seam Roof panels. Panels will be 22 Gauge with a Galvalume Finish. Panels will be 36" Wide and run the length of the Roof.

Shelter Components:

Rolled Roof Trusses

2 1/2" Diameter Standard Steel Pipe, Schedule 40,
with 2 7/8" Outer Diameter and .203 wall.

Welded Tabs for Rolled Roof Trusses

1/4" x 3" +- x 3 1/2" +- Support Tabs are welded to Roof Joists. Tabs will have pre-drilled holes. #16 x 1" Screws will fasten Rolled Trusses to Roof Joists.

Welded Steel Plates for Roof Joists

3/8" x 6" x 9 1/2" Support Plates are welded to Roof Joists. A 5/8" diameter thru Bolt is used to fasten the Roof Joists to the Vertical Support Posts.
Use Neoprene Gasket as Isolator to separate metals.

Upper Horizontal Roof Joists

4" Diameter Standard Steel Pipe, Schedule 40, ASTM A-36 grade with 4 1/2" Outer Diameter and .237 wall. Joist will have Welded Steel Plates to fasten Joists to Assembled Support Columns.

Lower Horizontal Roof Joists

4" Diameter Standard Steel Pipe, Schedule 40, ASTM A-36 grade with 4 1/2" Outer Diameter and .237 wall. Joist will have Welded Steel Plates to fasten Joists to Assembled Support Columns.

Shelter Post and Shoe Repair

Weld repairs will be made by cleaning the welds and prepping area. Preparation is made by sanding the affected area to rough up the surface for paint adherence. Surface will then be cleaned. Primer will then be applied using Gripgard Washer Primer. Finally a Powder Coated compatible paint provided by the manufacturer will be sprayed. Paint will match Powder Coat color and semi-gloss finish

Fabricated Support Posts

Welded 4" Diameter Standard Steel Pipe, Schedule 40, ASTM-A-36 with 4 1/2" Outer Diameter and .237 wall.

Fabricated Shoes

Welded 3" Diameter Standard Steel Pipe, Schedule 40, ASTM-A-36 with 3 1/2" Outer Diameter and .216 wall.

Base Plate

14" x 1" x 14" Steel Base Plate with holes to accommodate (4) 3/4" Diameter Anchor Bolts.

Masonry Anchors

3/4" Diameter HDI (SS 303) 3/4" x 3 1/2" Stainless Steel Drop-In Anchors with 3/4" x 3" Stainless Steel Hex Head Bolts and Washers. Anchor Bolt will be used with 3000 psi concrete.

Welded Wire Mesh Dividers

Wire Mesh is welded between 1/4" x 1 1/2" wide Steel Flat Bar. Dividers are then welded to Support Posts
2" x 2" Opening Steel Mesh. Use .192 Gauge.

Bench Perforated Panels

Panels will have a +- 1/16" tolerances, 12 Gauge, 1/2" perforation on a 3/8" stagger, 40% open mesh. Panels will be powder coated to match shelter.

Assembled Support Columns

Upper Assembled Support System

Horizontal 4" Diameter Standard Steel Pipe, Schedule 40, ASTM-A-36 with 4 1/2" Outer Diameter and .237. Horizontal Support pipe has (2) Welded 3" Standard Steel Pipes as a connection point to Lower Assembled Support System. The Upper and Lower Support Systems are fastened with (4) 5/8" Diameter thru bolts and Nut and Washer assembly. The Upper Support System also has (2) Welded Vertical 4" Standard Pipe members. Wire Mesh Panels are welded to these Vertical Members

Lower Assembled Support System

Vertical 4" Diameter Standard Steel Pipe, Schedule 40, ASTM-A-36 with 4 1/2" Outer Diameter and .237. Vertical Support Section fastens to Upper Support Section with (4) 5/8" Diameter thru bolts and Nut and Washer assembly. An Ornamental Framing is welded between Vertical Support Posts.

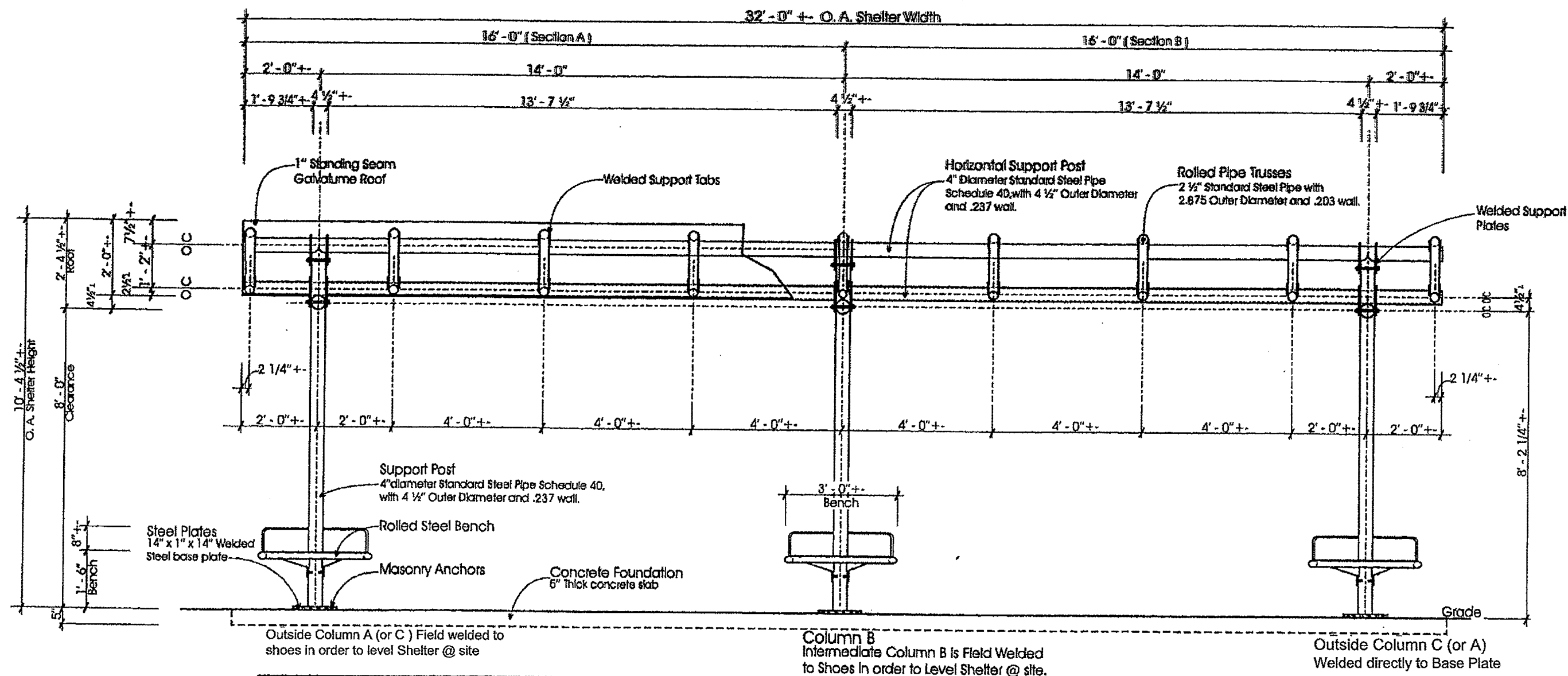
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Sheet 2 of 18

VIA Bus Shelter Project
12' x 32' Super Stop Shelter
Component List



Weld repairs will be made by cleaning the welds and prepping area. Then the repairs will be primed with Grippard Washer Primer. After priming Powder Coat compatible paint with semi-gloss finish will be used. Refer to Repair Notes on Sheet 2

Front Elevation N.T.S.
Shelter Roof can be divide into two (2) sections, Section A and Section B. The Center Support Post will be the connecting point for both sections.

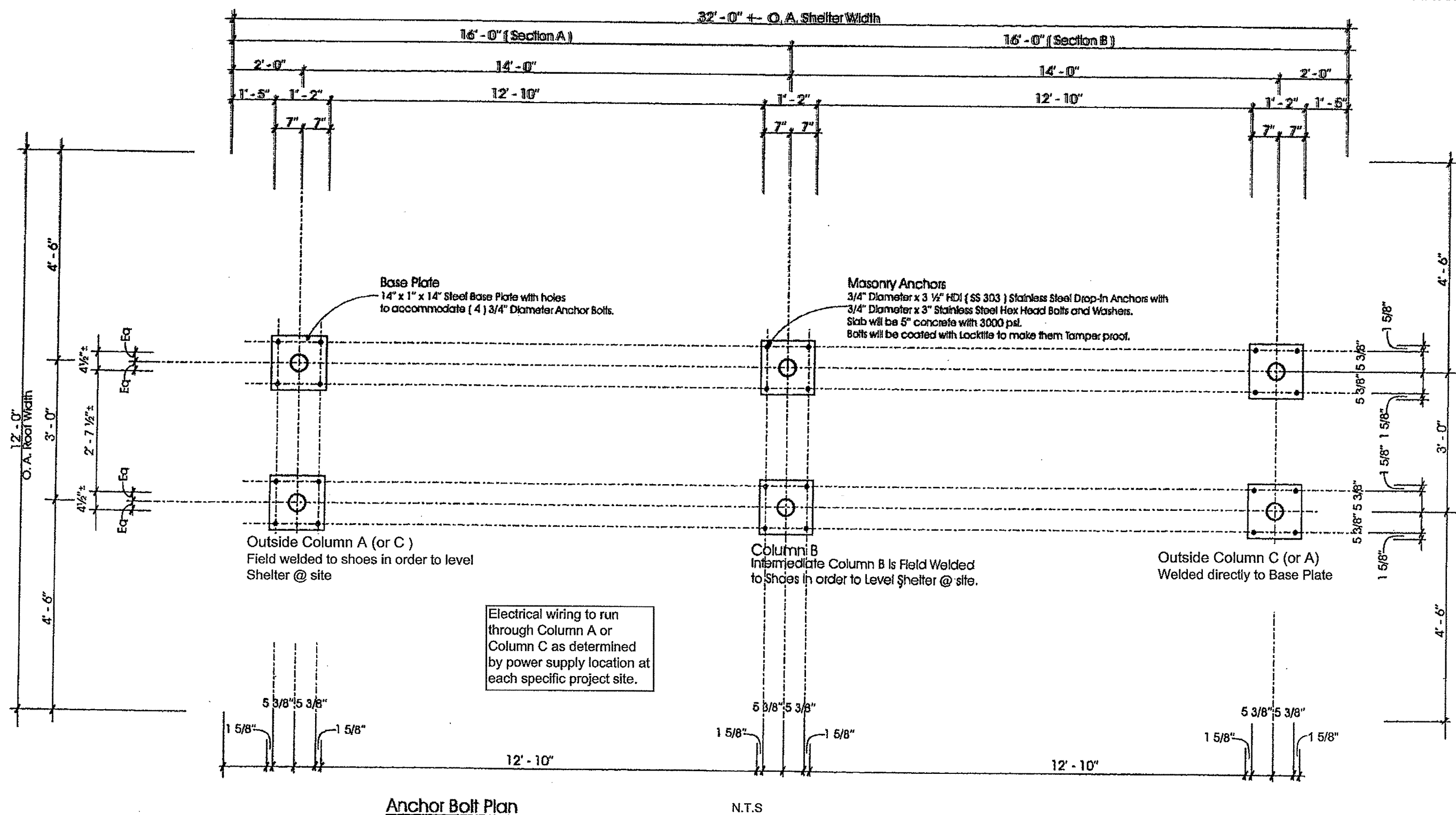
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Sheet 3 of 18

VIA Bus Shelter Project
12' x 32' Super Stop Shelter
Front View Elevation





Parts and Assembly Drawings

12' - 0" x 32' - 0" Barrel Vault Roof Shelter

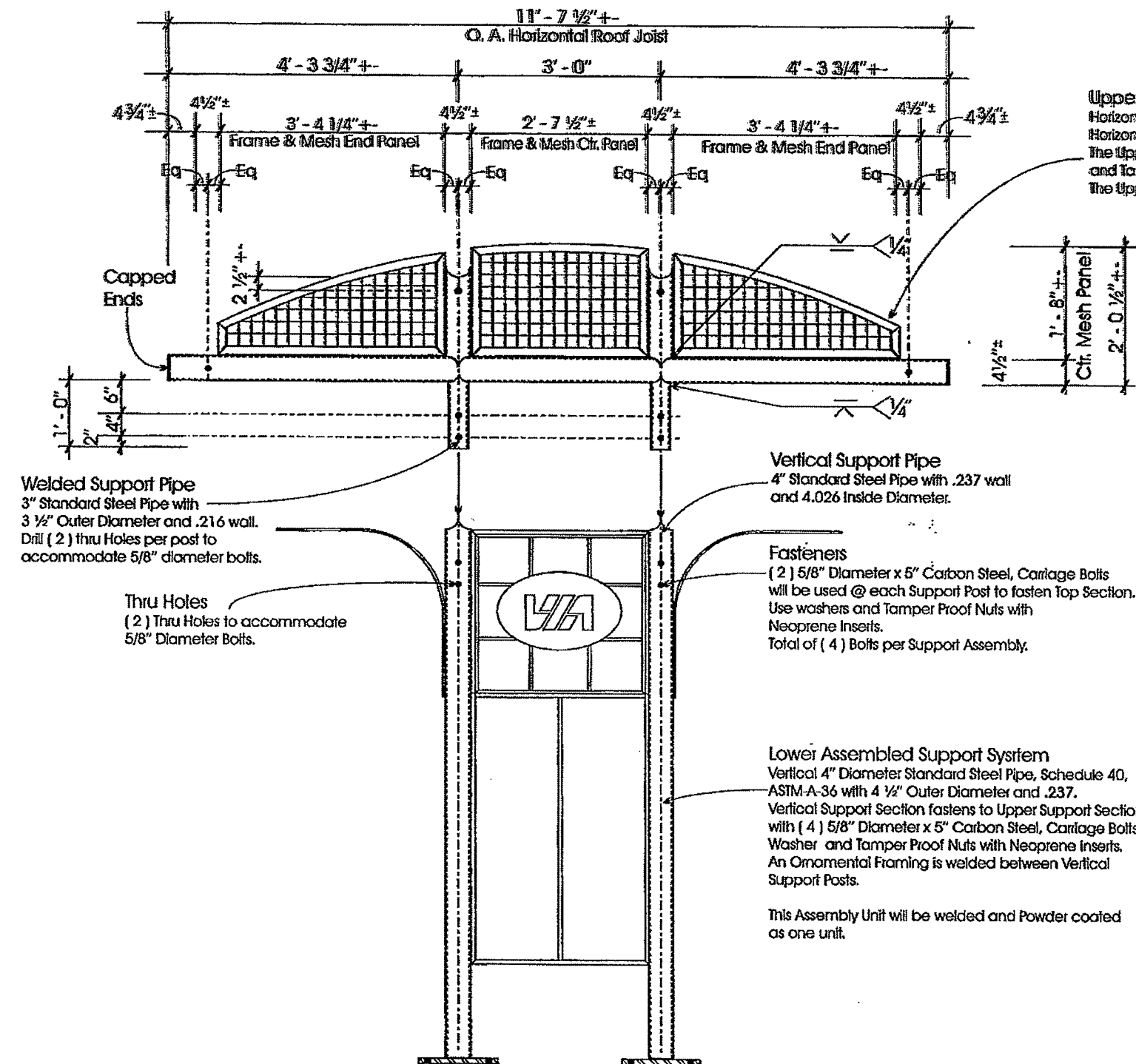
Sheet Number	Description
S-6	Parts and Assembly Drawings Index Sheet
S-7	Support Column Assembly
S-8	End Columns and Base Plate
S-9	Intermediate Column and Shoe
S-10	Ornamental Frame, Logo and Mesh Panels
S-10A	Logo Panel Fastening Details
S-11	Roof Assembly
S-11A	Roof Assembly Details
S-12	Horizontal Roof Joist
S-13	Horizontal Joist @ End Post Detail
S-14	Horizontal Roof Joist @ Center Post
S-15	Bench Fabrication Drawing
S-15A	Bench Fabricating Details



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Sheet 6 of 18

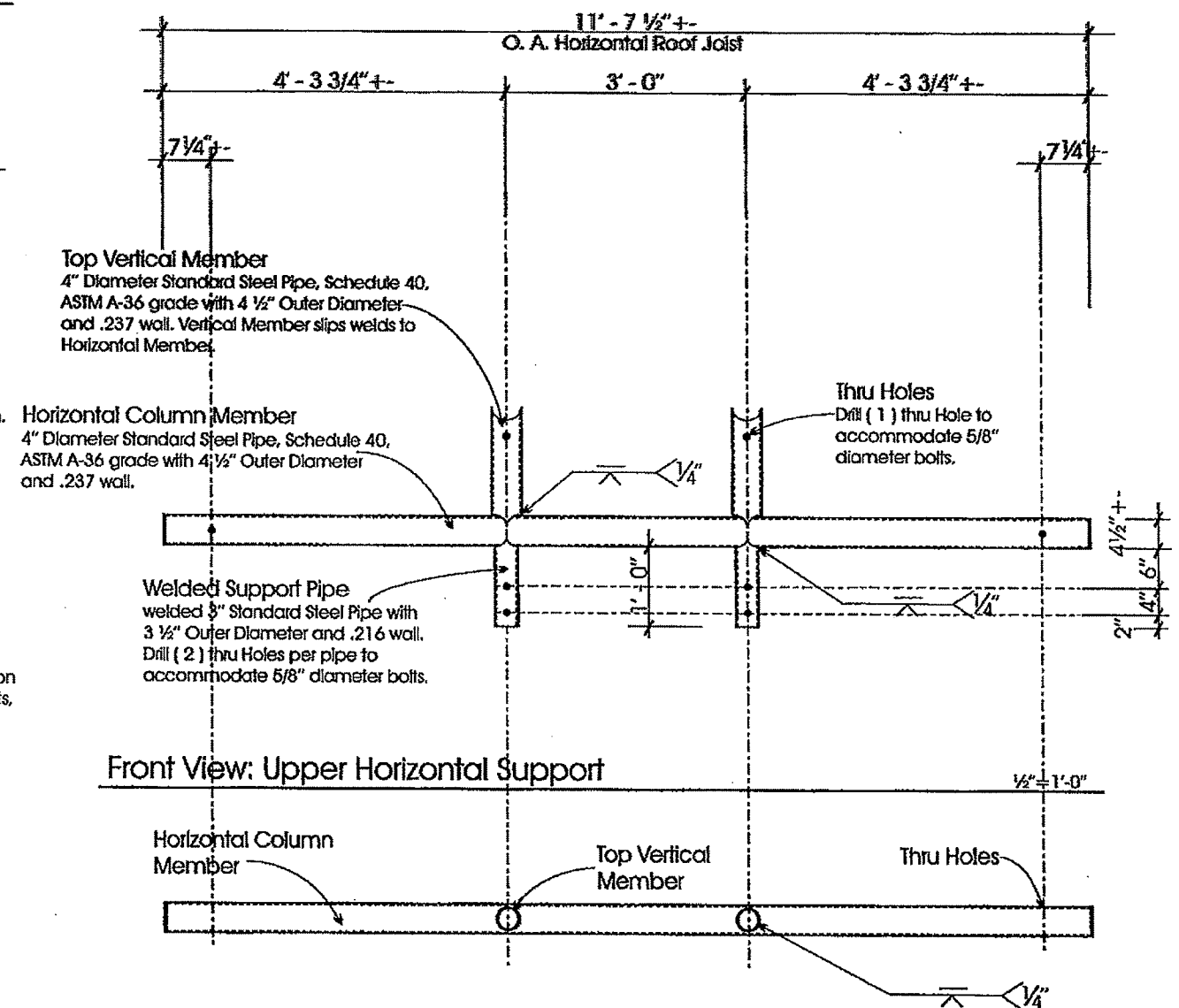
VIA Bus Shelter Project
12' x 32' Super Stop Shelter
Parts and Assembly Drawings Index Sheet



End Column A: Assembly Plan

N.T.S

Upper Assembled Support System
Horizontal 4" Diameter Standard Steel Pipe, Schedule 40, ASTM A-36 with 4 1/2" Outer Diameter and .237. Horizontal Support pipe has (2) Welded 3" Standard Steel Pipes as a connection point to Lower Assembled Support System. The Upper and Lower Support Systems are fastened with (4) 5/8" Diameter x 5" Carbon Steel, Carriage Bolts with Washers and Tamper Proof Nuts with Neoprene Inserts. The Upper Support System also has (2) Welded Vertical 4" Standard Pipe members.



Plan View: Upper Horizontal Support

N.T.S

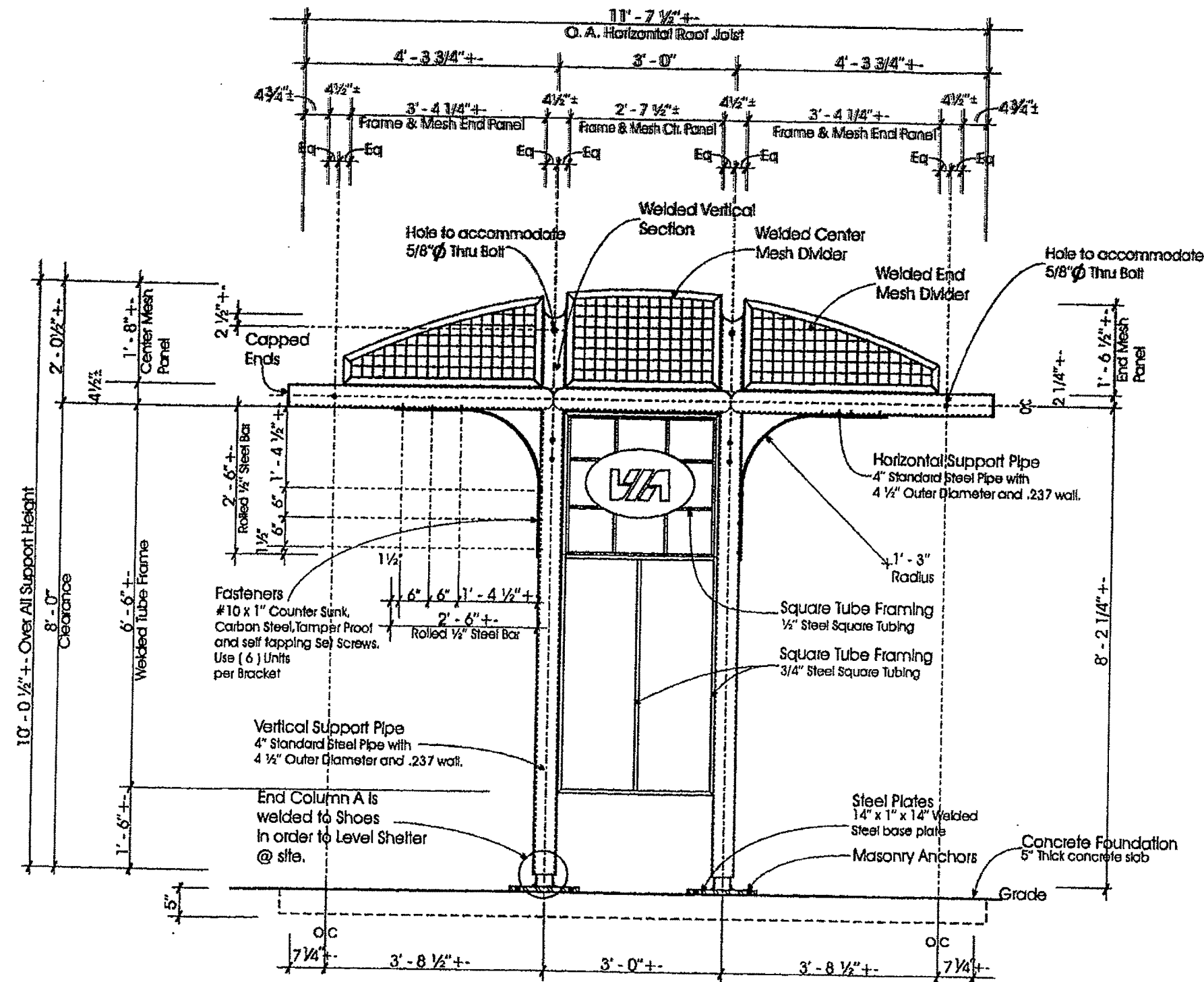
Horizontal 4" Diameter Standard Steel Pipe, Schedule 40, ASTM A-36 with 4 1/2" Outer Diameter and .237. Thru Pipe Supports are 3" Diameter Standard Pipe welded to Horizontal Pipe.

VIA

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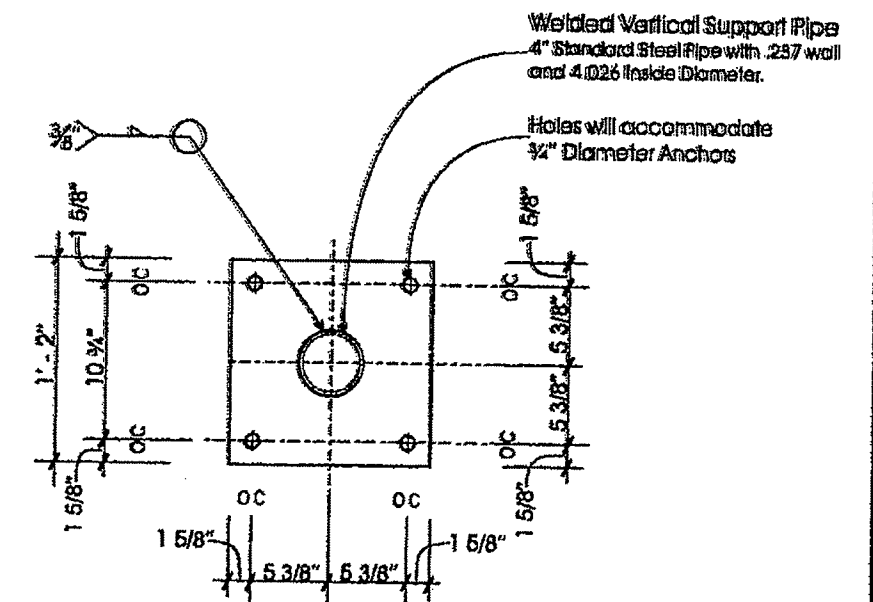
Sheet 7 of 18

VIA Bus Shelter Project
12' x 32' Super Stop Shelter
Support Column Assembly



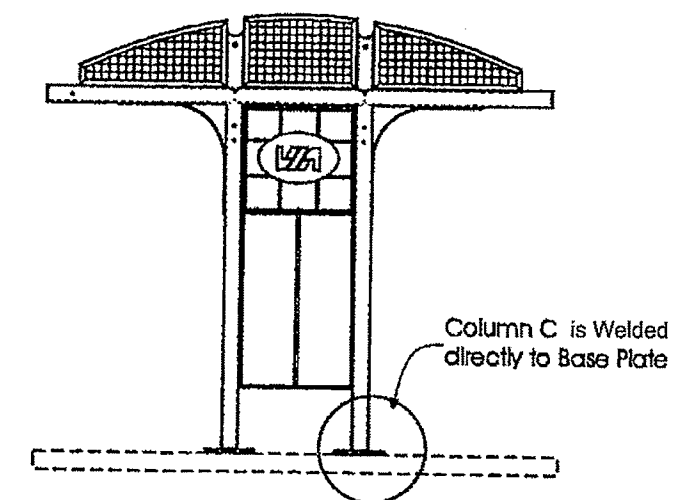
Elevation: Assembled End Column A,
Make (1) per Shelter

N.T.S.



Plan View of Base Plate
Make (2) Two Plates per shelter.
14" x 1" x 14" Steel Base Plate

N.T.S.



Elevation: End Column C, Make (1) One per Shelter

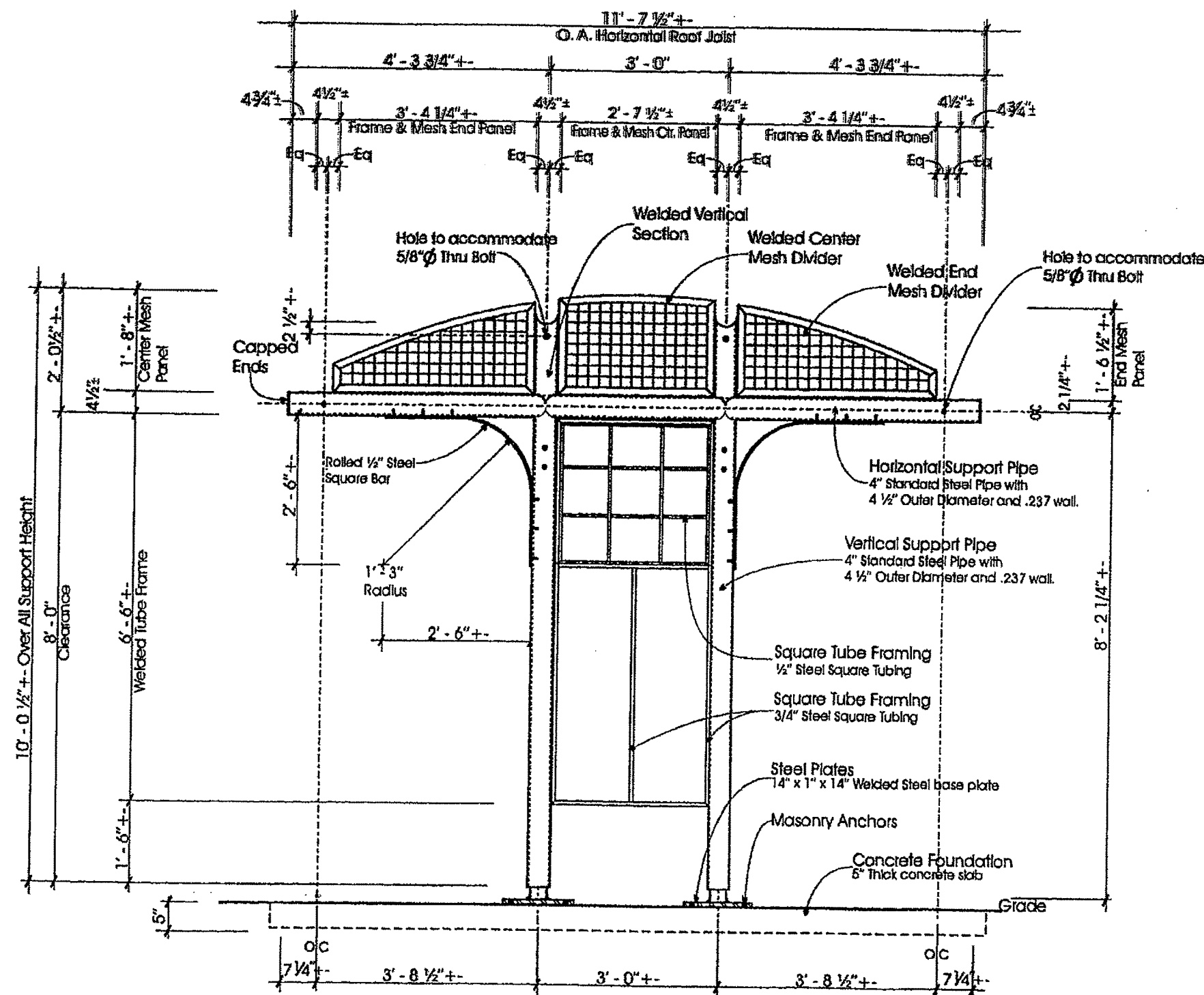
N.T.S.

VIA

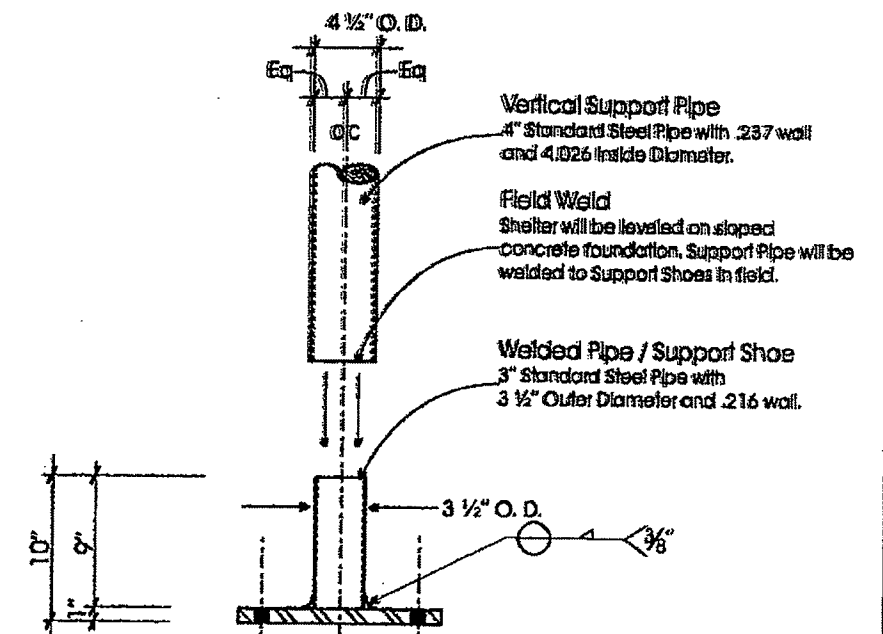
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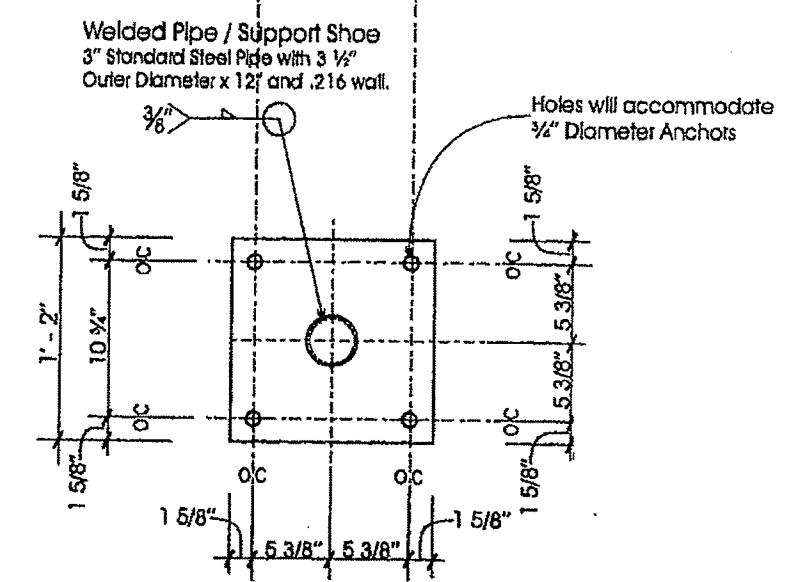
VIA Bus Shelter Project
12' x 32' Super Stop Shelter
End Columns and Base Plate



Elevation: Assembled Intermediate Column B,
Make (1) per Shelter



Shoe Detail
N.T.S.
4\"/>



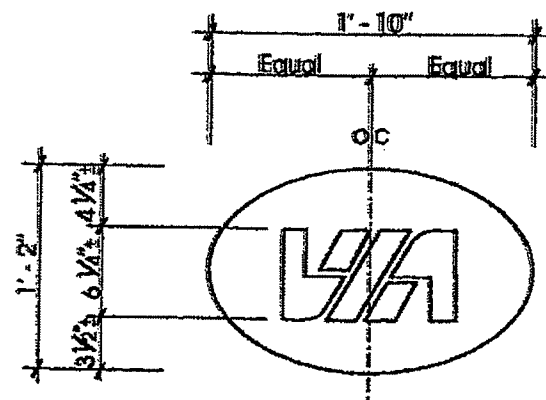
Plan View of Shoe
N.T.S.
Make (4) Four Shoes per shelter.

VIA

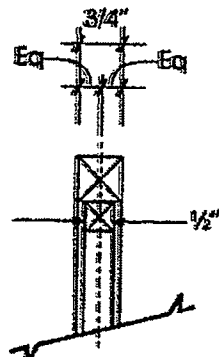
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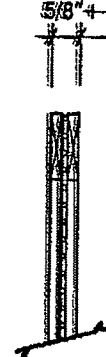
VIA Bus Shelter Project
12' x 32' Super Stop Shelter
Intermediate Column and Shoe



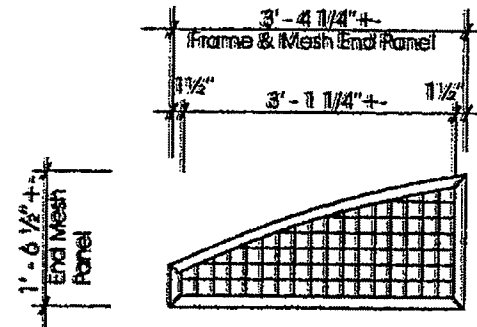
VIA Logo Panel N.T.S.
Panel will be Fastened to Ornamental Steel Framing.
Logo colors as per client. Fabricate panel using 11 Gauge Steel.



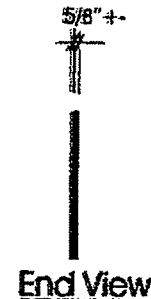
Detail: N.T.S.
End View
Ornamental Frame



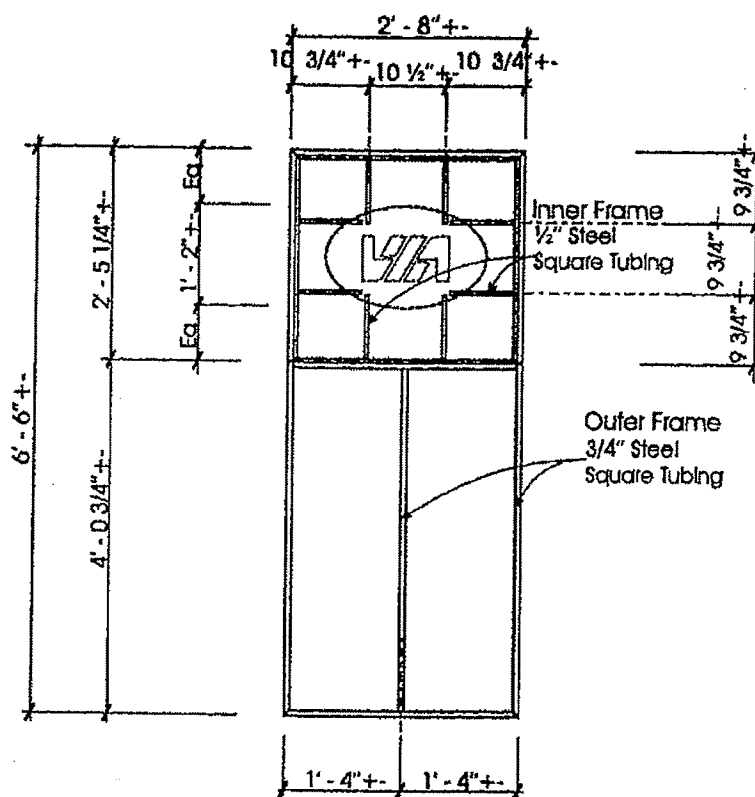
Detail: N.T.S.
End View
Mesh Panels



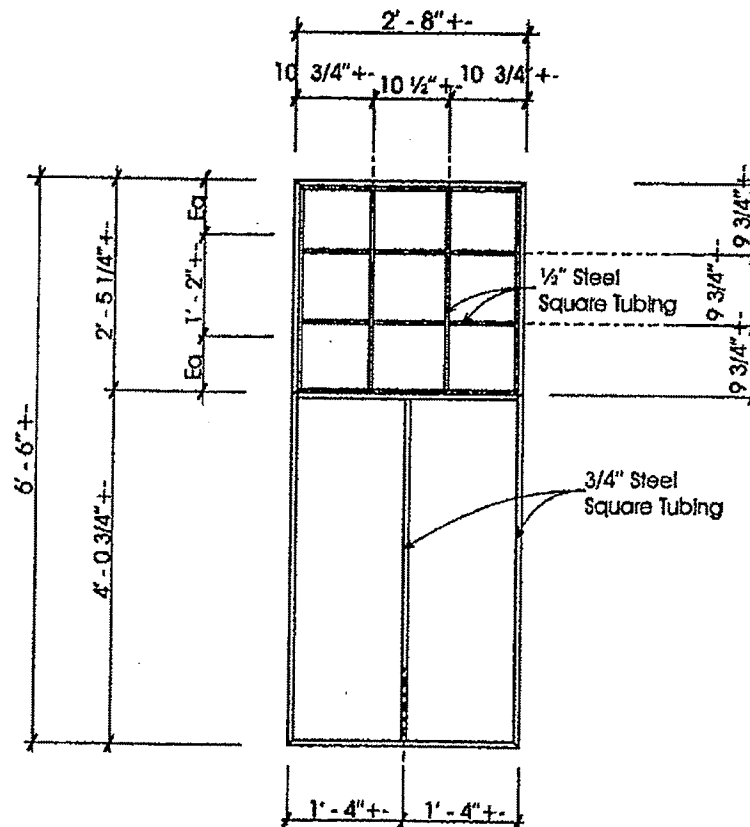
End Mesh Panel Divider N.T.S.
Fabricate with 1/4" Steel Flat Bar Welded and Mitered @ Corners. Steel Mesh is secured between Steel Flat Bar. Powder Coat all mesh panels. Mesh is .192 Gauge with 2" x 2" Openings.



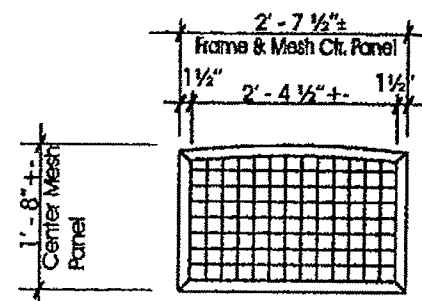
End View



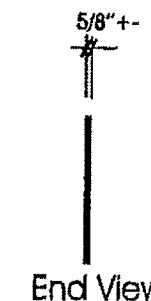
End Columns A and B N.T.S.
Ornamental Metal Framing
Welded steel square tube framing @ End Columns.
Ornamental Frame is welded between Support Posts.
Logo will always face toward exterior of shelter.



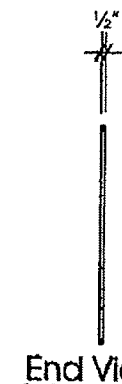
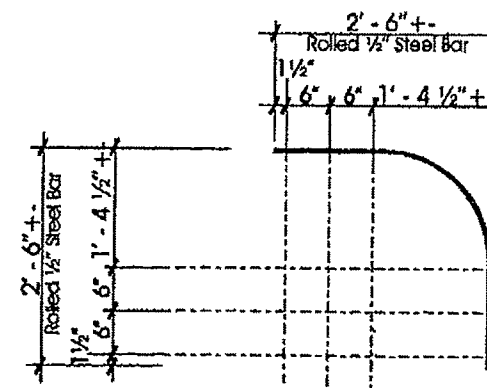
Interior Center Column B N.T.S.
Ornamental Metal Framing
Welded steel square tube framing @ End Columns.
Ornamental Frame is welded between Support Posts.
Interior Frame does not have Logo attached.



Center Mesh Panel Divider N.T.S.
Fabricate with 1/4" Steel Flat Bar Welded and Mitered @ Corners. Steel Mesh is secured between Steel Flat Bar. Powder Coat all mesh panels. Mesh is .192 Gauge with 2" x 2" Openings.



End View



End View

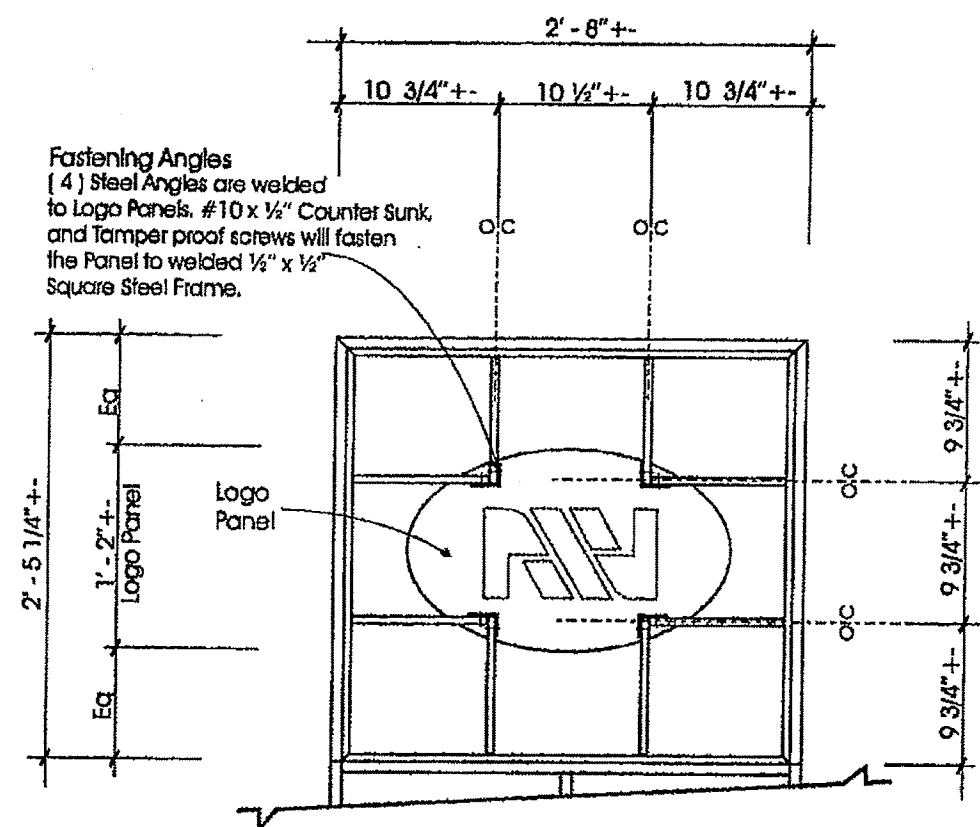
Rolled Steel Bar (2) per Shelter N.T.S.
1/2" Thick Square Rolled Steel Solid Bar fastens to Support Post with (6) #10 x 1" Counter Sunk, S.S. Tamper proof and Self Tapping Screws.

VIA

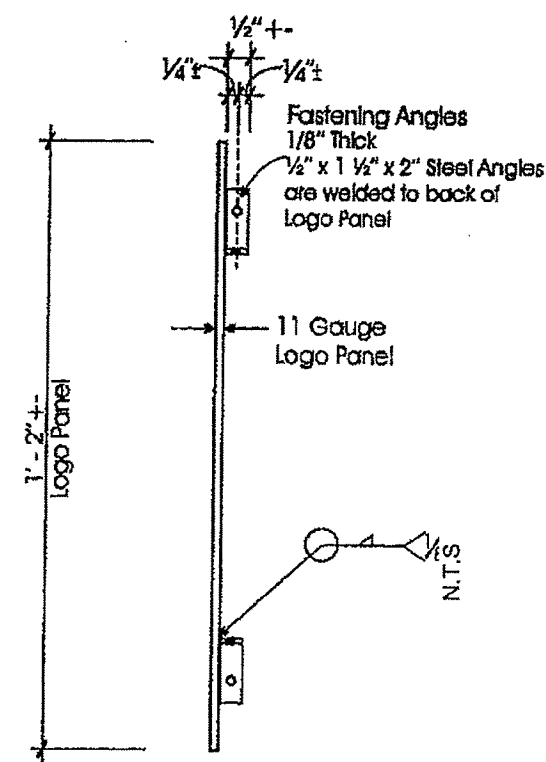
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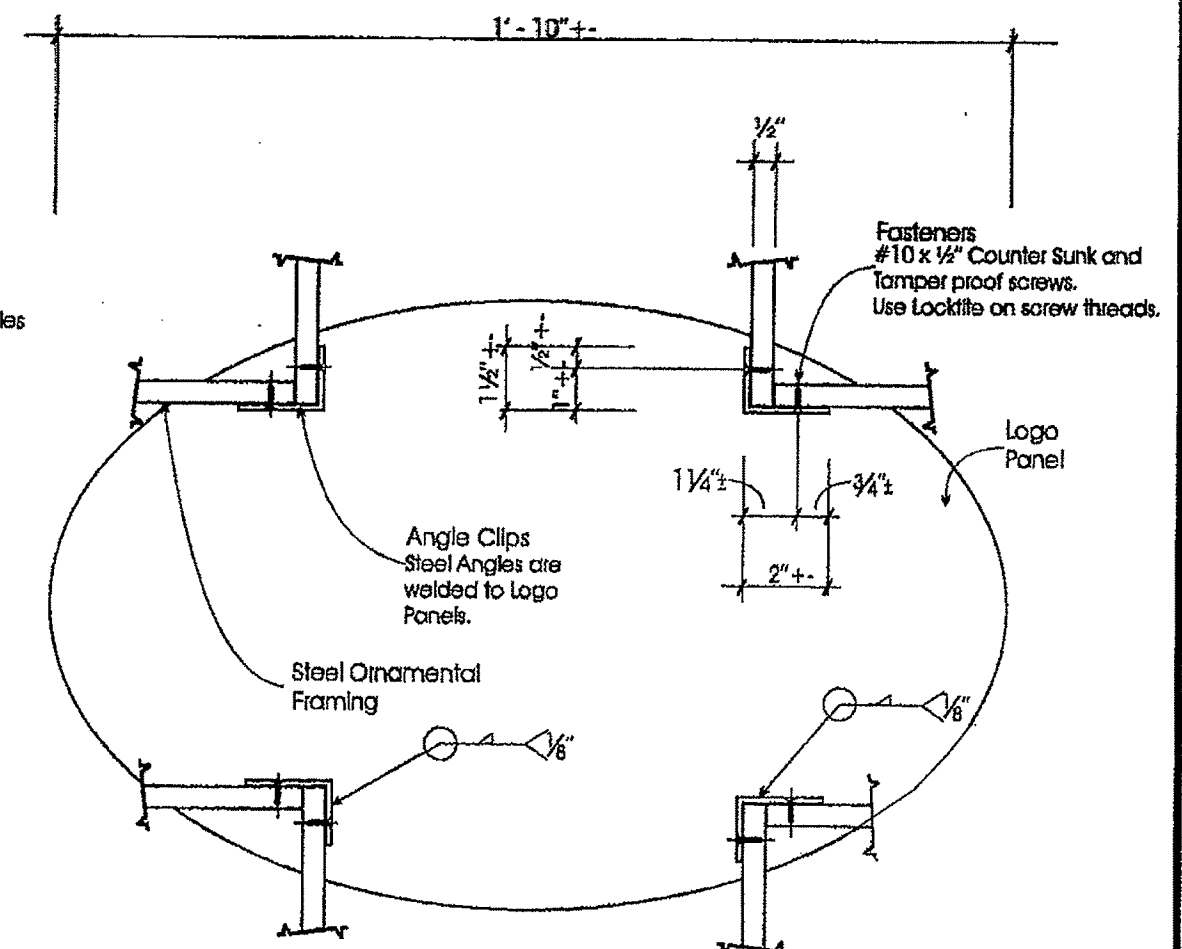
VIA Bus Shelter Project
12' x 32' Super Stop Shelter
Ornamental Frame and Mesh Panels



Rear View of Logo Panel N.T.S
Logo Panel will fasten to Steel Ornamental Frame using (4) Welded Steel Angles and (2) #10 x 1/2" Counter Sunk and Tamper Proof screws per angle. Use Locktite on screw threads. Use total of (8) screws.



Side View: Logo Panel
3"=1'-0"



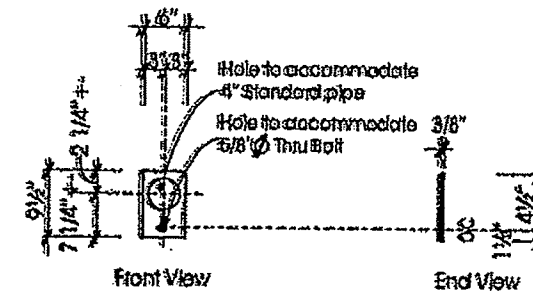
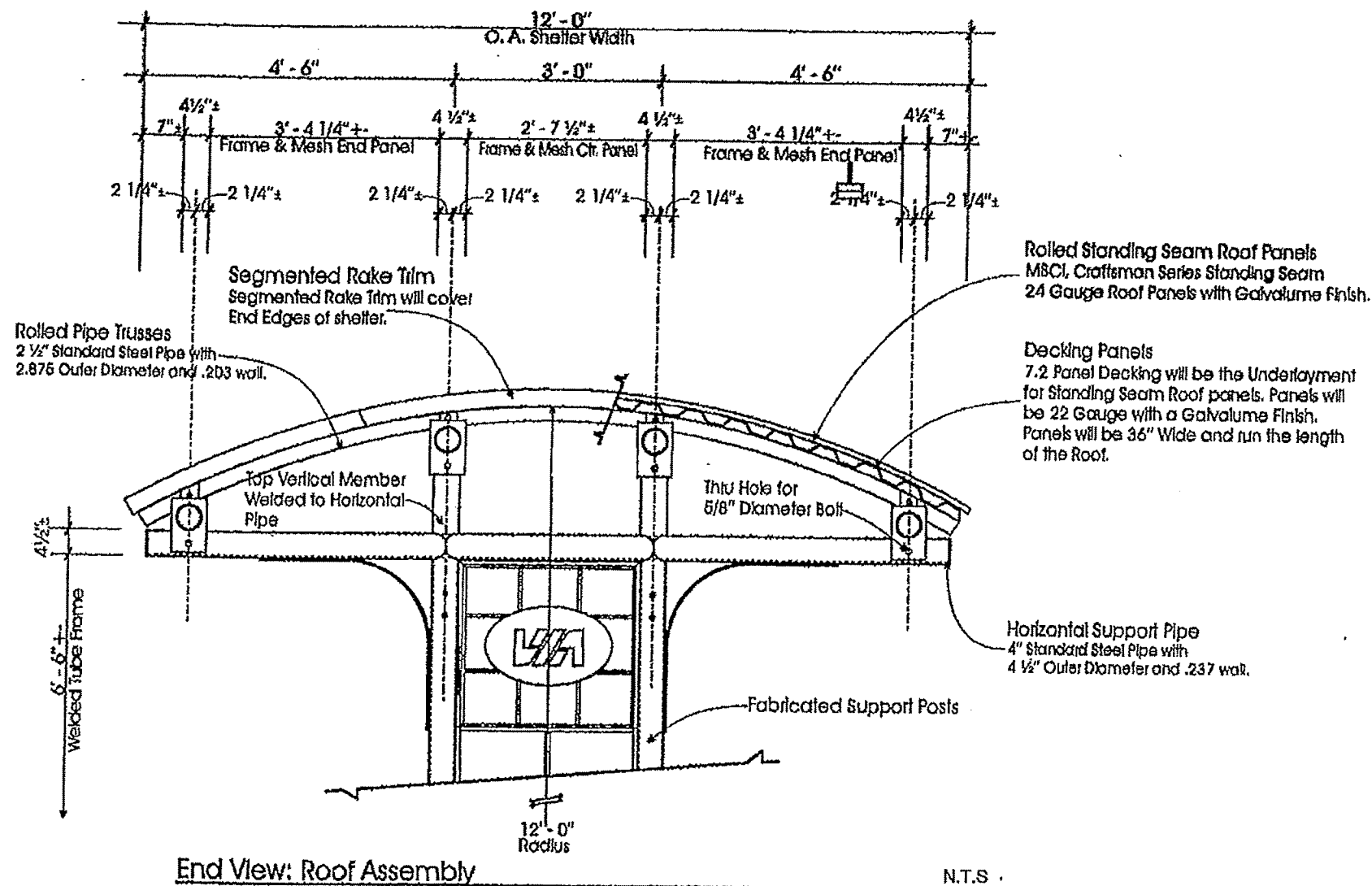
Fastening Angles N.T.S
(4) Steel Angles are welded to Logo Panels. (2) #10 x 1/2" Pan Head, Tamper proof screws will fasten the Panel to welded 1/2" x 1/2" Square Steel Frame through the Welded Angles. Use Locktite on screw threads. Use total of (8) Screws.

VIA

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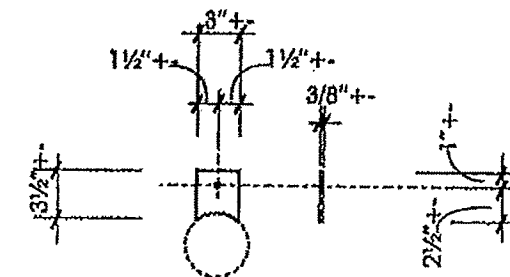
VIA Bus Shelter Project
12' x 32' Super Stop Shelter
Ornamental Frame and Mesh Panels



Roof Joists

Welded Support Plates

3/8" x 6" x 9 1/2" Support Plates are welded to Roof Joists. A 5/8" diameter x 6" Carbon Steel, Carriage Bolt is used to fasten the Roof Joists to the Vertical Support Posts. Use Washers and Tamper Proof Nuts with Neoprene Inserts. Make and Weld (3) per Support Joist.



Welded Support Tabs

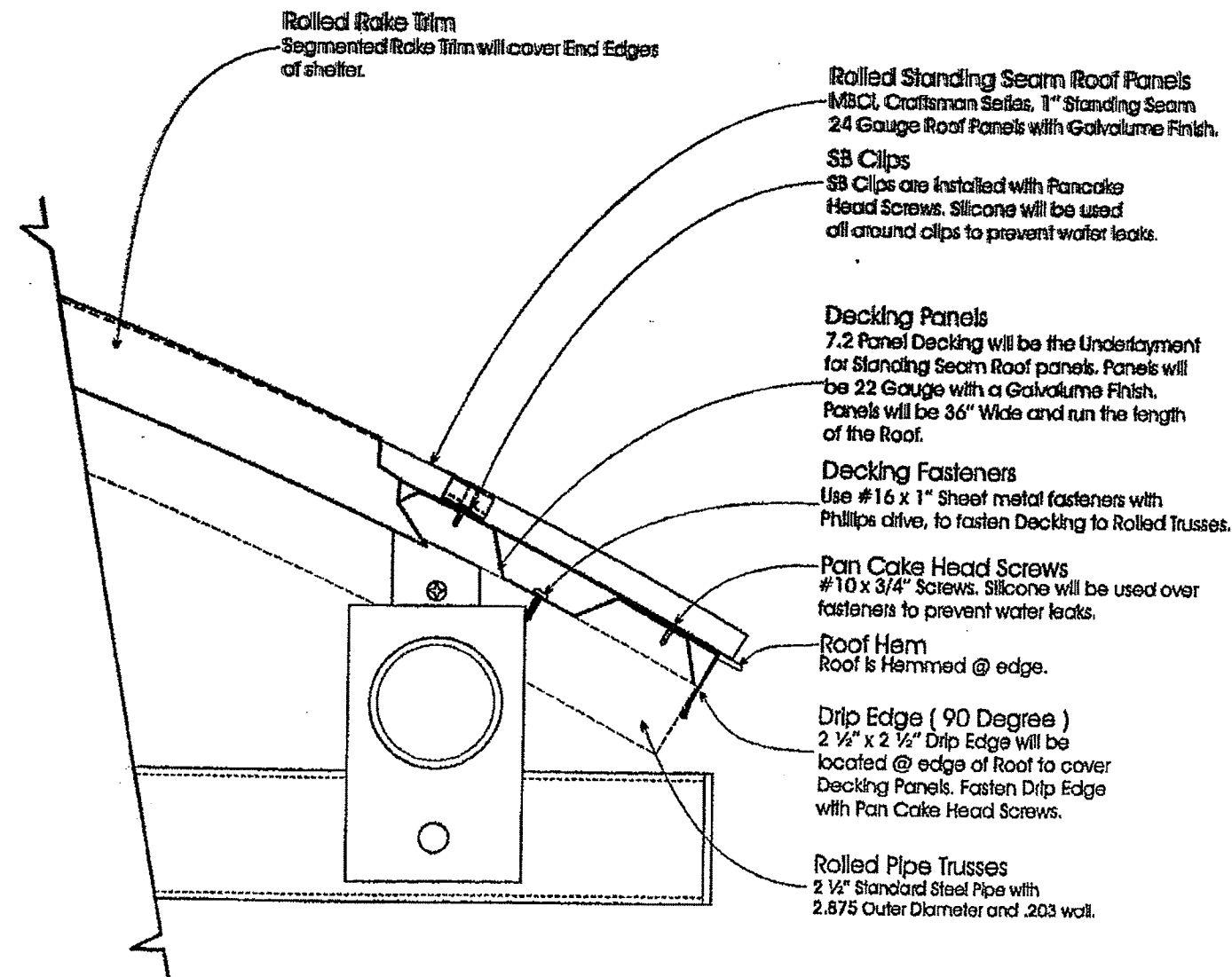
1/4" x 3"± x 3 1/2"± Support Tabs are welded to Roof Joists. Tabs will have pre-drilled holes, #16 x 1" Carbon Steel Screws will fasten Rolled Trusses to Roof Joists. Make and Weld (8) per Support Joist. Curve Top of Weld Tabs to Truss Radius.

VIA

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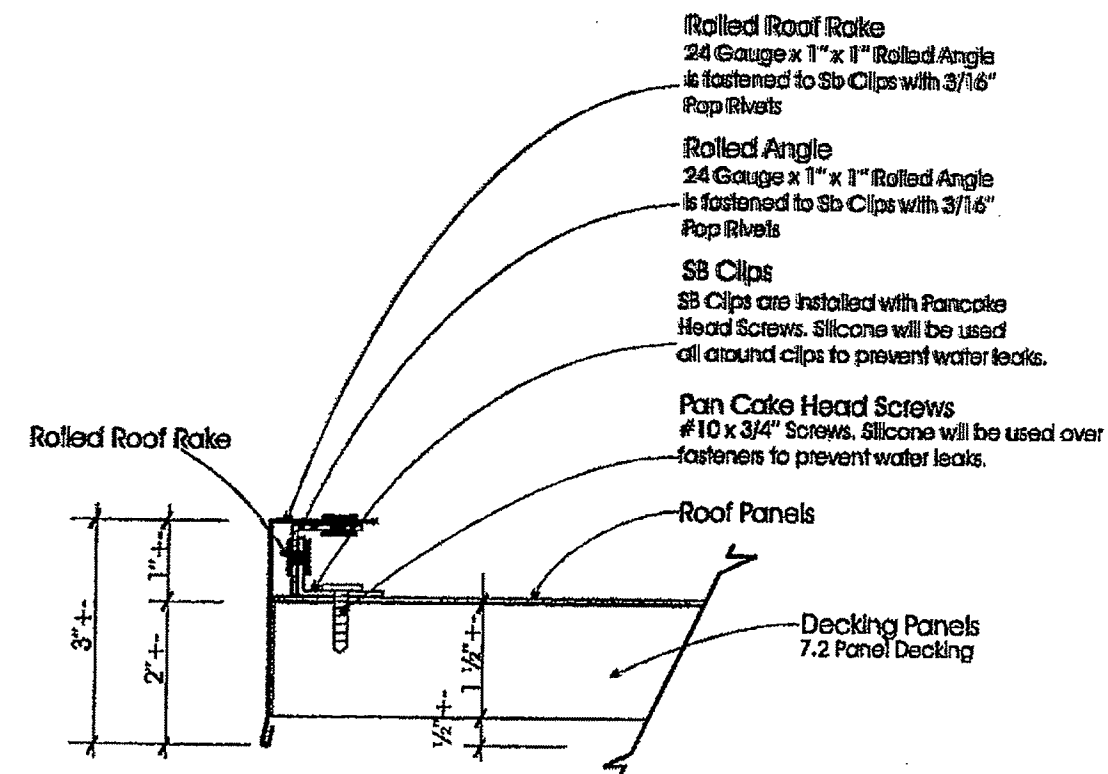
Sheet 11 of 18

VIA Bus Shelter Project
12' x 32' Super Stop Shelter
Roof Assembly



Roof Detail

N. T. S.



Section: Rolled Rake Trim

Segmented Rake Trim will cover End Edges of shelter.

N. T. S.

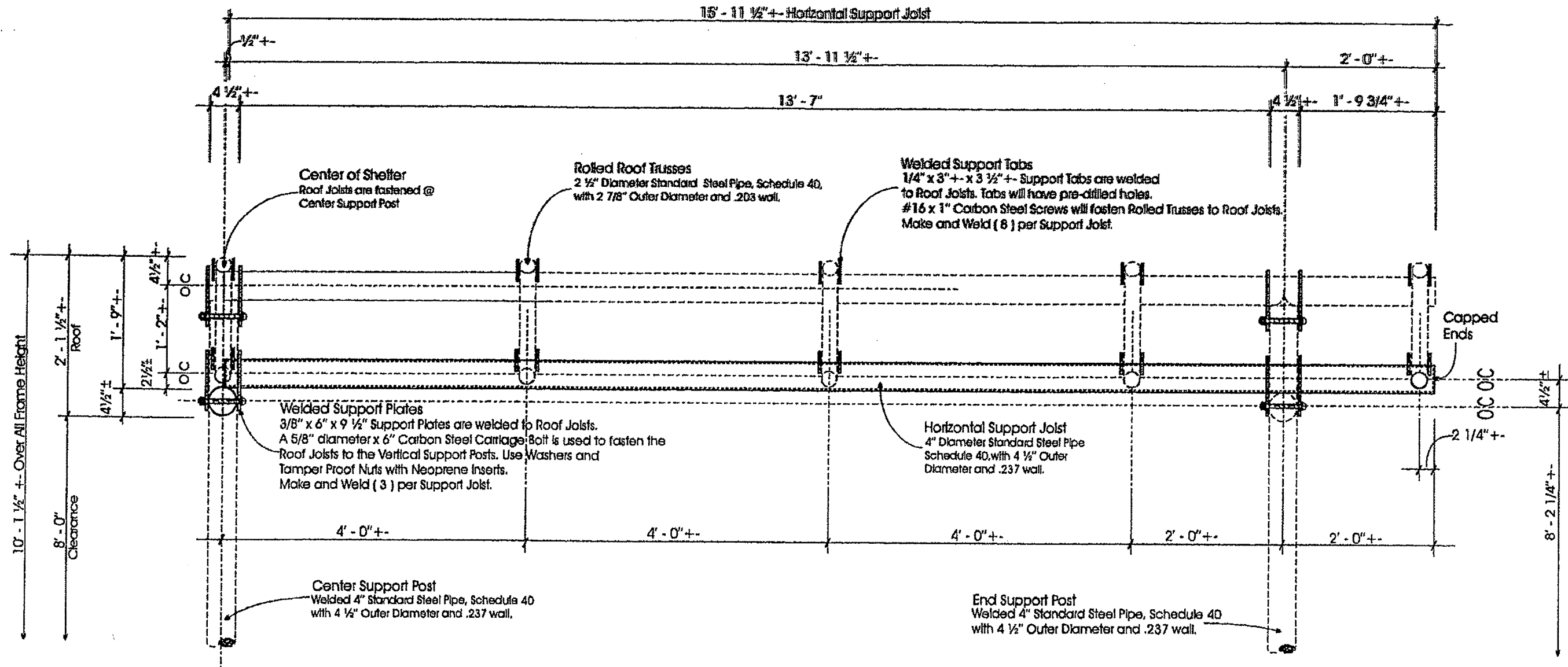
VIA

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VIA Bus Shelter Project
12' x 32' Super Stop Shelter
Roof Details



Front Elevation: Use for all Roof Joists

N.T.S

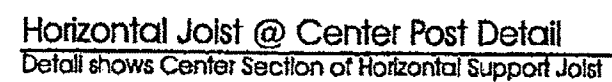
Shelter Roof can be divide into two (2) sections, Section A and Section B. The Center Support Post will be the connecting point for both sections.

VIA

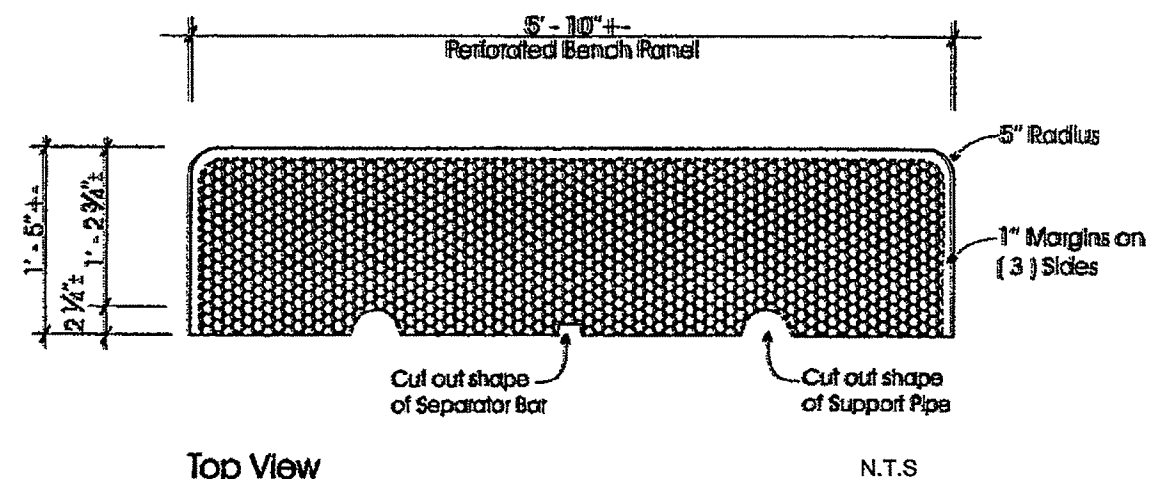
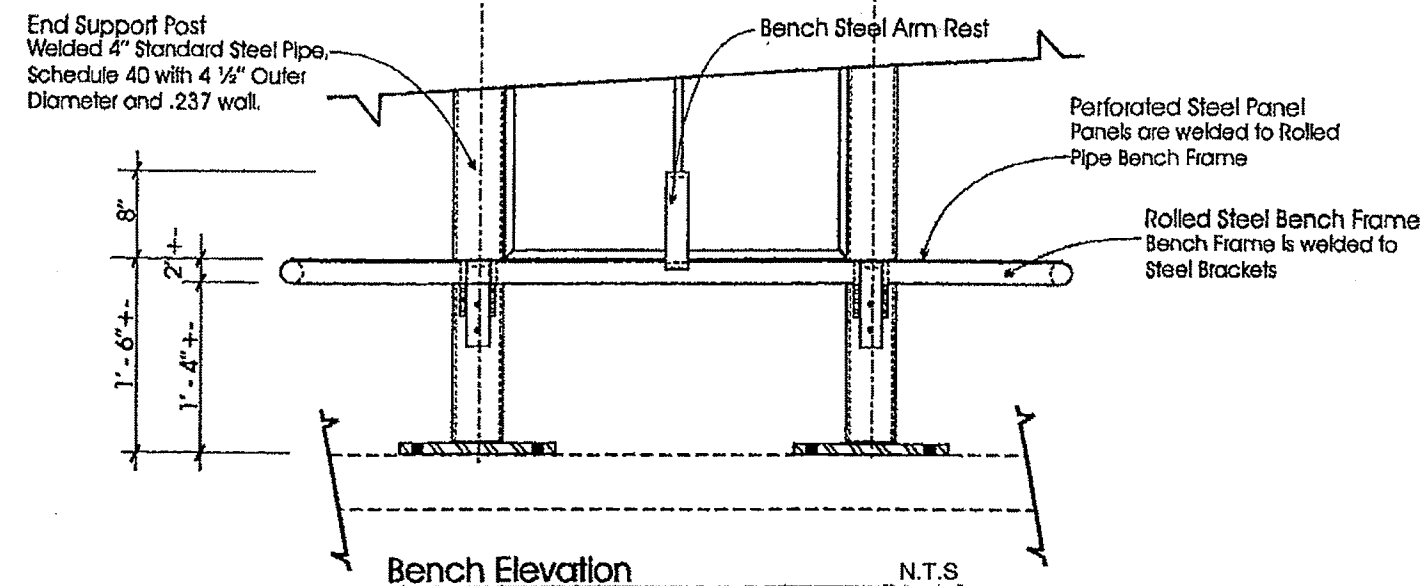
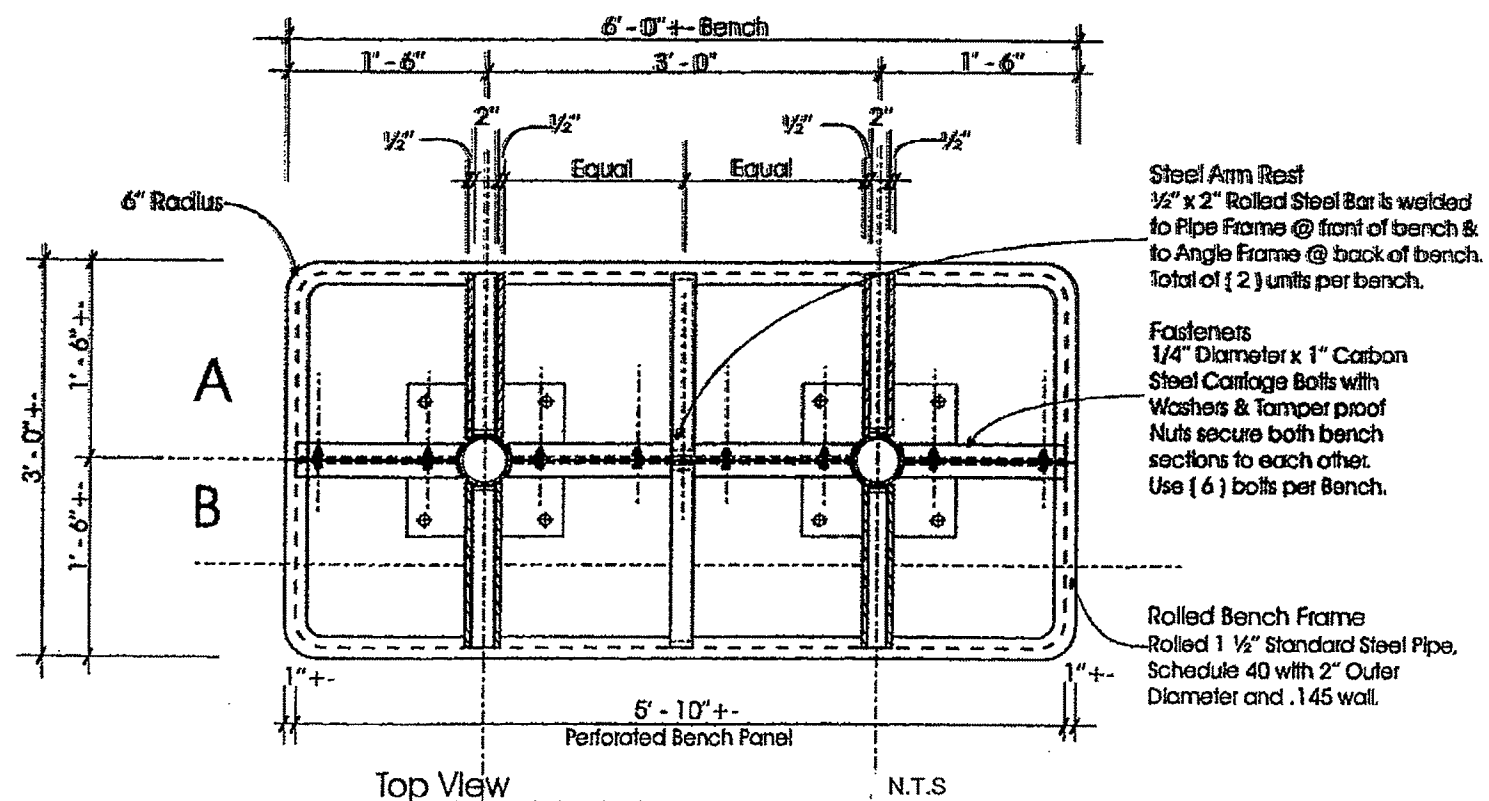
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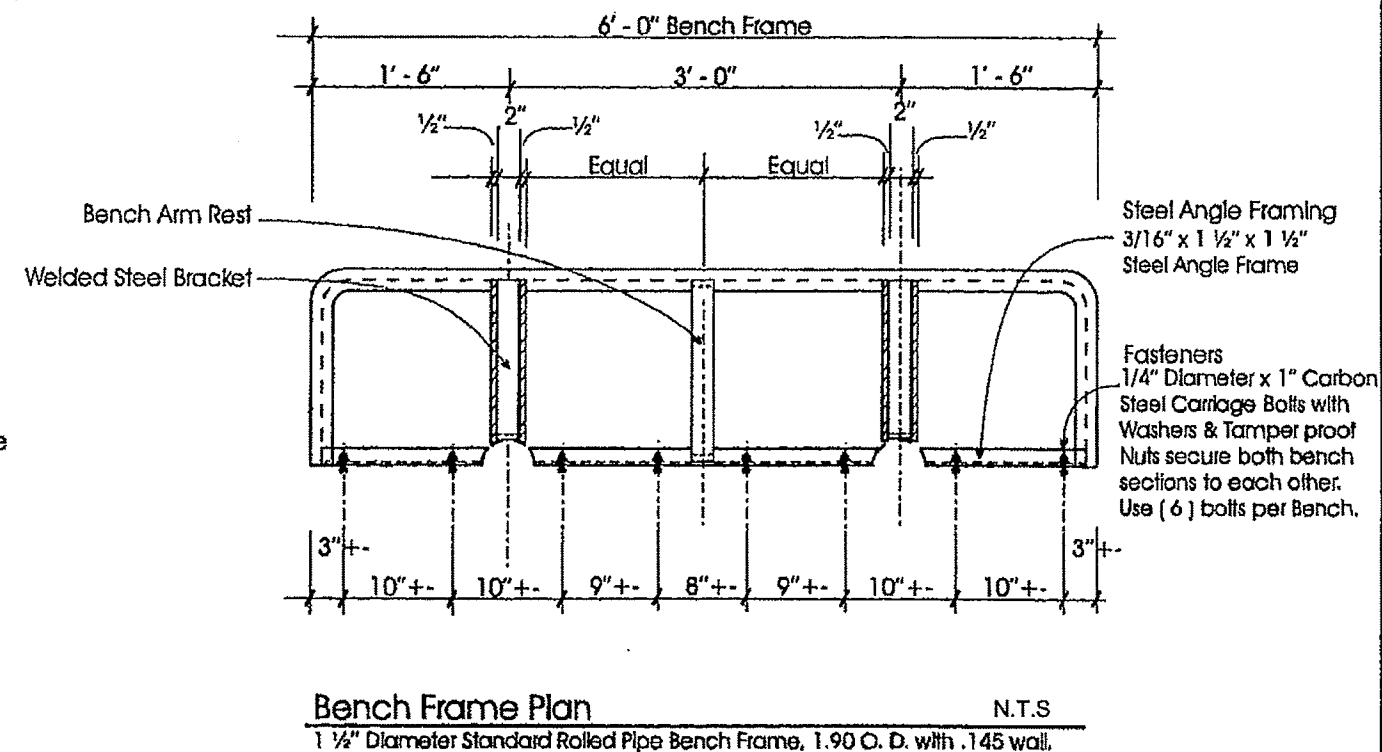
VIA Bus Shelter Project
12' x 32' Super Stop Shelter
Horizontal Roof Joist



VIA Bus Shelter Project
12' x 32' Super Stop Shelter
Horizontal Roof Joist @ Center Post



Top View
Bench Perforated Panels
Panels will have a $\pm 1/16"$ tolerances, 12 Gauge, 1/4" perforation on a 3/8" stagger, 40% open mesh. Panels will be powder coated to match shelter.

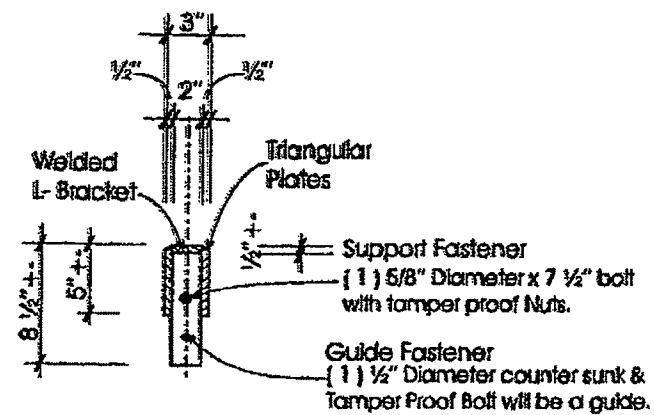


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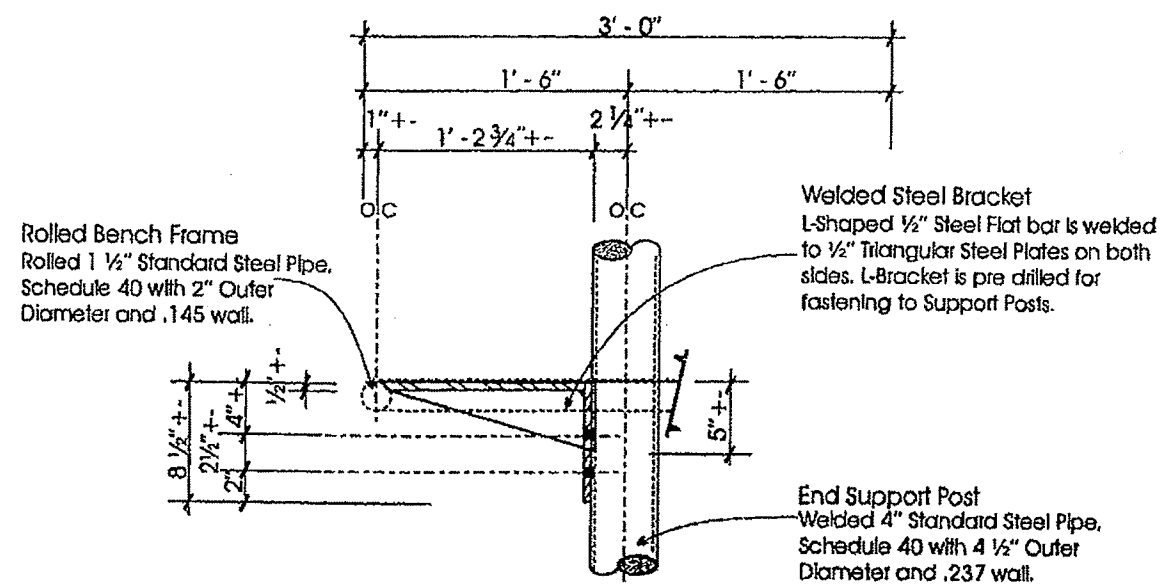
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VIA Bus Shelter Project
12' x 32' Super Stop Shelter
Bench Fabrication Drawings



Welded Bracket Section

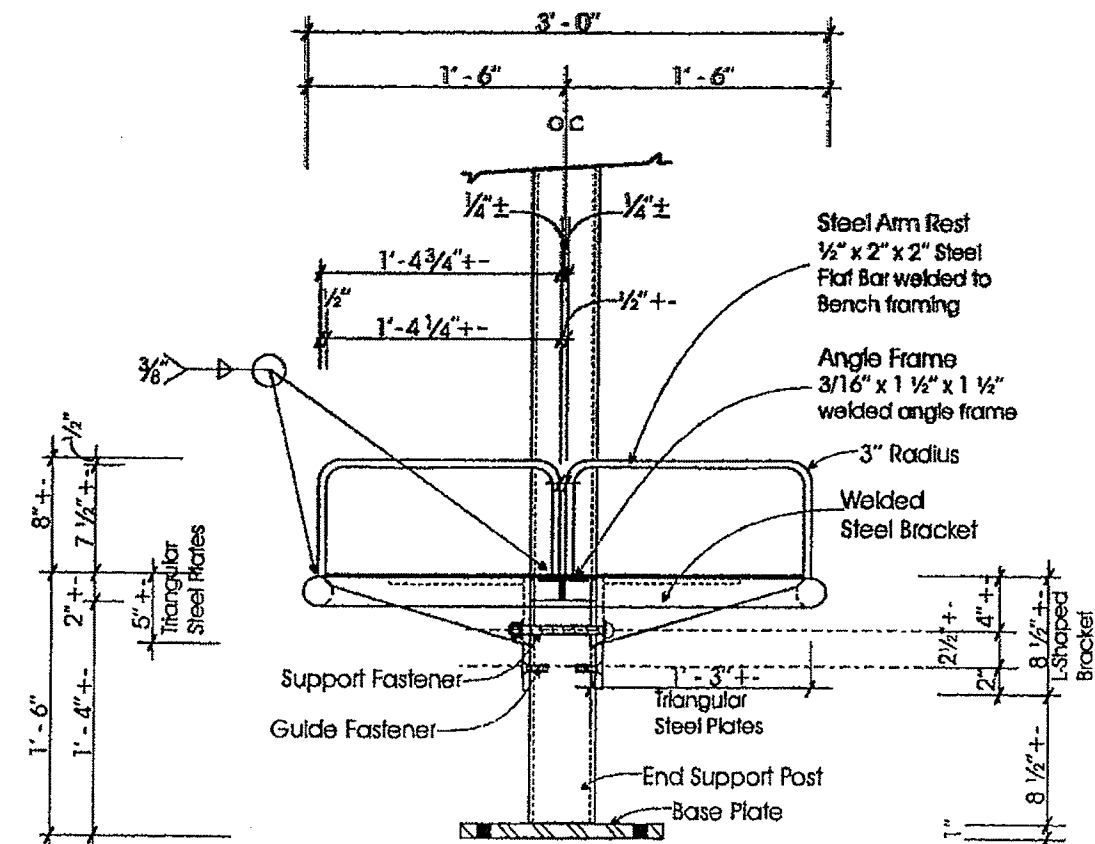
N.T.S



End View Section

N.T.S

Steel Brackets are welded to Bench Pipe Frame.



Bench Section

N.T.S

Support Fastener

A 5/8 inch diameter Carbon Steel Carriage Bolt with Washers and Tamper Proof Nuts with Neoprene Inserts, supports benches to Support Post.

Guide Fastener

A 1/2 inch diameter Carbon Steel, Counter Sunk Bolt and Tamper Proof Bolt will be used as a guide to fasten benches to Support Posts.

Rolled Bench Frame

Rolled 1 1/2 inch Standard Steel Pipe, Schedule 40 with 2 inch Outer Diameter and .145 wall.

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VIA Bus Shelter Project
12' x 32' Super Stop Shelter
Bench Fabrication Drawings