This agreement falls under Other Transaction Authority (OTA), not the Federal Acquisition Regulation (FAR). By incorporating the U.S. Government's terms and conditions directly into Section I, the terms and conditions become a core component of the agreement, eliminating the need for a separate attachment.

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ARTICLE 1: DEFINITIONS AND ACRONYMS

1.1. “Adequate security” means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

1.2 “Administrative Agreements Officer (AAO)” is the Army Contracting Activity warranted Agreements Officer delegated and authorized to act in an administrative capacity in addition to the AO.

1.3. “Agreement” or "OTA" refers to the Other Transaction Agreement, as authorized under 10 U.S.C. 2808a, between the Government and COMPANY this Agreement. OTA also refers to Other Transaction Authority. The term 'other transaction authority' means the authority provided under section 2808(a) of title 10, United States Code and any other code that uses such similar authorities.

1.4. “Agreements Officer (AO)” is the U.S. Army Mission & Installation Contracting Command (MICC) Activity warranted official authorized to sign the final agreement for the Government.

1.5. “Agreements Officer’s Representative (AOR)” is the individual designated by the Government on a per project basis to monitor all technical and administrative aspects. Throughout the OTA, this individual may also be referred to as the Contracting Officer Representative (COR).

1.6. “Commercial Computer Software” means software developed or regularly used for non-governmental purposes which -

a. Has been sold, leased, or licensed to the public;
b. Has been offered for sale, lease, or license to the public;
c. Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this agreement; or
d. Satisfies a criterion expressed in paragraphs a, b, or c of this definition and would require only minor modification to meet the requirements of this agreement.

1.7. “Commercial Computer Software License” means the license terms under which Commercial Computer Software is sold or offered for sale, lease or license to the general public.

1.8 “COMPANY” or “Company” means any commercial business that is the other signatory to this agreement beyond the U.S. Government. This term includes but is not

limited any business formed under United States of America state laws, informal entities such as sole proprietorships, partnering firms, Joint Ventures.

1.9. “COMPANY attributional/proprietary information” means information that identifies the COMPANY(s), whether directly or indirectly, by the grouping of information that can be traced back to the COMPANY(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

1.10. “Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

1.11. “Computer Data Base” as used in this Agreement, means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

1.12. “Computer program” as used in this Agreement means a set of instructions, rules, or routines in a form that is capable of causing a computer to perform a specific operation or series of operations.

1.13. “Computer software” as used in this Agreement means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include computer databases or computer software documentation.

1.14. “Computer software documentation” means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

1.15. “Confidential Information” means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information or a Trade Secret if such Disclosing Party, within thirty calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its

obligations. “Confidential Information” includes any information, and materials considered a Trade Secret by the COMPANY on its own behalf or on behalf of their subcontractors or suppliers.

1.16. “Contracting Activity” means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements or another agency designated by the director of a defense agency which has been delegated contracting authority through its agency charter.

1.17. “Covered COMPANY information system” means an unclassified information system that is owned, or operated by or for, a COMPANY and that processes, stores, or transmits covered defense information.

1.18. “Controlled Unclassified Information (CUI)” means unclassified information that requires safeguarding or dissemination controls, pursuant to and consistent with applicable law, regulations, and Government-wide policies. Instructions for the use, marking, dissemination, and storage of CUI can be found in DoDI Instruction 5200.48, “Controlled Unclassified Information (CUI).”

1.19. “Cyber incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

1.20. “Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to agreement administration, such as financial, administrative, cost or pricing, or management information.

1.21. “Date of Completion” is the date on which all work is completed as identified in Design and Construction Schedule.

1.22. “Days” means calendar days unless otherwise stated.

1.23. “Developed” means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered “developed,” the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

1.24. “Development” means the systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of a potential new product or service (or of an improvement in an existing product or service) to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing.

1.25. “Disclosing Party” means COMPANY, or their subcontractors or suppliers, or the Government who discloses Confidential Information.

1.26. “Form, fit and function data” means technical data that describes the required overall physical, functional and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

1.27. “Foreign Firm or Institution” means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

1.28. “Government” means the U.S. Government.

1.29. “Government Fiscal Year” means the period commencing on October 1 and ending
September 30 of the following calendar year.

1.30. “Government purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multinational defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

1.31. “Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

1.32. “Know-How” means all information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

1.33. “Malicious software” means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan

horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

1.34. “Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered COMPANY information system.

1.35. “Percentage of Completion” means the proportion of the construction work that has been performed during the relevant billing period, measured against the total scope of work defined in the Technical Requirements and evaluated based on the standards of quality established under the Agreement. For the construction portion of the Agreement, the Government will make monthly progress payments as the work proceeds, based on percentage-of- completion estimates of work accomplished and accepted by the Agreements Officer Representative.

1.36. “Operationally critical support’’ means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

1.37. “Receiving Party” means COMPANY, or their subcontractors or suppliers, or the Government who receives Confidential Information disclosed by a Disclosing Party.

1.38. “Signatory Authority” refers to the individual that has the authority to legally bind a party to an agreement.

1.39. “Termination for Convenience” means the exercise of the Government’s right to completely or partially terminate performance of work under a agreement when it is in the Government’s interest.

1.40. “Termination for Default” means the exercise of the Government’s right to completely or partially terminate an agreement in accordance with Section 3.4.

ACRONYMS

AE	Architect-Engineering
AMC	Army Material Command
AO	Agreement Officer
AOR	Agreement Officer Representative
ASA I&E	Assistant Secretary of the Army for Installations, Energy and Environment
ASHRAE	American Society of Heating, Refrigerating, and Air Conditioning Engineers
CAC	Common Access Card

CSAM	Construction Scale Additive Manufacturing
CSRP	Central Shipping and Receiving Point
CTC	Combat Transaction Authority
DFARS	Defense Federal Acquisition Regulation Supplement
DOD	Department of Defense
DOW	Department of War
DPW	Directorate of Public Works
FAR	Federal Acquisition Regulation
FPR	Follow-On Production Request
IMCOM	Installation Management Command
MICC	Mission and Installation Contracting Command
NACI	National Agency Check with Inquiries
NAICS	North American Industry Classification System
NFPA	National Fire Protection Association
NIPR	Non-Classified Internet Protocol Router Network
OTA	Other Transaction Authority
PCAS	Post Construction Award Services
PDF	Portable Document File
SDD	Sustainable Design and Development
TR	Technical Requirements
TSC	Theater Support Center
UFC	Unified Facilities Criteria
USG	United States Government
U.S.C.	United States Code
VCC	Visitor Control Center

ARTICLE 2: SCOPE OF THE AGREEMENT

2.1. Background

Other Transactions Agreement (OTA) is the term commonly used to refer to the 10 U.S.C. § 2808a authority to enter transactions other than contracts, grants or cooperative agreements. The Department of War (DOW) currently has authority to make awards that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the DOW, or to improvement of platforms, systems, components, or materials in use by the armed forces. OTAs are acquisition instruments that are generally not subject to the Federal laws and regulations governing procurement (FAR based) contracts. As such, they are not required to comply with the Federal Acquisition Regulation (FAR), its supplements (e.g., Defense Acquisition Regulation (DFARS), Army Federal Acquisition Regulation (AFARS)) or laws that are limited in applicability to procurement contracts.

2.2. Scope

2.2.1. This Agreement is an Other Transaction Agreement pursuant to 10 U.S.C. § 2808a. The principal purpose of this Agreement is to design, construct, and repair per the technical requirements (TR)

2.2.2. COMPANY shall be responsible for performance of the work set forth in the TR, in this agreement, and any attached documents to the agreement. The COMPANY shall provide all documentation required in accordance with the requirements of the OT.

ARTICLE 3: TERM OF AGREEMENT AND TERMINATION

3.1. Term of this Agreement

The term of this agreement commences upon the effective date and continues as defined in the agreement. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified herein, shall be given effect, notwithstanding this Article.

3.2. Termination Provisions

Subject to a reasonable determination that the program, or a project funded under the program, will not produce beneficial results commensurate with the expenditure of resources, the Government may terminate performance of work under this Agreement for convenience, in whole or in part, if the AO determines that a termination is in the Government’s interest. The AO will terminate by delivering to the COMPANY a Notice of Termination specifying the extent of termination and the effective date. After receipt of a Notice of Termination, and except as directed by the AO, the COMPANY shall

immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due:

(1) Stop work and direct its subcontractors/vendors/suppliers/partners to stop work as specified in the notice.

(2) Place no further orders for materials, services, or facilities, except as necessary to complete the continued portion of the Agreement.

(3) Terminate all orders to the extent they relate to the work terminated.

(4) Complete performance of any work not terminated, if applicable.

(5) Take any action that may be necessary, or that the AO may direct, for the protection and preservation of the property related to this project that is in the possession of the Company and in which the Government has or may acquire an interest.

If the Government terminates, then the Government will pay COMPANY for all work and services rendered and performed up to date of the notice of termination plus reasonable expenses actually incurred by the COMPANY and COMPANY's reasonable cost(s) to break contractual obligations with subcontractors, subconsultants, suppliers, vendors and materialmen entered prior to COMPANY's receipt of the notice of termination. The COMPANY must submit a written request for reasonable expenses with back-up data clearly demonstrating the costs incurred by the Government termination. The AO determines reasonable costs for reimbursement based on the written request.

The COMPANY may request an Agreement termination by giving the Government a written notification, provided that such written notice is preceded by consultation between the Parties. The COMPANY must provide a 30-day written notice to the Government. The Government is not obligated to grant an Agreement termination at the COMPANY's request and will only agree to the termination if it is in the best interest of the Government. If the COMPANY unilaterally terminates the agreement, it will be considered a breach of agreement and default subject to the terms in paragraph 3.4 and 3.5.

Failure of the Parties to agree to terminate shall be resolved pursuant to Article 6, Disputes.

3.3. Extending the Term

The Parties may extend, by mutual written agreement, the term of this Agreement if opportunities within the scope set forth in the Agreement reasonably warrant. Any extension shall be formalized through modification of the Agreement by the AO and the COMPANY and in accordance with procedures outlined in Article 4.2.

The Government shall exercise due diligence, reasonable promptness, and good-faith cooperation in performing all obligations under this Agreement. This includes, without limitation, the timely provision of all Government- furnished information, materials, approvals, access, decisions, and direction required for Company to perform the Work.

The Government shall not delay, hinder, or otherwise interfere with the Company's performance. Any failure by the Government to timely perform its obligations, or any Government-caused delay or disruption, may entitle Company to an equitable adjustment in schedule or other terms as necessary to account for the impact of such delay, which shall be modified in accordance with the procedures set forth in Article 4.2. The Government agrees to promptly address and resolve issues, dependencies, or approval requests submitted by Company to avoid material impacts to the Work.

Company shall not be held responsible for performance delays, nonperformance, or cost impacts arising from the Government's failure that directly impact the Company's ability to meet its obligations under this Agreement.

3.4 Termination for Default

a. If the Company refuses or fails to prosecute the work for the reasons identified below, the Government may, by written notice to the Company outlining the failure and default, terminate the right to proceed with the work (or the separable part of the work), after providing the required notice and opportunity to cure as stated in Section 3.4(b), if the Company:

1. repeatedly refuses or fails to supply an architect, or enough properly skilled consultants, or workers or proper materials;
2. fails to make undisputed payment to the architect, consultants, or subcontractors for services, materials or labor in accordance with their respective agreements with the Company, provided Government has made such payments to Company and there is no dispute with the architect, consultant, or subcontractors related to their services, materials or labor;
3. repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
4. is otherwise guilty of substantial breach of a provision of the agreement.

b. When any of the above reasons exist, the Government may, without prejudice to any other rights or remedies of the Government, and after giving the Company and the Company's surety, if applicable, written notice, that Government intends to terminate unless the above issue(s) cited in the written notice is either cured, Company provides a plan to cure, or Company commences to be cure within 90 days of Company's receipt of such written notice.

c. In this event, the Government may take over the work and complete it by agreement or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

3.5 Damages

(a) If the COMPANY fails to deliver the supplies or perform the services within the milestones specified in this agreement, the COMPANY shall, in place of actual damages, pay to the Government liquidated damages of $10,000 per calendar day of delay.

(b) If the Government terminates this agreement in whole or in part under the COMPANY fault, the COMPANY is liable for liquidated damages accruing until the Government reasonably obtains delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(c) The COMPANY will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the COMPANY as defined in the Default-Fixed-Price Supply and Service clause in this agreement.

ARTICLE 4: MANAGEMENT, ADMINISTRATION, AND MODIFICATION

4.1. Administration. Unless otherwise provided in this Agreement, changes to this Agreement may only be made by the AO. Administrative and contractual matters under this Agreement shall be referred to the representatives identified in Agreement Administration.

4.2. Modifications

4.2.1. Recommendations for modifications, including justifications to support any changes to the TR and terms of this agreement may originate with either a request from the COMPANY to the AOR and AO, or the Government through the AO. This documentation will detail the technical, chronological, and financial impact of the proposed modification to the program. Any Agreement modification shall be mutually agreed upon by the AO and the COMPANY. The Government is not obligated to pay for additional or revised pay activities until the ALIN Schedule is formally revised and made part of this Agreement via modification signed by the AO, and the project schedule is updated to incorporate pay activity changes resulting from the modification. If the Agreements Officer designates an Agreements Officer Representative (AOR), the COMPANY will receive a copy of the written designation. It will specify the extent of the AOR's authority to act on behalf of the Agreements Officer.

4.2.2. The AO is responsible for the review and approval of any recommendations to modify the TR, or other proposed changes to the terms and conditions of this Agreement. If additional terms and conditions are required to be included to address work that may be required under this Agreement, they will be included by mutual written modification to this Agreement.

4.2.3. For minor or administrative Agreement modifications (e.g. changes in the paying office or appropriation data, changes to Government or the COMPANY's personnel identified in the Agreement) no signature is required by the COMPANY. The Government reserves the right to unilaterally issue modifications to this Agreement for administrative changes provided that the COMPANY is notified of such modifications in writing (email accepted). All modifications except for administrative modifications shall be made by mutual written agreement of the parties.

4.2.4. The AO may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the agreement, including changes-

(1) In the specifications (including drawings and designs);
(2) In the method or manner of performance of the work;
(3) In the Government-furnished property or services; or
(4) Directing acceleration in the performance of the work.

4.2.5 The AO is responsible for initiating all modifications to this Agreement.

ARTICLE 5: OBLIGATION AND PAYMENT

5.1. Obligation

This Agreement is funded in accordance with the amount annotated in the SF 26 Section G ("Contract Administration Data"). In no case shall the Government's financial obligations exceed the amount obligated on the Agreement, or as may be adjusted by amendment, change order, or change directive to this Agreement. The Government is not obligated to reimburse the COMPANY for expenditures in excess of the amount of obligated by the Government. If a modification becomes necessary in performance of this Agreement, pursuant to Article 4.2, the AO and the COMPANY shall execute a revised ALIN Schedule and update the project schedule to reflect pay activity changes resulting from the modification.

5.2. Payments

5.2.1. The Parties agree that payments will be made in accordance with each completion of the agreed upon cost loaded schedule. These payments reflect the value received by the Government toward the accomplishment of the terms of this Agreement.

5.2.2. The COMPANY shall document the accomplishments each month against the Project Schedule by submitting or otherwise providing the Progress Report required by the TR. After verification (written or otherwise) of the Progress Report by the AOR, the COMPANY shall submit invoices for processing according to the project payment schedule via the Procurement Integrated Enterprise Environment (PIEE), according to this agreement.

5.2.3. Limitation of Funds: In no case shall the Government's financial liability exceed the amount(s) obligated under this Agreement.

5.2.4. Payments will be made by the Defense Finance Accounting Service (DFAS) within 30 calendar days of an accepted invoice in PIEE. Refer to this agreement for further details on how to submit and process invoices through PIEE.

5.2.5. Payments shall be made in the amounts set forth in SF26 Section B, provided the AOR has verified the Progress Report.

5.2.6. The COMPANY shall maintain adequate records to account for all obligated funding under this Agreement.

5.2.7 Upon execution of the Agreement, the Government shall provide the Company with written payment information through AE Firm.

5.3. Financial Records and Reports:

5.3.1. The COMPANY shall maintain adequate records to account for Federal funds received under this Agreement and shall maintain adequate records to account for COMPANY Project Agreement funding provided under this Agreement.

ARTICLE 6: DISPUTES

6.1. General

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues pertaining to this Agreement under this article, with the objective of resolving any misunderstanding, disagreement, claims, or disputes by mutual agreement.

6.2. Dispute Resolution Procedures

6.2.1. Any disagreement, claim or dispute between the Government and the COMPANY concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.

6.2.2. Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable, with the goal of settlement within three months of identification of the issue. Every reasonable attempt will be made to resolve all issues at the AO's level. Alternative Dispute Resolution (ADR) procedures to include, but not limited to settlement negotiations, mediation and fact-finding, will be used to the maximum extent practicable. Whenever the COMPANY submits, in writing, a claim or issue to the

Government, the AO shall consider the claim or issue and, within 30 calendar days of receipt of the claim or issue in dispute, either:

a. Prepare and transmit a written decision to the COMPANY, which shall include the basis for the decision, and accordingly document the Agreement file or;

b. Notify the COMPANY of a specific date when the AO will render a decision if more time is needed for response. The notice will inform the COMPANY of the reason for delaying the decision.

6.2.3. In the event the COMPANY decides to appeal the decision, the AO shall make every effort to encourage the COMPANY to enter into ADR procedures with the AO. The ADR procedure applicable to this Agreement expressed in subparagraphs below:

a. Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party through the cognizant AO in writing documenting the relevant facts, identifying unresolved issues, specifying the clarification or remedy sought, and documenting the rationale as to why the clarification/remedy is appropriate. Within ten working days after providing notice to the other Party, the aggrieved Party may, in writing, request a decision by the Senior Contracting Official (SCO), MICC. The other Party shall submit a written position on the matter(s) in dispute within 30 calendar days after being notified that a decision has been requested. The SCO will conduct a review of the matter(s) in dispute and render a decision in writing within 30 calendar days of receipt of such a position. Any such decision is final and binding, unless a Party shall, within 30 calendar days request further review as provided by this article. If requested within 30 calendar days of the decision by SCO, further review will be conducted by the President of the COMPANY and the MICC Senior Contracting Official (SCO) In the event of a decision, or in absence of a decision within 60 calendar days of referral to the President of the COMPANY and the MICC SCO (or such other period as agreed to by the parties), either party may pursue any right or remedy provided by law. Alternatively, the parties may agree to explore and establish an Alternate Disputes Resolution procedure to resolve this dispute.

b. If the COMPANY chooses not to participate in the Dispute Resolution Procedure or does not accept the results of the Dispute Resolution Procedure, the COMPANY may bring a formal claim as authorized by 28 U.S.C. 1491, or other applicable statutes, and pursue any right and remedy in a court of competent jurisdiction. The Parties' attempt to resolve issues through settlement negotiations, mediation and fact-finding pursuant to this Article 6 shall be non-binding and without prejudice to either Party.

6.3. Limitation of Damages

No Party shall be liable to any other Party for consequential, punitive, special and incidental damages or other indirect damages, whether arising in the agreement (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise, except to the extent such damages are caused by a Party's willful misconduct; Notwithstanding the foregoing, claims for contribution toward third-party injury, damage, or loss are not limited, waived, released, or disclaimed.

ARTICLE 7: CONFIDENTIAL INFORMATION

7.1. Exchange of Information

The Government may from time to time disclose Government Confidential Information to the COMPANY and its subcontractors or suppliers, in connection with a particular project, and the COMPANY and its subcontractors or suppliers, may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with the OTA or performance thereunder. Neither the Government nor COMPANY or their subcontractors or suppliers shall be obligated to transfer Confidential Information or Trade Secrets independently developed by the Government or the COMPANY or their subcontractors or suppliers, absent an express written agreement between the Parties providing the terms and conditions for such disclosure.

7.2. Confidentiality and Authorized Disclosure

The Receiving Party agrees, to the extent permitted by law, that Confidential Information and Trade Secrets shall remain the property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Confidential Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified project efforts, except to the extent that such information must be communicated

a. to subcontractors, vendors, consultants, and other third parties in connection with the performance of this Agreement;

b. as required by governmental agencies or otherwise required by law;

c. as required for financial, insurance or tax audits, subject to a confidentiality agreement with the auditor; or

d. as may be authorized in writing by the party from whom that information originated; provided that the duty to protect such “Confidential Information” and “Trade Secrets” shall not extend to materials or information that:

1. Are received or become available without restriction to the Receiving Party under a proper, separate agreement,

2. Are not identified with a suitable notice or legend per Article entitled "Confidential Information" herein,

3. Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure thereof as demonstrated by prior written records,

4. Are or later become part of the public domain through no fault of the Receiving Party,

5. Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,

6. Are developed independently by the Receiving Party without use of Confidential Information or Trade Secrets as evidenced by written records,

7. Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

7.3. Return of Proprietary Information

Upon the request of COMPANY, the Government shall promptly return all copies and other tangible manifestations of the Confidential Information or Trade Secrets disclosed but may keep one copy for audit and business records purposes, provided such retained copies must be held in a secure, non-production, and non-active archival system and shall not be readily accessible by or used by the Government's operational personnel. Upon request by the Government, COMPANY shall promptly return all copies and other tangible manifestations of the Confidential Information disclosed by the Government but may keep one copy for legal, regulatory and audit archival purposes provided such retained copies must be held in a secure, non-production, and non-active archival system and shall not be readily accessible by or used by the COMPANY's operational personnel. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

7.4. Term

Except to the extent covered by and subject to other provisions of this Agreement, the obligations of the Receiving Party under this Article shall continue for a period of five years after the expiration or termination of this Agreement.

7.5. Sub-agreements

The Government and the COMPANY shall flow down the requirements of this Article to their respective personnel, agents, partners, and team members receiving such Confidential Information or Trade Secrets under this OTA.

ARTICLE 8: DATA RIGHTS

8.1. Allocation of Principal Rights

8.1.1. Data that will be delivered, furnished, or otherwise provided to the Government under this Agreement, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with the pre- existing rights, unless (a) the parties have agreed otherwise, or (b) any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

8.1.2. Identification of Principal Rights:

8.1.3. Marking of Data: Any Data delivered under this Agreement shall be marked with the following legend:

"This data is being delivered as Commercial Computer Software or Technical Data, as defined in Agreement [INSERT AGREEMENT NUMBER]. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement [INSERT AGREEMENT NUMBER] between the COMPANY and the Government."

Companies shall provide Data Rights Assertions in a tabular format prescribed below. Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software.

Technical Data or Computer Software to be Furnished With Restrictions* [1]	Basis for Assertion** [2]	Asserted Rights Category*** [3]	Name of Person Asserting Restrictions**** [4]
(LIST)***** [5]	(LIST)	(LIST)	(LIST)

However, in addition to the content and formatting requirements set forth in the table above, the Company's Data Rights Assertions table shall list Data items that the Company intends to furnish to the Government with and without license restrictions. Thus, the Data/Software Rights Assertions table may include technical data and software items that are provided to the Government with an "unlimited rights" license. Further, the Company shall comply with the restrictive marking requirements set forth in the tables below.

IDENTIFICATION AND ASSERTION OF RESTRICTIONS ON THE GOVERNMENT' S USE, RELEASE, OR DISCLOSURE OF TECHNICAL DATA

Technical Data			Name of Person
to be Furnished	Basis for	Asserted Rights	Asserting

With Restrictions*	Assertion**	Category***	Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Computer Software.

Computer Software to be Furnished With Restrictions[1]	Basis for Assertion[2]	Asserted Rights Category[3]	Name of Person Asserting Restrictions[4]
(LIST)	(LIST)	(LIST)	(LIST)

8.1.4. In the event that the COMPANY learns of a release to the Government of its unmarked Data that should have contained a restricted legend, the COMPANY will have the opportunity to cure such omission going forward by providing written notice to the AO within six months of the erroneous release.

8.2. Prior Technology

In the event it is necessary for the COMPANY to furnish the Government with Data which existed prior to, or was produced outside of this Agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or agreement employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government’s responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of nondisclosure agreements by such Government Contractors or agreement employees. The COMPANY shall not be obligated to provide Data that existed prior to or was developed outside of this Agreement to the Government. Upon completion of activities under this Agreement, such Data will be disposed of as requested by the COMPANY.

8.3. Oral and Visual Information

If information which the COMPANY considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is expressly disclosed orally or visually directly to the Government, the exchange of such information must be memorialized in tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government within 30 calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information. If the Government reasonably determines that the memorialization of the exchange is insufficiently detailed to enable it to identify the privileged or confidential information, COMPANY shall provide

additional detail at the Government's request, subject to restrictions on use and disclosure.

8.4. Disclaimer of Liability

8.4.1. Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of:

a. Data not identified with a suitable notice or legend as set forth in this Article;

nor

b. Information contained in any Data for which disclosure and use is restricted, if such information is or becomes generally known without breach of the above, is properly known to the Government or is generated by the Government independent of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is included in Data which the COMPANY has furnished, or is required to furnish to the Government without restriction on disclosure and use.

8.4.2. Notwithstanding Article 10.4.1.a., if the COMPANY cures the omission of the suitable notice or legend, the restrictions, and related liability for disclosure and use of such information shall apply after cure unless it is then unrestricted under Article 10.4.1.b.

8.5. Copyright

No copyrighted materials are expected to be developed under this Agreement. In the event copyrighted materials are developed under this Agreement, the COMPANY hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly any copyrighted materials developed (excluding Data) under this Agreement to which it owns the copyright, and to authorize others to do so.

Jointly Created Works: Ownership to copyrights for original works of authorship created jointly by a Government employee and a Company employee in the course of performance of work under this Agreement is vested in the Company. The Company grants to the Government a royalty-free, nonexclusive, irrevocable license in accordance with the Data Rights provisions of the FPR.

8.6. Lower Tier Agreements

The COMPANY shall include this Article, suitably modified to identify the parties, in all, sub-agreements or lower tier agreements, regardless of tier, or experimental, developmental, or research work.

8.7 PATENTS

8.7.1 Authorization and Consent

a. The Government authorizes and consents to all use and manufacture, in performing this agreement or any sub-agreement at any tier, of any invention described in and covered by a United States patent-

1. Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this agreement; or

2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Company or a subcontractor with (i) specifications or written provisions forming a part of this agreement or (ii) specific written instructions given by the Agreement Officer directing the manner of performance. The entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this agreement or any sub-agreement hereunder (including any lower-tier sub-agreement), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

3. The Company shall include the substance of this in all sub-agreements.

8.7.2 Notice and Assistance Regarding Patent and Copyright Infringement

a. The Company shall report to the Agreement Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this agreement of which the Company has knowledge.

b. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this agreement or out of the use of any supplies furnished or work or services performed under this agreement, the Company shall furnish to the Government, when requested by the Agreement Officer, all evidence and information in the Company's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the COMPANY has agreed to indemnify the Government.

c. The Company shall include the substance of this in all sub-agreements.

8.7.3 Patent Indemnity

a. The Company shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this agreement, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

b. This indemnity shall not apply unless the Company shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to—

1. An infringement resulting from compliance with specific written instructions of the Agreement Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the agreement not normally used by the Company;

2. An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

3. A claimed infringement that is unreasonably settled without the consent of the Company, unless required by final decree of a court of competent jurisdiction.

8.7.4 Patent Rights-Ownership by the Company

a. As used in this clause

1. *Invention* means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code, or any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq*.)
2. *Made* means-
   i. When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention; or
   ii. When used in relation to a plant variety, that the COMPANY has at least tentatively determined that the variety has been reproduced with recognized characteristics.

Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

"Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention means any invention of the Company made in the performance of work under this agreement.

b. Company's rights.
    1. Ownership. The Company may retain ownership of each subject invention throughout the world in accordance with this clause.

    2. License. The Company shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Company fails to disclose the invention within the times specified in paragraph (c) of this clause. The Company's license extends to any domestic subsidiaries and affiliates within the corporate structure of which the Company is a part, and includes the right to grant sublicenses to the extent the Company was legally obligated to do so at agreement award. The license is transferable only with the written approval of the agency, except when transferred to the successor of that part of the Company's business to which the invention pertains. The Company's license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the subject invention in a particular country.

c. Company 's obligations.

    1. The Company shall disclose in writing each subject invention to the Agreement Officer within 2 months after the inventor discloses it in writing to Company personnel responsible for patent matters. The disclosure shall identify the inventor(s) and this agreement under which the subject invention was made. It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure shall also identify any publication, on sale

(i.e., sale or offer for sale), or public use of the subject invention, or whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, the Company shall promptly notify the Agreement Officer of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.

2. The Company shall elect in writing whether or not to retain ownership of any subject invention by notifying the Agreement Officer within 2 years of disclosure to the agency. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

3. The Company shall file either a provisional or a nonprovisional patent application or a Plant Variety Protection Application on an elected subject invention within 1 year after election. However, in any case where a publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Company shall file the application prior to the end of that statutory period. If the Company files a provisional application, it shall file a nonprovisional application within 10 months of the filing of the provisional application. The Company shall file patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

4. The Company may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (c)(2), and (c)(3) of this clause.

d. Government's rights-
   1. Ownership. The Company shall assign to the agency, on written request, title to any subject invention-
      i. If the Company fails to disclose or elect ownership to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain ownership; provided, that the agency may request title only within 60 days after learning of the Company's failure to disclose or elect within the specified times.
      ii. In those countries in which the Company fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Company has filed a patent

application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Company shall continue to retain ownership in that country.

iii. In any country in which the Company decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

2. License. If the Company retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

e. Company action to protect the Government's interest.

1. The Company shall execute or have executed and promptly deliver to the agency all instruments necessary to-

   i. Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Company elects to retain ownership; and
   ii. Assign title to the agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection and plant variety protection for that subject invention in any country.

2. The Company shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Company's format, each subject invention in order that the Company can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Company shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

3. The Company shall notify the Agreement Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

4. The Company shall include, within the specification of any United States nonprovisional patent or plant variety protection application and any patent or plant variety protection certificate issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the agreement) awarded by (identify the agency). The Government has certain rights in the invention."

f. Reporting on utilization of subject inventions. The Company shall submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining utilization of the subject invention that are being made by the Company or its licensees or assignees. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Company, and other data and information as the agency may reasonably specify. The Company also shall provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (h) of this clause. The Company also shall mark any utilization report as confidential/proprietary to help prevent inadvertent release outside the Government. As required by 35 U.S.C. 202(c)(5), the agency will not disclose that information to persons outside the Government without the Company's permission.

g. Preference for United States industry. Notwithstanding any other provision of this clause, neither the Company nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for an agreement may be waived by the agency upon a showing by the Company or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States, or that under the circumstances domestic manufacture is not commercially feasible.

h. March-in rights. The Company acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency in effect on the date of agreement award.

i. Special provisions for agreements with nonprofit organizations. If the Company is a nonprofit organization, it shall-

1. Not assign rights to a subject invention in the United States without the written approval of the agency, except where an assignment is made to an organization that has as one of its primary functions the management of inventions, provided, that the assignee shall be subject to the same provisions as the Company;

2. Share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (but through their agency if the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

3. Use the balance of any royalties or income earned by the Company with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions for the support of scientific research or education; and

4. Make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business concerns, and give a preference to a small business concern when licensing a subject invention if the Company determines that the small business concern has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business concerns; provided, that the Company is also satisfied that the small business concern has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Company.

5. Allow the Secretary of Commerce to review the Company's licensing program and decisions regarding small business applicants, and negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Company could take reasonable steps to more effectively implement the requirements of paragraph (i)(4) of this clause.

j. Sub-agreements.

1. The Company shall include the substance of this clause, including this paragraph (j), in all sub-agreements for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.

2. The Company shall include in all other sub-agreements for experimental, developmental, or research work the substance of the patent rights.

3. At all tiers, the patent rights clause must be modified to identify the parties as follows: references to the Government are not changed, and the subcontractor has all rights and obligations of the Company in the clause. The Company shall not, as part of the consideration for awarding the sub-agreement, obtain rights in the subcontractor subject inventions.

8.8 JOINT SUBJECT INVENTIONS –
Title to a Subject Invention made jointly by a Government employee and a Company employee –shall be held jointly by the Government and the Company. The Company shall have the initial option to file a patent application on a joint subject invention at its own expense. If the Company declines to file or complete prosecution of a patent application, the Company waives co-ownership interest and agrees to assign its title to the joint subject invention to the Government.

8.9. Survival Rights

Provisions of this Article shall survive termination of this Agreement.

ARTICLE 9: OPERATIONAL SECURITY

9.1 This Section covers project requirements applicable to Antiterrorism and Operations Security.

9.2 Antiterrorism/Operations Security

1. AT Level I Awareness training. This language is for company employees with an area of performance within an Army controlled installation, facility or area. All Company employees, including subcontractor employees, requiring access to Army installations, facilities and controlled access areas shall complete AT Level I Awareness training within 7 calendar days after agreement start date or effective date of incorporation of this requirement into the agreement, whichever is applicable. The COMPANY shall submit certificates of completion for each affected COMPANY employee and subcontractor employee, to the AOR or to the Agreement officer, if an AOR is not assigned, within 5 calendar days after completion of training by all employees and subcontractor personnel. AT level I Awareness training is available at the following website: http://jko.jten.mil.

2. Access and general protection/security policy and procedures. This standard language is for Company employees with an area of performance within Army-controlled installation, facility, or area. Company and all associated subcontractor employees shall provide all information required for background checks to meet installation access requirements to be accomplished by installation Provost Marshal Office, Director of Emergency Services or Security

Office. Company workforce must comply with all personal identity verification requirements as directed by DOW, HQDA and/or local policy. In addition to the changes otherwise authorized, should the Force Protection Condition (FPCON) or Health Protection Condition (HPCON) at any individual facility or installation change, the Government may require changes in Company security matters or processes.

a. For Companies requiring Common Access Card (CAC). Before CAC issuance, the Company employee requires, at a minimum, a favorably adjudicated National Agency Check with Inquiries (NACI) or an equivalent or higher investigation in accordance with Army Directive 2014-05. The Company employee will be issued a CAC only if duties involve one of the following:

(1) both physical access to a DOW facility and access, via logon, to DOW networks on-site or remotely;
(2) remote access, via logon, to a DOW network using DOW-approved remote access procedures; or
(3) physical access to multiple DOW facilities or multiple non-DOW federally controlled facilities on behalf of the DOW on a recurring basis for a period of 6 months or more. At the discretion of the sponsoring activity, an initial CAC may be issued based on a favorable review of the FBI fingerprint check and a successfully scheduled NACI at the Office of Personnel Management.

b. For Companies that do not require CAC but require access to a DOW facility or installation. Company and all associated subcontractor employees shall comply with adjudication standards and procedures using the National Crime Information Center Interstate Identification Index (NCIC-III) and Terrorist Screening Database (Army Directive 2014-05/AR 190-13); applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by Government representative); or, at OCONUS locations, in accordance with status-of-forces agreements and other theater regulations.

3. Locally Developed iWATCH Army Training. The Company and all associated subcontractors shall brief all employees on the local iWATCH Army program (training standards provided by the requiring activity ATO). This local developed training will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity to the AOR. This training shall be completed within 7 calendar days of Notice to Proceed and within 7 calendar days of new employees commencing performance with the results reported to the AOR NLT 7 calendar days after Notice to Proceed. https://home.army.mil/polk/about/garrison-directorates-and-support-offices/DPTMS/iwatch

4. For agreements that require OPSEC Training. Per AR 530-1, Operations Security, the Company employees must complete Level I OPSEC Awareness training. New employees must be trained within 7 calendar days of their reporting for duty and annually thereafter.

ARTICLE 10: GOVERNING LAW AND JURISDICTION

This Agreement shall be construed and enforced in accordance with the laws of the United States in a Federal Court with competent jurisdiction. Any dispute arising under this Agreement shall first be handled in accordance with Article 6: Disputes of this Agreement.

ARTICLE 11: TITLE TO AND DISPOSITION OF PROPERTY

The Government will not take title to Company acquired or produced property, except property the agreement identifies as deliverable property, unless the parties agree otherwise. Title to all other property shall remain with the COMPANY. The COMPANY shall be responsible for the maintenance, repair, protection, and preservation of all such property at its own expense.

ARTICLE 12: SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING

Company shall comply with the Cybersecurity Maturity Model Certification (CMMC) Program and NIST 800-171 to protect Controlled Unclassified Information (CUI) anywhere it is stored, transmitted, and processed.

ARTICLE 13: STATUTORY AUTHORITY

This Agreement is not a Federal procurement contract, grant or cooperative agreement. Nothing in this Agreement or its attachments will be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation not specifically mentioned in this Agreement. This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d) relating to nondiscrimination in Federally assisted programs. By executing this Agreement, the COMPANY has signed an Assurance of Compliance with the nondiscriminatory provisions of the Act. Additionally, this Agreement is subject to the

Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. chapter 78), Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, the international Traffic in Arms Regulations (22 C.F.R. Part 120, et seq.), the National Industrial Security Program Operating Manual (NISPOM) (DOD 5220.22-M), the Department of Commerce's Export Administration Regulations (15 C.F.R. Part 730, et seq.), and the Federal Property and Administrative Services Act (40 U.S.C. chapter 5), to the extent applicable to the activities to be conducted under this Agreement. In addition, the Procurement integrity Act (41 U.S.C. §2101-2107) shall apply to this Agreement.

ARTICLE 14: INDEMNITY

14.1. The COMPANY shall defend, indemnify and hold the Government harmless (including payment of all reasonable costs, attorneys' fees, settlements and damages) from any actions brought against Government to the extent that it is based on a claim that the Products or Documentation infringe any U.S. registered copyright of any third party, provided that: (i) the COMPANY is promptly notified in writing of the claim; (ii) the COMPANY has sole control of the investigation, preparation, defense, and/or settlement of such claim, and the Government does not settle such claim without the COMPANY's consent; and (iii) at the COMPANY's request and expense, Government provides reasonable assistance and information to the COMPANY. Nothing contained herein shall be deemed to contradict or contravene the authority of the Department of Justice as per 28 USC §516.

14.2. In the event of any such infringement claim, the COMPANY may at its sole option:

1. replace the infringing Products with functionally equivalent software;
2. modify such Products to render the same non- infringing, while retaining substantively equivalent functionality

3. procure for the Government a license to continue to use such Products under the terms of this Agreement; or
4. if the foregoing are not commercially reasonable, direct the Government to terminate use of such Products. If the COMPANY directs Government to terminate use of such Products (or a permanent injunction is issued against such use), the COMPANY shall refund any prepaid unearned fees as of the date of the termination.

14.3. Notwithstanding the foregoing, the COMPANY will have no liability with respect to any claim that arises from any such infringement claim to the extent that it results from: (i) use, operation, or combination of the Products or Documentation with programs, data, equipment, or materials not provided by the COMPANY if such infringement would have been avoided by the use of the Products or Documentation without such other programs, data, equipment, or materials; (ii) modifications to the Products made by a

party other than COMPANY or its agents; (iii) data accessed or generated by the Products (including, without limitation Third Party Materials); (iv) the combination, operation or use of the Products with equipment, devices, data or software not provided or approved by COMPANY; (v) the Government's failure to use updated or modified versions of the Products provided by COMPANY to avoid a claim; (vi) COMPANY's compliance with any specifications or requirements provided by Government; or (vii) the Government's use of the Products other than in accordance with this Agreement.

14.4. This article specified the Government's sole and exclusive remedy and the COMPANY'S sole and exclusive obligation with respect to the infringement of intellectual property rights.

14.5. The Government shall not indemnify any entity. The Government agrees to pay for any loss, liability or expense, which arises out of or relates to the Government's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the Government is established by a court of law, or where settlement has been agreed to by the Government agency with, where appropriate, the coordination of the Department of Justice. This provision shall not be construed to limit the Government's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement.

ARTICLE 15: ASSIGNMENT AND TRANSFER

Neither Party may assign, reassign, or transfer such Party's rights and obligations under this Agreement without the prior written consent of the other Party, provided that (1) the Government may delegate or transfer its administrative authority over this Agreement to a different AO within the U.S. Department of War, and (2) nothing herein shall be construed to preclude Company from assigning proceeds under this Agreement in accordance with the Assignment of Claims Act. Any assignment, reassignment or transfer is subject to payment of then- current license and support fees, as applicable for the number of Applications required by such assignee or transferee

ARTICLE 16: FORCE MAJEURE

Neither Parties failure or omission in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement. Neither Party shall have liability in the performance of its work and services if the same shall arise from any cause or causes beyond the control of Party, including but not limited to, the following: acts of God; Acts or omissions of any Government; Any rules, regulations or orders issued by any Governmental authority or by any officer, department, and agency or instrumentality thereof; fire; unusually severe weather, flood; earthquake; accident; war; rebellion; insurrection; riot; pandemic; epidemic; public health crisis; lock-out; labor

dispute; boycott; embargoes; blockades; terrorism; hostilities; change in law; and invasion ("Force Majeure Event") and provided that such failure or omission resulting from one of the above causes is cured as soon as is practicable after the occurrence of one or more of the above mentioned cause. If any of COMPANY's services or work are affected by an event resulting from a Force Majeure Event, COMPANY shall be entitled to an equitable adjustment in time and schedule to complete the work or services to be negotiated and agreed upon by the parties based on the damages caused by the Force Majeure event.

ARTICLE 17: ORDER OF PRECEDENCE

In case of a conflict or inconsistency between this Agreement and attachments, the following order of precedence will govern, with lower numbers governing over higher ones:

(1) this Agreement,

(2) any Technical Requirements (TR), with more recent TR taking precedence over later ones, and

(3) all other attachments to this agreement in the order they are listed.

No TR or other attachment incorporated into this Agreement after execution of this main body will be construed to amend this agreement or any earlier attachment unless it specifically states its intent to do so and cites the section or sections amended.

The COMPANY's proposal will be incorporated by reference into the awarded Agreement. If the proposal conflicts with the RPP project specifications, the document most beneficial to the U.S. Government takes precedence.

ARTICLE 18: PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT*

(a) Definitions. As used in this article—
Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China. Covered telecommunications equipment or services means—

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

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

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

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

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it

is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources. Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.
Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a agreement to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Company is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this article applies or the covered telecommunication equipment or services are covered by a waiver.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a agreement, or extending or renewing a agreement, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this article applies or the covered telecommunication equipment or services are covered by a waiver. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal agreement.

(c) Exceptions. This article does not prohibit COMPANY from providing—
(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Company identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during agreement performance, or the Company is notified of such by a subcontractor at any tier or by any other source, the Company shall report the information in paragraph (d)(2) of this article to the AO, unless elsewhere in this agreement are established procedures for reporting the information; in the case of the Department of War, the Company shall report to the website at https://dibnet.dod.mil. For indefinite delivery contracts, the Company shall report to the AO for the indefinite delivery contracts and the AO(s) for any affected order or, in the case of the Department of War, identify both the indefinite delivery contract and any affected orders in the report provided at https://dibnet.dod.mil.

(2) The Company shall report the following information pursuant to paragraph (d)(1) of this article:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this article: Any further available information about mitigation actions undertaken or recommended. In addition, the Company shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Sub-agreements. The Company shall insert the substance of this article, including paragraph (e) and excluding paragraph (b)(2), in all sub-agreements and other contractual instruments, including sub-agreements for the acquisition of commercial items.

ARTICLE 19: DESIGN

The terms contained under Article 19 shall apply to the Company and all entities working on the Company's behalf for Design work related to this Project. The Company

will flow down the terms contained under Article 19 in all sub-agreements or lower tier agreements, regardless of tier, for Design work as part of this Agreement.

19.1 Site Investigation and Conditions Affecting the Work

a. The Company acknowledges that, prior to commencing construction, it will take steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to

1. conditions bearing upon transportation, disposal, handling, and storage of materials;
2. the availability of labor, utilities, and roads;
3. uncertainties of weather, river stages, tides, or similar physical conditions at the site;
4. the conformation and conditions of the ground; and
5. the character of equipment and facilities needed preliminary to and during work performance.

The Company also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this Agreement. Any failure of the Company to take the actions described and acknowledged in this paragraph will not relieve the Company from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

b. The Government assumes no responsibility for any conclusions or interpretations made by the Company based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this Agreement, unless that understanding, or representation is expressly stated in this Agreement.

19.2 Permits and Responsibilities - Design

The Company shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Company shall also be responsible for all damages to persons or property that occur to the extent caused by the Company’s fault or negligence. The Company shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the Agreement.

19.3 Responsibility of the Company for Design

a. Responsibilities of Design Builder
The Company shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other non-construction services furnished by the Company under this Agreement. The Company shall, without additional compensation, correct or revise any errors or deficiency in its designs, drawings, specifications, and other non-construction services and perform any necessary rework or modifications, including any damage to real or personal property, resulting from the design error or omission.

b. Standard of Care
The standard of care for all design services performed under this agreement shall be the care and skill ordinarily used by members of the architectural or engineering professions practicing under similar conditions at the same time and locality. Notwithstanding the above, in the event that the Agreement specifies that portions of the Work be performed in accordance with a performance standard, the design services shall be performed so as to achieve such standards.

c. Design Review
If required by this Agreement, the Government shall review and provide written feedback on all design deliverables requiring Government review within seven business days. Failure to respond within that period constitutes deemed approval. If the Government later requires changes to a design that was approved or deemed approved, the Parties shall modify the Agreement to provide the Company with an equitable adjustment in time and funding for the resulting impacts.

d. No Waiver of Rights for Damages
Neither the Government's review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The Company shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Company’s negligent performance of any of these services furnished under this Agreement.

e. Rights and Remedies
The rights and remedies of the Government provided for under this Agreement are in addition to any other rights and remedies provided by law.

f. Use of Design Software

The COMPANY shall establish and follow processes that ensure the safeguarding of project data in accordance with its classification. If the COMPANY intends to use an external cloud service provider to store, process, or transmit any covered

defense information in performance of this agreement, the COMPANY shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (https://www.fedramp.gov/resources/documents/) and that the cloud service provider complies with requirements for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

19.4 Performance Coordination

The Company shall be responsible for all coordination and interface between design and construction activities and staff. The Company's construction management key personnel shall be actively involved during the design process to effectively integrate the design and construction requirements of this Agreement. In addition to the typical required construction activities, the Company's involvement includes, but is not limited to actions such as: integrating the design schedule into the Project Schedule to maximize the effectiveness of fast-tracking design and construction (within the limits allowed in the Agreement), ensuring constructability and economy of the design, integrating the shop drawing and installation drawing process into the design, executing the material and equipment acquisition programs to meet critical schedules, effectively interfacing the construction Quality Control (QC) program with the design QC program, and maintaining and providing the design team with accurate, up-to-date redline and as-built documentation. The Company shall require and manage the active involvement of key trade Sub-Recipients in the above activities.

19.5 Deviating from the Accepted Design

The U.S. Government's approval and the concurrence are required for any proposed variation from the accepted design that still complies with the agreement before the Company is authorized to proceed with material acquisition or installation. If necessary to facilitate the project schedule, before official submission to the Government, the Company and the Designer of Record (DOR) may discuss with the Agreements Officer's Representative a submittal proposing a variation.

However, the Government reserves the right to review the submittal before providing an opinion. In any case, the Government will not formally agree to or provide a preliminary opinion on any variation without the DOR's approval or recommended approval. The Government reserves the right to reject any design, variation that may affect furniture, furnishings, equipment selections, or operational decisions that were made, based on the reviewed and concurred design.

Substitutions Unless prohibited or otherwise provided for elsewhere in the agreement, where the proposed solution named products, systems, materials or equipment by manufacturer, brand name, model number, or other specific identification, and the

Company desires to substitute a manufacturer or model after award, submit a requested substitution for Government concurrence. Include substantiation, through identifying information and the DOR's approval, that the substitute meets the terms and conditions of the agreement and that it is equal in function, performance, quality, and salient features to that in the proposed solution. If the agreement otherwise prohibits substitutions of equal named products, systems, materials or equipment by manufacturer, brand name, model number or other specific identification, the request is considered a "variation" to the agreement. Variations are discussed below in paragraphs: "DESIGNER OF RECORD APPROVED/GOVERNMENT APPROVED" and VARIATIONS.

Designer of Record Approved/Government Approved (DA/GA)
In addition to the above-stated requirements for proposed variations to the accepted design, both DOR and Government Approval and, where applicable, a modification are required before the Company is authorized to proceed with material acquisition or installation for any proposed variation agreement, that constitutes a change to the agreement terms. The Government reserves the right to accept or reject any such proposed variation.

VARIATIONS
Variations from agreement requirements require Agreements Officer approval and will be considered where advantageous to the Government.

Considering Variations
Discussion of variations with the Agreements Officer before submission will help ensure

For variations that include design changes or some material or product substitutions, the Government may require an evaluation and analysis by a licensed professional engineer hired by the Company, other than the QC manager.

Specifically point out variations from agreement requirements in the AE firm’s forms. Failure to point out variations may cause the Government to require rejection and removal of such work at no additional cost to the Government.

Proposing Variations
Utilize the AE firm forms for submittals that include variations proposed by the Company. Set forth in writing the reason for any variations and note such variations in the submittal. The Government reserves the right to rescind inadvertent approval of submittals containing unnoted variations.

Warranting that Variations are Compatible
When delivering a variation for approval, the Company warrants that this agreement has been reviewed to establish that the variation, if incorporated, will be compatible with other elements of work.

Review Schedule Extension

In addition to the normal submittal review period, a period of 14 calendar days will be allowed for the Government to consider submittals with variations.

ARTICLE 20: CONSTRUCTION

20.1 Differing Site Conditions

a. The Company shall promptly without further disturbing the site, give a written notice to the AO of –

1. Subsurface or latent physical conditions at the site which differ materially from those indicated in this Agreement; 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 the Agreement.

b. The AO 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 Company's cost of, or the time required for, performing any part of the work under this Agreement, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this Article and the Agreement modified in writing accordingly.

c. No request by the Company for an equitable adjustment to the Agreement under this Article shall be allowed, unless the Company has given the written notice required; provided, that the time prescribed in paragraph (a) of this Article for giving written notice may be extended by the AO.

d. No request by the Company for an equitable adjustment to the Agreement for differing site conditions shall be allowed if made after final payment under this Agreement.

20.2 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

a. The Company shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this Agreement. The Company shall only remove trees when specifically authorized to do so and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during Agreement performance, or by the careless operation of equipment, or by workmen, the Company shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the AO.

b. The Company shall protect from damage all existing improvements and utilities
1. at or near the work site, except for any existing improvements and/or utilities which have been preapproved and preplanned for demolition or deactivation at or near the work site, and
2. on adjacent property of a third party, the locations of which are made known to or should be known by the Company.

The Company shall repair any damage to those facilities, including those that are the property of a third party, to the extent caused by COMPANY's failure to exercise reasonable care in performing the work. If the Company fails or refuses to repair the damage caused by COMPANY promptly, the AO may have the necessary work performed and charge the cost to the Company.

20.3 Material and Workmanship

a. All equipment, material, and articles incorporated into the work covered by this Agreement shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Agreement. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Company may, at its option, use any equipment, material, article, or process that, in the judgment of the AO, is equal to that named in the specifications, unless otherwise specifically provided in this Agreement.

b. The Company shall obtain the AO's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Company shall furnish to the AO the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this Agreement or by the AO, the Company shall also obtain the AO's approval of the material or articles which the Company contemplates incorporating into the work. When requesting approval, the Company shall provide full information concerning the material or articles. When directed to do so, the Company shall submit samples for approval at the Company's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

c. All work under this Agreement shall be performed in a skillful and workmanlike manner. The AO may require, in writing, that the Company remove from the work any employee the AO deems incompetent, careless, or otherwise objectionable.

20.4 Superintendence by the Company

At all times during performance of this Agreement and until the work is completed and accepted, the Company shall directly superintend the work or assign and have on the worksite a competent superintendent who has authority to act for the Company.

20.5 Cleaning Up

The Company shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Company shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Company shall leave the work area in a clean, neat, and orderly condition satisfactory to the AO.

20.6 Accident Prevention and Governmental Safety Requirements

REFERENCES
The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

a. AMERICAN SOCIETY OF HEATING, REFRIGERATING AND AIR-CONDITIONING ENGINEERS (ASHRAE)
b. ASHRAE 52.2 (2017) Method of Testing General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size
c. AMERICAN SOCIETY OF SAFETY PROFESSIONALS (ASSP)
d. ANSI/ASSP A10.34 (2021) Protection of the Public on or Adjacent to Construction Sites
e. ANSI/ASSP A10.44 (2020) Control of Energy Sources (Lockout/Tagout) for Construction and Demolition Operations
f. ASTM INTERNATIONAL (ASTM)
g. ASTM D6245 (2012) Using Indoor Carbon Dioxide Concentrations to Evaluate Indoor Air Quality and Ventilation
h. ASTM D6345(2010) Standard Guide for Selection of Methods for Active, Integrative Sampling of Volatile Organic Compounds in Air
i. ASTM F855 (2020) Standard Specifications for Temporary Protective Grounds to Be Used on De-energized Electric Power Lines and Equipment
j. INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS (IEEE)
k. IEEE 1048 (2016) Guide for Protective Grounding of Power Lines
l. IEEE C2 (2023) National Electrical Safety Code INTERNATIONAL SAFETY EQUIPMENT ASSOCIATION (ISEA)
m. ANSI/ISEA Z89.1 (2014; R 2019) American National Standard for Industrial Head Protection
n. NATIONAL FIRE PROTECTION ASSOCIATION (NFPA)
o. NFPA 51B (2024) Standard for Fire Prevention During Welding, Cutting, and Other Hot Work
p. NFPA 70 (2026) National Electrical Code
q. NFPA 70E (2024) Standard for Electrical Safety in the Workplace

r. NFPA 241 (2022) Standard for Safeguarding Construction, Alteration, and Demolition Operations
s. SHEET METAL AND AIR CONDITIONING CONTRACTORS' NATIONAL ASSOCIATION (SMACNA)
t. ANSI/SMACNA 008 (2007) IAQ Guidelines for Occupied Buildings Under Construction, 2nd Edition
u. U.S. ARMY CORPS OF ENGINEERS (USACE)
v. EM 385-1-1 (2024) Safety -- Safety and Occupational Health (SOH) Requirements
w. U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)
x. 10 CFR 20 Standards for Protection Against Radiation
y. 29 CFR 1910Occupational Safety and Health Standards
z. 29 CFR 1915Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment
aa. 29 CFR 1926 Safety and Health Regulations for Construction
bb. 49 CFR 173 Shippers - General Requirements for Shipments and Packagings
cc. CPL 2.100 (1995) Application of the Permit-Required Confined Spaces (PRCS) Standards, 29 CFR 1910.146

DEFINITIONS

The following definitions are for the convenience of the reader. If there is a referenced document in the text of this specification section, that is the document that should define terms for that paragraph. If further clarification is needed, contact the Agreements Officer.

1.2.1 Site Safety and Health Officer (SSHO)

A Company Employee that is responsible for overseeing and ensuring implementation of the prime Company's Safety and Occupational Health (SOH) program according to the Agreement, EM 385-1-1, applicable federal, state, and local requirements.

1.2.1.1 Level One SSHO

A designated employee with full-time SOH responsibility that meets and follows the requirements of EM 385-1-1.

1.2.1.2 Level Two SSHO

A designated employee with Level Two SSHO responsibility that meets and follows the requirements of EM 385-1-1. Level Two SSHOs cannot be assigned to projects that have a residual Risk Assessment Code (RAC) of high or extremely high.

1.2.1.3 Level Three SSHO

A designated Qualified Person or Competent Person with SOH responsibility that meets and follows the requirements of EM 385-1-1. Level 3 SSHOs cannot be assigned to projects that have a residual RAC of high or extremely high.

1.2.1.4 Alternate SSHO
An employee that meets the definition of the agreement-required level SSHO but is not the primary SSHO.

1.2.2 Competent Person (CP)
The CP is a person designated in writing, who, through training, knowledge and experience, is capable of identifying, evaluating, and addressing existing and predictable hazards in the working environment or working conditions that are unsanitary, hazardous, or dangerous to personnel, and who has authorization to take prompt corrective measures to eliminate them.

1.2.3 Qualified Person (QP)
The QP is a person designated in writing, who, by possession of a recognized degree, certificate, or professional standing, or extensive knowledge, training, and experience, has successfully demonstrated their ability to solve or resolve problems related to the subject matter, the work, or the project.

SUBMITTALS
Government Acceptance or Approval does not remove responsibility from the Company for their actions or liability.

PUBLIC HEALTH EMERGENCIES
In the event of a declared public health emergency, follow safety precautions as required by the Occupational Safety and Health Administration (OSHA) www.osha.gov, the Centers for Disease Control and Prevention (CDC) www.cdc.gov, and as required by federal, state and local requirements.

MONTHLY EXPOSURE REPORTS
Provide a Monthly Exposure Report by the fifth of each month. This report is a compilation of employee hours worked each month for all site workers, both Prime and subcontractor. Failure to submit the report may result in retention of up to 10 percent of the progress payment.

REGULATORY REQUIREMENTS
In addition to the detailed requirements included in the provisions of this Agreement, comply with the most recent edition of USACE EM 385-1-1, and the following federal, state, and local laws, ordinances, criteria, rules and regulations at the date of the Request for Prototype Proposal for this Agreement. Submit matters of interpretation of standards to the appropriate administrative agency for resolution before starting work.

Where the requirements of this specification, applicable laws, criteria, ordinances, regulations, and referenced documents vary, the most stringent requirements govern.

SITE QUALIFICATIONS, DUTIES, AND MEETINGS

Site Safety and Health Officer (SSHO)

Qualifications of SSHO

All SSHOs will have met the training, experience requirements identified in the EM 385-1-1 and this Agreement.

Duties of SSHO

All SSHOs will carry out the roles and responsibilities as identified in this Agreement and the EM 385-1-1. All SSHOs will be designated on an AE firm form as specified with the AE firm. The form can be found at https://www.publications.usace.army.mil/Portals/76/Eng_Form_6282_2023Aug28.pdf

Superintendent, QC Manager, and SSHO are subject to dismissal if their required duties are not being effectively carried out. If either the Superintendent, QC Manager, or SSHO are dismissed, project work will be stopped and will not be allowed to resume until a suitable replacement is approved and the above duties are again being effectively carried out.

Additional Site Safety and Health Officer (SSHO) Requirements and Duties
The SSHO may not serve as the Quality Control Manager. The SSHO may not serve as the Superintendent. The SSHO shall be assigned no other duties.

Safety Meetings
Conduct safety meetings to review past activities, plan for new or changed operations, review pertinent aspects of appropriate AHA (by trade), establish safe working procedures for anticipated hazards, and provide pertinent Safety and Occupational Health (SOH) training and motivation.

Conduct meetings at least once a month for all supervisors at the project location.

The SSHO, supervisors, or foremen must conduct meetings at least once a week for the trade workers. Document meeting minutes to include the date, persons in attendance, subjects discussed, and names of individual(s) who conducted the meeting. Maintain documentation on-site and furnish copies to the Agreements Officer on request. Notify the Agreements Officer of all scheduled meetings 7 calendar days in advance.

Roles and Responsibilities of Prime Company and SSHO
The Prime Company and SSHO must ensure that the requirements of all applicable OSHA and EM 385-1-1 are met for the project. The Prime Company must ensure an SSHO or an equally qualified Alternate SSHO(s) is at the worksite at all times to implement and administer the Company's safety program and Government accepted Accident Prevention Plan. If the required SSHO has to temporarily (that is, up to 24 hours / 1 day) leave the site of work due to unforeseen or emergency situations, a Level One, Two, or Three SSHO may be used in the interim and must be on the site of work at all times when work is being performed.

If the SSHO must be off-site for a period longer than 24 hours / 1 day, a qualified alternate that meets the requirements of the agreement must be onsite.

a. Prime Company must ensure all SSHOs:
   (1) Meet minimum training and experience requirements identified in EM 385-1-1.
   (2) Execute roles and responsibilities identified in EM 385-1-1.

Project Site Safety And Health Officer(s)(SSHOs) Minimum Requirements
Provide a minimum of one Level One SSHO that meets the requirements of EM 385-1-1 for this project.

Competent Person for Confined Space Entry
Provide a CP for Confined Space Entry who meets the requirements of EM 385-1-1 and herein. The CP for Confined Space Entry must supervise the entry into each confined space in accordance with EM 385-1-1.

Preconstruction Conference

a. Company representatives who have a responsibility or significant role in accident prevention on the project must attend the preconstruction conference. This includes the project superintendent, Site Safety and Occupational Health Officer, quality control manager, or any other assigned safety and health professionals who participated in the development of the APP (including the Activity Hazard Analyses (AHAs) and special plans, program and procedures associated with it).

b. Discuss the details of the submitted APP to include incorporated plans, programs, procedures and a listing of anticipated AHAs that will be developed and implemented during the performance of the Agreement. This list of proposed AHAs will be reviewed and an agreement will be reached between the Company and the Agreements Officer as to which phases will require an analysis. In addition, establish a schedule for the preparation, submittal, and Government review of AHAs to preclude project delays. The creation of the APP and Schedule will be created after being given Notice to Proceed.

c. Deficiencies in the submitted APP, identified during the Agreements Officer's review, must be corrected, and the APP re-submitted for review prior to the start of construction. Work is not permitted to begin until an APP is established that is acceptable to the Agreements Officer.

ACCIDENT PREVENTION PLAN (APP)

Accident Prevention Plan (APP) - Design

Provide a site-specific Accident Prevention Plan (APP), including Activity Hazard Analyses (AHA), in accordance with EM 385-1-1, AE firm form as specified with the AE firm, for the design team to follow during site visits and investigations. For subsequent

visits, update the plan if there are changes in the personnel who will be attending, or the tasks to be performed. Submit the APP for review and acceptance by the Government at least 15 calendar days prior to the start of the design field work after being given Notice to Proceed.
Field work must not begin until the design APP is accepted by the Agreements Officer.

Prior to the start of construction, incorporate the Design APP into the Construction APP so that one site specific APP exists for the project and submit to the Agreements Officer for acceptance.

If the design scope includes borings or other subsurface investigations, include in the APP the type of field investigation and verification techniques, such as visual, local utility locating service scanning and third-party subcontractor scanning, potholing, or hand digging within two feet of a known utility that will be required. Mark underground utilities before starting any ground-disturbing actions. Notify the Agreements Officer 15 business days prior to the start of soil borings or sub-surface investigations.

Accident Prevention Plan (APP) - Construction
Submit the Accident Prevention Plan (APP) for review and acceptance by the Government at least 15 calendar days prior to the start, after being given Notice to Proceed. A competent person must prepare the written site-specific APP. Prepare the APP in accordance with the format and requirements of EM 385-1-1, ENG Form 6293, and herein. The APP must be job-specific and address any unusual or unique aspects of the project or activity for which it is written. The APP must interface with the Company's overall safety and occupational health program referenced in the APP in the applicable APP element, and made site-specific. Describe the methods to evaluate past safety performance of potential subcontractors in the selection process.

Also, describe innovative methods used to ensure and monitor safe work practices of subcontractors. The Government considers the Prime Company to be the "controlling employer" for all worksite safety and health of the subcontractors. Companies are responsible for informing their subcontractors of the safety provisions under the terms of the Agreement and the penalties for noncompliance, coordinating the work to prevent one craft from interfering with or creating hazardous working conditions for other crafts, and inspecting subcontractor operations to ensure that accident prevention responsibilities are being carried out. The APP must be signed in accordance with the APP and ENG Form 6293 Accident Prevention Plan Worksheet. The SSHO must provide and maintain the APP and a log of signatures by each subcontractor foreman, attesting that they have read and understand the APP, and make the APP and log available on-site to the Agreements Officer.

If English is not the foreman's primary language, the Prime Company must provide an interpreter.

Submit the APP to the Agreements Officer 15 calendar days prior to the date of the preconstruction conference for acceptance. Work cannot proceed without an accepted

APP. Once reviewed and accepted by the Agreements Officer, the APP and attachments will be enforced as part of the Agreement. Disregarding the provisions of this Agreement or the accepted APP is cause for stopping of work, at the discretion of the Agreements Officer, until the matter has been rectified. Continuously review and amend the APP, as necessary, throughout the life of the Agreement.

Changes to the accepted APP must be made with the knowledge and concurrence of the Agreements Officer, project superintendent, SSHO and Quality Control Manager.

Incorporate unusual or high-hazard activities not identified in the original APP as they are discovered. Should any severe hazard exposure (i.e., imminent danger) become evident, stop work in the area, secure the area, and develop a plan to remove the exposure and control the hazard. Notify the Agreements Officer within 24 hours of discovery.

Eliminate and remove the hazard.In the interim, take all necessary action to restore and maintain safe working conditions in order to safeguard onsite personnel, visitors, the public (as defined by ANSI/ASSP A10.34), and the environment.
Names and Qualifications
Provide plans in accordance with the requirements outlined in EM 385-1-1, including the following:

a. Names and qualifications (resumes including education, training, experience and certifications) of site safety and health personnel designated to perform work on this project to include the designated Site Safety and Health Officer and other competent and qualified personnel to be used. Specify the duties of each position.
b. As a minimum, designate and submit qualifications of Competent Persons (CP) for each of the following major areas: excavation; scaffolding; fall protection; hazardous energy; confined space; health hazard recognition, evaluation and control of chemical, physical and biological agents; and personal protective equipment and clothing to include selection, use and maintenance. Designate and submit qualifications for additional CPs as applicable to the work performed under this Agreement.

Plans
Provide plans in the APP in accordance with the requirements outlined in EM 385-1-1.

ACTIVITY HAZARD ANALYSIS (AHA)
Before beginning each activity, task or Definable Feature of Work (DFOW) involving a type of work presenting hazards not experienced in previous project operations, or where a new work crew or subcontractor is to perform the work, the Companies performing that work activity must prepare an AHA. AHAs must be developed by the Prime Company, subcontractor, or supplier performing the work, and provided for Prime Company review and approval before submitting it to the Agreements Officer. AHAs must be signed by the SSHO, Superintendent, QC Manager and the subcontractor Foreman performing the work.

Format the AHA in accordance with EM 385-1-1 or as directed by the Agreements Officer. Submit the AHA for review at least 15 working days prior to the start of each activity task, or DFOW. The Government reserves the right to require the Company to revise and resubmit the AHA if it fails to effectively identify the work sequences, specific anticipated hazards, site conditions, equipment, materials, personnel and the control measures to be implemented.

AHAs must identify competent persons required for phases involving high risk activities, including confined entry, crane and rigging, excavations, trenching, electrical work, fall protection, and scaffolding.

AHA Management
Review the AHA list periodically (at least monthly) at the Company supervisory safety meeting, and update as necessary when procedures, scheduling, or hazards change.

Use the AHA during daily inspections by the SSHO to ensure the implementation and effectiveness of the required safety and health controls for that work activity.

AHA Signature Log
Each employee performing work as part of an activity, task or DFOW must review the AHA for that work and sign a signature log specifically maintained for that AHA prior to starting work on that activity. The SSHO must maintain a signature log on site for every AHA.

Provide employees whose primary language is other than English, with an interpreter to ensure a clear understanding of the AHA and its contents.

SITE SAFETY REFERENCE MATERIALS
Maintain safety-related references applicable to the project, including those listed in paragraph REFERENCES. Maintain applicable equipment manufacturer's manuals.

EMERGENCY MEDICAL TREATMENT
Companies must arrange for their own emergency medical treatment in accordance with EM 385-1-1. The Government has no responsibility to provide emergency medical treatment.

NOTIFICATIONS AND REPORTS
Accident Notification. Notify the Agreements Officer in accordance with the EM 385-1-1 Accident Reporting Timeline.

Table
Accident Reporting Required Timeline

Accident Type	Notify AOR	Complete Final Accident Report on ENG 3394 and provide to KO or AOR

Fatality, in-patient hospitalization, amputation, eye loss, or property damage over $600,000.	Immediately, no later than (NLT) 8 Hours	Within 7 Calendar Days
All other accidents and near misses	Immediately, no later than (NLT) 24 Hours	Within 7 Calendar Days

Within notification include Company name; Project title; type of Agreement; name of activity, installation or location where accident occurred; date and time of accident; names of personnel injured; extent of property damage, if any; extent of injury, if known, and brief description of accident (for example, type of construction equipment used and PPE used). Preserve the conditions and evidence on the accident site until the Government investigation team arrives on-site and Government investigation is conducted. Assist and cooperate fully with the Government's investigation(s) of any accident or near miss.

Accident Reports

a. Conduct an accident investigation for recordable injuries and illnesses, property damage, and near misses as defined in EM 385-1-1, to establish the root cause(s) of the accident. All accidents are reportable, regardless of whether or not it is recordable. Complete the applicable USACE Accident Report, ENG Form 3394 or U.S. Government approved alternate form, and provide the report to the Agreements within 7 calendar days of the accident. The Agreements Officer will provide copies of any required or special forms. All accidents are reportable, regardless of whether or not it is recordable.

b. Near Misses: For Army projects, report all "Near Misses" to the Agreements Officer, using local accident reporting procedures, within 24 hours. The Agreements Officer will provide the Company the required forms. Near miss reports are considered positive and proactive Company safety management actions.

LHE Inspection Reports
Submit LHE inspection reports required in accordance with EM 385-1-1 and as specified herein with Daily Reports of Inspections.

Certificate of Compliance and Pre-lift Plan/Checklist for LHE and Rigging
Provide a Certificate of Compliance for LHE entering an activity under this Agreement and in accordance with EM 385-1-1. Post certifications on the crane.

Develop a Standard Lift Plan (SLP) in accordance with EM 385-1-1 and using Standard Pre-Lift Crane Plan/Checklist for each lift planned. Submit SLP to the Agreement Officer for approval within 15 calendar days in advance of planned lift.

HOT WORK PERMIT

Permit and Personnel Requirements

Submit and obtain a written permit prior to performing "Hot Work" (i.e., welding or cutting) or operating other flame-producing/spark producing devices, from the Fire Division. A permit is required from the Explosives Safety Office for work in and around where explosives are processed, stored, or handled. Companies are required to meet all criteria before a permit is issued. Provide at least two 20 pound 4A:20 BC rated extinguishers for normal "Hot Work". The extinguishers must be current inspection tagged, and contain an approved safety pin and tamper resistant seal. It is also mandatory to have a designated FIRE WATCH for any "Hot Work" done at this activity. The Fire Watch must be trained in accordance with NFPA 51B and remain on-site for a minimum of 1 hour after completion of the task or as specified on the hot work permit.

When starting work in the facility, require personnel to familiarize themselves with the location of the nearest fire alarm boxes and place in memory the emergency Fire Division phone number. Report any fire, no matter how small, to the responsible Fire Division immediately.

Work Around Flammable Materials

Obtain permit approval from a NFPA Certified Marine Chemist, or Certified Industrial Hygienist for "Hot Work" within or around flammable materials (such as fuel systems or welding/cutting on fuel pipes) or confined spaces (such as sewer wet wells, manholes, or vaults) that have the potential for flammable or explosive atmospheres.

Whenever these materials, except beryllium and chromium (VI), are encountered in indoor operations, local mechanical exhaust ventilation systems that are sufficient to reduce and maintain personal exposures to within acceptable limits must be used and maintained in accordance with manufacturer's instruction and supplemented by exceptions noted in
EM 385-1-1.

RADIATION SAFETY REQUIREMENTS

Submit License Certificates, employee training records, and Leak Test Reports for radiation materials and equipment to the Agreements Officer and Radiation Safety Office (RSO) for all specialized and licensed material and equipment proposed for use on the construction project (excludes portable machine sources of ionizing radiation including moisture density and X-Ray Fluorescence (XRF)). Maintain on-site records whenever licensed radiological materials or ionizing equipment are on Government property.

Protect workers from radiation exposure in accordance with 10 CFR 20, ensuring any personnel exposures are maintained As Low As Reasonably Achievable.

Radiography Operation Planning Work Sheet

Submit a Gamma and X-Ray Radiography Operation Planning Work Sheet to Agreements Officer 14 days prior to commencement of operations involving radioactive

materials or radiation generating devices. For portable machine sources of ionizing radiation, including moisture density and XRF, use and submit the Portable Gauge Operations Planning Worksheet instead. The Agreements Officer will review the submitted worksheet and provide questions and comments. Companies must use primary dosimeters process by a National Voluntary Laboratory Accreditation Program (NVLAP) accredited laboratory.

Site Access and Security
Coordinate site access and security requirements with the Agreements Officer for all radiological materials and equipment containing ionizing radiation that are proposed for use on a government facility. For gamma radiography materials and equipment, a Government escort is required for any travels on the Installation. The Government authorized representative will meet the Company at a designated location outside the Installation, ensure safety of the materials being transported, and will escort the Company for gamma sources onto the Installation, to the job site, and off the Installation. For portable machine sources of ionizing radiation, including moisture density and XRF, the Government authorized representative will meet the Company at the job site. Provide a copy of all calibration records, and utilization records for radiological operations performed on the site.

Loss or Release and Unplanned Personnel Exposure
Loss or release of radioactive materials, and unplanned personnel exposures must be reported immediately to the Agreements Officer, RSO, and Base Security Department Emergency Number.

Site Demarcation and Barricade
Properly demark and barricade an area surrounding radiological operations to preclude personnel entrance, in accordance with EM 385-1-1, Nuclear Regulatory Commission, and Applicable State regulations and license requirements, and in accordance with requirements established in the accepted Radiography Operation Planning Work Sheet. Do not close or obstruct streets, walks, and other facilities occupied and used by the Government without written permission from the Agreements Officer.

Security of Material and Equipment
Properly secure the radiological material and ionizing radiation equipment at all times, including keeping the devices in a properly marked and locked container, and secondarily locking the container to a secure point in the Company's vehicle or other approved storage location during transportation and while not in use. While in use, maintain a continuous visual observation on the radiological material and ionizing radiation equipment. In instances where radiography is scheduled near or adjacent to buildings or areas having limited access or one-way doors, make no assumptions as to building occupancy. Where necessary, the Agreements' Officer will direct the Company to conduct an actual building entry, search, and alert. Where removal of personnel from such a building cannot be accomplished and it is otherwise safe to proceed with the radiography, position a fully instructed employee inside the building or area to prevent exiting while external radiographic operations are in process.

Transportation of Material
Comply with 49 CFR 173 for Transportation of Regulated Amounts of Radioactive Material. Notify Local Fire authorities and the site Radiation Safety Officer (RSO) of any Radioactive Material use.

Schedule for Exposure or Unshielding
Actual exposure of the radiographic film or unshielding the source must not be initiated until after 5 p.m. on weekdays.

Transmitter Requirements
Adhere to the base policy concerning the use of transmitters, such as radios and cell phones. Obey Emissions control (EMCON) restrictions.

CONFINED SPACE ENTRY REQUIREMENTS
Confined space entry must comply with EM 385-1-1, 29 CFR 1926, 29 CFR 1910, and Directive CPL 2.100. Any potential for a hazard in the confined space requires a permit system to be used.

Rescue Procedures and Coordination with Local Emergency Responders
Develop and implement an on-site rescue and recovery plan and procedures. The rescue plan must not rely on local emergency responders for rescue from a confined space.

CONSTRUCTION INDOOR AIR QUALITY (IAQ) MANAGEMENT PLAN
Submit an IAQ Management Plan within 15 calendar days after design and not less than 10 calendar days before the preconstruction conference. Revise and resubmit Plan as required by the Agreements Officer. Make copies of the final plan available to all workers on site. Include provisions in the Plan to meet the requirements specified below and to ensure safe, healthy air for construction workers and building occupants.

Submit Final IAQ Management Plan for inclusion in document submittals.

Requirements During Construction
Provide for evaluation of indoor Carbon Dioxide concentrations in accordance with ASTM D6245. Provide for evaluation of volatile organic compounds (VOCs) in indoor air in accordance with ASTM D6345. Use filters with a Minimum Efficiency Reporting Value (MERV) of 8 in permanently installed air handlers during construction.

Control Measures
Meet or exceed the requirements of ANSI/SMACNA 008 to help minimize contamination of the building from construction activities. The five requirements of this manual which must be adhered to are described below:

a. HVAC protection: Isolate return side of HVAC system from surrounding environment to prevent construction dust and debris from entering the duct work and spaces.

b. Source control: Use low emitting paints and other finishes, sealants, adhesives, and other materials as specified. When available, cleaning products must have a low VOC content and be non-toxic to minimize building contamination. Utilize cleaning techniques that minimize dust generation. Cycle equipment off when not needed. Prohibit idling motor vehicles where emissions could be drawn into building. Designate receiving/storage areas for incoming material that minimize IAQ impacts.

c. Pathway interruption: When pollutants are generated use strategies such as 100 percent outside air ventilation or erection of physical barriers between work and non-work areas to prevent contamination.

d. Housekeeping: Clean frequently to remove construction dust and debris. Promptly clean up spills. Remove accumulated water and keep work areas dry to discourage the growth of mold and bacteria. Take extra measures when hazardous materials are involved.

e. Scheduling: Control the sequence of construction to minimize the absorption of VOCs by other building materials.

Moisture Contamination

a. Remove accumulated water and keep work dry.
b. Use dehumidification to remove moist, humid air from a work area.
c. Do not use combustion heaters or generators inside the building.
d. Protect porous materials from exposure to moisture.
e. Remove and replace items which remain damp for more than a few hours.

Requirements After Construction

After construction ends and prior to occupancy, conduct a building flush-out or test the indoor air contaminant levels. Flush-out must be a minimum 2 weeks with MERV-13 filtration media as determined by ASHRAE 52.2 at 100 percent outside air. Air contamination testing must be consistent with EPA's current Compendium of Methods for the Determination of Air Pollutants in Indoor Air. After building flush-out or testing and prior to occupancy, replace filtration media. Filtration media must have a MERV of 13 as determined by ASHRAE 52.2.

SEVERE STORM PLAN

In the event of a severe storm warning, the Company must comply with the applicable Storm Plan and:

a. Secure outside equipment and materials and place materials that could be damaged in protected areas.

b. Check surrounding area, including roof, for loose material, equipment, debris, and other objects that could be blown away or against existing facilities.

c. Ensure that temporary erosion controls are adequate.

CONSTRUCTION AND OTHER WORK

Comply with EM 385-1-1, NFPA 70, NFPA 70E, NFPA 241, the APP, the AHA, Federal and State OSHA regulations, and other related submittals and activity fire and safety regulations. The most stringent standard prevails.

PPE is governed in all areas by the nature of the work the employee is performing. Use personal hearing protection at all times in designated noise hazardous areas or when performing noise hazardous tasks. Safety glasses must be worn or carried/available on each person. Mandatory PPE includes:

a. Head Protection that meets ANSI/ISEA Z89.1
b. Long Pants
c. Appropriate Safety Footwear
d. Appropriate Class Reflective Vests

Worksite Communication

Employees working alone in a remote location or away from other workers must be provided an effective means of emergency communications (i.e., cellular phone, two-way radios, land-line telephones or other acceptable means). The selected communication must be readily available (easily within the immediate reach) of the employee and must be tested prior to the start of work to verify that it effectively operates in the area/environment. Develop an employee check-in/check-out communication procedure to ensure employee safety.

Hazardous Material Exclusions

Notwithstanding any other hazardous material used in this Agreement, radioactive materials or instruments capable of producing ionizing/non-ionizing radiation (with the exception of radioactive material and devices used in accordance with EM -1-1 such as nuclear density meters for compaction testing and laboratory equipment with radioactive sources) as well as materials which contain asbestos, mercury or polychlorinated biphenyls, di-isocyanates, lead-based paint, and hexavalent chromium, are prohibited. The Agreements Officer, upon written request by the Company, may consider exceptions to the use of any of the above excluded materials.

Low mercury lamps used within fluorescent lighting fixtures are allowed as an exception without further Agreements Officer approval. Notify the Radiation Safety Officer (RSO) prior to excepted items of radioactive material and devices being brought on base.

Unforeseen Hazardous Material

Agreement documents identify materials such as PCB, lead paint, and friable and non-friable asbestos and other OSHA regulated chemicals (i.e., 29 CFR Part 1910.1000).

If material(s) that may be hazardous to human health upon disturbance are encountered during demolition, repair, renovation, or construction operations. Stop that portion of work and notify the Agreements Officer immediately. Within 14 calendar days the Government will determine if the material is hazardous. If material is not hazardous or poses no danger, the Government will direct the Company to proceed without change. If material is hazardous and handling of the material is necessary to accomplish the work, the Government will issue a modification.

UTILITY OUTAGE REQUIREMENTS

Apply for utility outages in advance. At a minimum, the written request must include the location of the outage, utilities being affected, duration of outage, any necessary sketches, and a description of the means to fulfill energy isolation requirements in accordance with EM 385-1-1.

In accordance with EM 385-1-1, where outages involve Government or Utility personnel, coordinate with the Government on all activities involving the control of hazardous energy.
These activities include, but are not limited to, a review of Hazardous Energy Control Program (HECP) and HEC procedures, as well as applicable Activity Hazard Analyses (AHAs). In accordance with EM 385-1-1 and NFPA 70E, work on energized electrical circuits must not be performed without prior Government authorization. Government permission is considered through the permit process and submission of a detailed AHA. Energized work permits are considered only when de-energizing introduces additional or increased hazard or when de-energizing is infeasible.

OUTAGE COORDINATION MEETING
After the utility outage request is approved and prior to beginning work on the utility system requiring shut-down, conduct a pre-outage coordination meeting in accordance with EM 385-1-1. This meeting must include the Prime Company, the Prime and subcontractors performing the work, the Agreements Officer, and the Installation representative. All parties must fully coordinate HEC activities with one another. During the coordination meeting, all parties must discuss and coordinate on the scope of work, HEC procedures (specifically, the lock-out/tag-out procedures for worker and utility protection), the AHA, assurance of trade personnel qualifications, identification of competent persons, and compliance with HECP training in accordance with EM 385-1-1. Clarify when personal protective equipment is required during switching operations, inspection, and verification.

CONTROL OF HAZARDOUS ENERGY (LOCKOUT/TAGOUT)
Provide and operate a Hazardous Energy Control Program (HECP) in accordance with EM 385-1-1, 29 CFR 1910, 29 CFR 1915, ANSI/ASSP A10.44, and NFPA 70E.

Safety Preparatory Inspection Coordination Meeting with the Government or Utility
For electrical distribution equipment that is to be operated by Government or Utility personnel, the Prime Company and the subcontractor performing the work must attend the safety preparatory inspection coordination meeting, which will also be attended by the Agreements Officer's Representative, and required by EM 385-1-1. The meeting will occur immediately preceding the start of work and following the completion of the outage coordination meeting. Both the safety preparatory inspection coordination meeting and the outage coordination meeting must occur prior to conducting the outage and commencing with lockout/tagout procedures.

Lockout/Tagout Isolation
Where the Government or Utility performs equipment isolation and lockout/tagout, the Company must place their own locks and tags on each energy-isolating device and

proceed in accordance with the HECP. Before any work begins, both the Company and the Government or Utility must perform energy isolation verification testing while wearing required PPE detailed in the Company's AHA and required by EM 385-1-1. Install personal protective grounds, with tags, to eliminate the potential for induced voltage in accordance with EM 385-1-1.

Lockout/Tagout Removal
Upon completion of work, conduct lockout/tagout removal procedure in accordance with the HECP. In accordance with EM 385-1-1, each lock and tag must be removed from each energy isolating device by the authorized individual or systems operator who applied the device. Provide formal notification to the Government (by completing the Government form if provided by Agreements Officer's Representative), confirming that steps of de-energization and lockout/tagout removal procedure have been conducted and certified through inspection and verification. Government or Utility locks and tags used to support the Company's work will not be removed until the authorized Government employee receives the formal notification.

FALL PROTECTION PROGRAM
Establish a fall protection program for the protection of all employees exposed to fall hazards. Within the program include company policy, identify roles and responsibilities, education and training requirements, fall hazard identification, prevention and control measures, inspection, storage, care and maintenance of fall protection equipment and rescue and evacuation procedures in accordance with EM 385-1-1.

Fall Protection Equipment and Systems
Enforce use of personal fall protection equipment and systems designated (to include fall arrest, restraint, and positioning) for each specific work activity in the Site Specific Fall Protection and Prevention Plan and AHA at all times when an employee is exposed to a fall hazard. Protect employees from fall hazards as specified in EM 385-1-1.

Provide personal fall protection equipment, systems, subsystems, and components that comply with EM 385-1-1 and 29 CFR 1926.

Additional Personal Fall Protection Measures
In addition to the required fall protection systems, other protective measures such as safety skiffs, personal floatation devices, and life rings, are required when working above or next to water in accordance with EM 385-1-1. Personal fall protection systems and equipment are required when working from an articulating or extendible boom, swing stages, or suspended platform. In addition, personal fall protection systems are required when operating other equipment such as scissor lifts. The need for tying-off in such equipment is to prevent ejection of the employee from the equipment during raising, lowering, travel, or while performing work.

Personal Fall Protection Equipment
Only a full-body harness with a shock-absorbing lanyard or self-retracting lanyard is an acceptable personal fall arrest body support device. The use of body belts is not

acceptable. Harnesses must have a fall arrest attachment affixed to the body support (usually a Dorsal D-ring) and specifically designated for attachment to the rest of the system. Snap hooks and carabineers must be self-closing and self-locking, capable of being opened only by at least two consecutive deliberate actions and have a minimum gate strength of 3,600 lbs in all directions. Use webbing, straps, and ropes made of synthetic fiber. The maximum free fall distance when using fall arrest equipment must not exceed 6 feet, unless the proper energy absorbing lanyard is used. Always take into consideration the total fall distance and any swinging of the worker (pendulum-like motion), that can occur during a fall, when attaching a person to a fall arrest system. Equip all full body harnesses with Suspension Trauma Preventers such as stirrups, relief steps, or similar in order to provide short-term relief from the effects of orthostatic intolerance in accordance with EM 385-1-1.

EQUIPMENT

Use of Explosives
Explosives must not be used or brought to the project site without prior written approval from the Agreements Officer. Such approval does not relieve the Company of responsibility for injury to persons or for damage to property due to blasting operations. Storage of explosives, when permitted on Government property, must be only where directed and in approved storage facilities. These facilities must be kept locked at all times except for inspection, delivery, and withdrawal of explosives.

ELECTRICAL
Perform electrical work in accordance with EM 385-1-1.

Electrical Work
As described in EM 385-1-1, electrical work is to be conducted in a de-energized state unless there is no alternative method for accomplishing the work.

In those cases obtain an energized work permit from the Agreements Officer. The energized work permit application must be accompanied by the AHA and a summary of why the equipment/circuit needs to be worked energized.

Underground electrical spaces must be certified safe for entry before entering to conduct work.

Cables that will be cut must be positively identified and de-energized prior to performing each cut.

Attach temporary grounds in accordance with ASTM F855 and IEEE 1048. Perform all high voltage cable cutting remotely using hydraulic cutting tool. When racking in or live switching of circuit breakers, no additional person other than the switch operator is allowed in the space during the actual operation. Plan so that work near energized parts is minimized to the fullest extent possible. Use of

electrical outages clear of any energized electrical sources is the preferred method.

When working in energized substations, only qualified electrical workers are permitted to enter. When work requires work near energized circuits as defined by NFPA 70, high voltage personnel must use personal protective equipment that includes, as a minimum, electrical hard hat, safety footwear, insulating gloves and electrical arc flash protection for personnel as required by NFPA 70E. Insulating blankets, hearing protection, and switching suits may also be required, depending on the specific job and as delineated in the Company's AHA. Ensure that each employee is familiar with and complies with these procedures and 29 CFR 1910.

Qualifications
Electrical work must be performed by QP with verifiable credentials who are familiar with applicable code requirements. Verifiable credentials consist of State, National and Local Certifications or Licenses that a Master or Journeyman Electrician may hold, depending on work being performed, and must be identified in the appropriate AHA. Journeyman/Apprentice ratio must be in accordance with State, Local requirements applicable to where work is being performed.

Arc Flash
Conduct a hazard analysis/arc flash hazard analysis whenever work on or near energized parts greater than 50 volts is necessary, in accordance with NFPA 70E.
All personnel entering the identified arc flash protection boundary must be QPs and properly trained in NFPA 70E requirements and procedures. Unless permitted by NFPA 70E, no Unqualified Person is permitted to approach nearer than the Limited Approach Boundary of energized conductors and circuit parts.
Training must be administered by an electrically qualified source and documented.

Grounding
Ground electrical circuits, equipment and enclosures in accordance with NFPA 70 and IEEE C2 to provide a permanent, continuous and effective path to ground unless otherwise noted by EM 385-1-1.

Testing
Temporary electrical distribution systems and devices must be inspected, tested and found acceptable for Ground-Fault Circuit Interrupter (GFCI) protection, polarity, ground continuity, and ground resistance before initial use, before use after modification and at least monthly. Monthly inspections and tests must be maintained for each temporary electrical distribution system and signed by the electrical CP or QP.

20.7 Availability and Use of Utility Services

The Company is responsible for coordinating all phase of utility work with the U.S. Government Agreement POCs and local utility providers whether the utility providers are the U.S. Government, a local utility, a private entity, or any combination thereof. Reference the TR and agreement attachments for more information on utilities.

20.8 Layout of Work

The Company shall lay out its work from Government established baselines and benchmarks indicated on the drawings and shall be responsible for all measurements in connection with the layout. The Company shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Company shall be responsible for executing the work to the lines and grades that may be established or indicated by the AO. The Company shall also be responsible for maintaining and preserving all stakes and other marks established by the AO until authorized to remove them. If such marks are destroyed by the Company or through its negligence before their removal is authorized, the AO may replace them and deduct the expense of the replacement from any amounts due or to become due to the Company.

20.9 Operations and Storage Areas

Due to the expedited and unique requirements of this Project, the Government shall, to the maximum extent practicable, facilitate practicable, unfettered access and logistics to the Company to enable this Project's objectives.

a. The Company shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the AO. The Company shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Company's performance.

b. Temporary buildings (e.g. storage sheds, shops, offices) and utilities may be erected by the Company only with the approval of the AO and shall be built with labor and materials furnished by the Company without expense to the Government. The temporary buildings and utilities shall remain the property of the Company and shall be removed by the Company at its expense upon completion of the work. With the written consent of the AO, the buildings and utilities may be abandoned and need not be removed.

c. The Company shall, under regulations prescribed by the AO, use only established roadways, or use temporary roadways constructed by the Company when and as authorized by the AO, which will be reviewed and approved by the AO prior to the Company’s mobilization and which shall be adjusted from time-to-

time as necessary to meet Project demands, in which case the AO will promptly review and approve such adjustment to ensure the Company can maintain the Project Schedule. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Company shall protect them from damage. The Company shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

20.10 Use and Possession Prior to Completion

a. Upon agreement with COMPANY, the Government will have the right to take possession of or use any completed or partially completed part of the work prior to Occupancy Readiness (as defined in the TR) but will not interfere, hinder, or obstruct COMPANY in the completion of its work or services, nor will be entitled to any warranty claims or rights. Before taking possession of or using any work, prior to completion of such work, the AO will furnish the Company a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the AO to list any item of work shall not relieve the Company of responsibility for complying with the terms of the Agreement. The Government's possession or use will not be deemed an acceptance of any work under the Agreement. The Government's possession or use pursuant to this section will not modify or change the date agreed upon by the Company and the Government that the work shall be deemed to have Occupancy Readiness, nor entitled Government to any warranty rights or claims before final acceptance.

b. While the Government has such possession or use, the Company shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the Article in this Agreement entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Company, an equitable adjustment shall be made in the Agreement price or the time of completion, and the Agreement shall be modified in writing accordingly.

c. The Company shall submit a draft DD1354 once construction is completed to the AE firm for review.

20.11 Other Agreements or Contracts

The Government may undertake or award other agreements or contracts for additional work at or near the site of the work under this Agreement. The Company shall fully cooperate with the contractors and with Government employees and shall carefully adapt scheduling and performing the work under this Agreement to accommodate the additional work, heeding any direction that may be provided by the AO. The COMPANY shall not commit or permit any act that will interfere with the performance of work by any contractor or by Government employees.

20.12 Modification Proposals – Price Breakdown

The Company shall furnish a price breakdown, itemized as required and within the time specified by the AO, with any proposal for an Agreement modification.

a. The price breakdown—Must include sufficient detail to permit an analysis of profit, and of all costs for—
   i. Material;
   ii. Labor;
   iii. Equipment;
   iv. Sub-Agreements; and
   v. Overhead.

b. Must cover all work involved in the modification, whether the work was deleted, added, or changed.

c. The Company shall provide similar price breakdowns to support any amounts claimed for Sub- Agreements.

d. The Company's proposal shall include a justification for any time extension proposed

20.13 Safety and Health Requirements

In accordance with article ACCIDENT PREVENTION, the Company shall comply with the latest version of Engineer Manual 385-1-1, including any interim revisions, in effect at the time of the Request for Prototype Proposal. EM 385-1-1 and its changes are available at https://www.usace.army.mil/Safety-and- Occupational-Health/Safety-and-Health- Requirements-Manual/.

20.14 Site Safety and Health Officer Requirements and Qualifications
The SSHO must be a Competent Person as defined by EM 385-1-1. Documentation of the following must be provided to the Government Representative prior to mobilization:

a. Experience: A minimum of five (5) years of continuous construction industry safety experience in supervising or managing a safety program.

b. Primary Training: Completion of a formal OSHA 30-Hour Construction safety class or an equivalent course within the last five (5) years.

c. Continuing Education: Maintenance of at least 24 hours of formal safety and health training every four (4) years to ensure up-to-date knowledge of evolving hazards and regulations.

20.15 Warranty of Construction Work and all Work

In addition to any other warranties in this Agreement, the Company warrants that all work performed under this Agreement conforms to the Agreement requirements and is free of any material defect in equipment, material, or workmanship performed by the Company or any Subcontractor or supplier at any tier.

Construction Warranty Period
This warranty shall continue for a period of one year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date the Government takes possession.

Remedy
The Company shall remedy at the Company's expense any failure to conform, any material defect. In addition, the Company shall remedy at the Company's expense any damage to Government owned or controlled real or personal property, when that damage is the result of- The Company's failure to conform to Agreement requirements; or any defect of equipment, material, or workmanship.

Replacement of work damages
For any warranty claim commenced during the construction warranty period, the Company shall restore any work damaged in fulfilling the terms and conditions of this article. The Company’s warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

Notification of failure, defect, or damage
The AO shall notify the Company, in writing, within a reasonable time after the discovery of any failure, defect, or damage, provided that such notification shall occur within the construction warranty period in order for the warranty to apply.

Failure to remedy
If the Company fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government will have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Company's expense. Furthermore, as long as the COMPANY is diligently pursuing the remedy, then the Government will not have the right to replace, repair, or otherwise remedy the failure, defect, or damage.
Warranties

With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, the Company shall-

Obtain all warranties that would be given in normal commercial practice:

a. Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the AO; and
b. Enforce all warranties for the benefit of the Government, if directed by the AO.

Expired Warranty
In the event the Company's warranty under this article has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

Defects in Government Furnished Materials or Design
Unless a defect is caused by the negligence of the Company or subcontractor supplier at any tier, the Company shall not be liable for the repair of any defects of material furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

COMPANY shall be entitled to rely upon information provided by the Government and the Government shall be responsible for the accuracy and completeness of the information or data provided to COMPANY.

Government's Rights
This warranty shall not limit the Government's rights under the Inspection and Acceptance article of this agreement with respect to latent defects, gross mistakes, or fraud.

To ensure all warranties are properly documented and managed, the COMPANY shall submit a detailed Warranty Management Plan as a closeout submittal. This plan must first be submitted in a preliminary phase, outlining the COMPANY's proposed system for managing warranty service, including the roles and responsibilities of personnel, and the proposed response and repair times for issues of varying priority.

Prior to project completion, the COMPANY shall deliver the final Warranty Management Plan. This final submittal shall act as a comprehensive register of all warranties and include:

1. All manufacturer warranty certificates and information for any new equipment or components installed.
2. A detailed list of all equipment, materials, and systems covered by the one-year construction warranty.
3. For each warranted item, the register must specify the name of the item, model/serial number, its location, the warranty term with start/expiration dates, and the name, address, and telephone number of the point of contact for initiating warranty service.
4. The warranty management plan shall detail that any warranty provided shall not limit the Government's rights to inspect or accept any aspects of the work performed with respect to latent defects, gross mistakes, and/or fraud.

20.16 Inspection – Dismantling, Demolition or Removal of Improvements

a. Unless otherwise designated by the specifications, all workmanship performed under the Agreement is subject to Government inspection at all times and places where dismantling or demolition work is being performed. The Company shall furnish promptly, and at no increase in Agreement price, all reasonable facilities, labor, and materials necessary for safe and convenient inspection by the Government. The Government shall perform inspections in a manner that will not unduly delay the work.

b. The Company is responsible for damage to property caused by defective workmanship. The Company shall promptly segregate and remove from the premises any unsatisfactory facilities, materials, and equipment used in Agreement performance, and promptly replace them with satisfactory items.

20.17 Assignment of Claims

a. The Company, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 6305 (hereafter referred to as “the Act”), may assign its rights to be paid amounts due or to become due as a result of the performance of this Agreement to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

b. Any assignment or reassignment authorized under the Act and this Article shall cover all unpaid amounts payable under this Agreement, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Agreement.

c. The Company shall not furnish or disclose to any assignee under this Agreement any classified document (including this Agreement) or information related to work under this Agreement until the AO authorizes such action in writing.

20.18 Performance and Payment Bonds – Construction

a. Definitions. As used in this Article --

“Original Agreement price” means the award price of the Agreement; or, for requirements Agreements, the price payable for the estimated total quantity; or, for indefinite-quantity Agreements, the price payable for the specified minimum quantity. Original Agreement price does not include the price of any options, except those options exercised at the time of Agreement award.

b. Amount of required bonds. Unless the resulting Agreement price is $150,000 or less, the successful offeror shall furnish performance and payment bonds to the AO as follows:

1. Performance Bonds (Standard Form 25). The penal amount of performance bonds at the time of Agreement award shall be 100 percent of the original construction price. If the construction price increases, an additional amount equal to 100 percent of the increase shall be required.

2. Payment Bonds (Standard Form 25-A). The penal amount of payment bonds at the time of Agreement award shall be 100 percent of the original construction price. If the construction price increases, an additional amount equal to 100 percent of the increase shall be required.

3. Additional bond protection.

i. The Government may require additional performance and payment bond protection if the construction price is increased. The increase in protection generally will equal 100 percent of the increase in construction price.

ii. The Government may secure the additional protection by directing the Recipient to increase the penal amount of the existing bond or to obtain an additional bond.

c. Furnishing executed bonds. The Recipient shall furnish all executed bonds, including any necessary reinsurance agreements, to the AO, within the time period specified by the AO, but in any event, before starting work.

d. Surety or other security for bonds. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register or may be obtained from the:

U.S. Department of Treasury Financial Management Service Surety Bond Branch
3700 East West Highway, Room 6F01 Hyattsville, MD 20782
Or via the internet at http://www.fms.treas.gov/c570/.

e. Notice of Sub-Recipient waiver of protection (40 U.S.C. 3133(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the Agreement.

f. If the COMPANY is unable to obtain these bonds before the start of construction after the initial four (4) MILCON projects, the bonding requirement will be modified to a lesser amount or removed entirely via a modification to this agreement. In this event, the Government will be entitled to a decrement, or a reduction in the agreement price commensurate with the updated bond amount and COMPANY may be required to reimburse the U.S. Government for the procurement costs under a different contract or Agreement.

20.19 Definitions for Articles
"Apprentice" means a person-

(1) Employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS; or

(2) Who is in the first 90 days of probationary employment as an apprentice in an apprenticeship program, and is not individually registered in the program, but who has been certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

"Construction, alteration, or repair" means all types of work done by laborers and mechanics employed by the construction company or construction subcontractor on a particular building or work at the site thereof, including without limitations-
site; or work;

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site
(2) Painting and decorating;
(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building
(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (1)(i) and (ii) of the "site of the work" definition of this Article, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition of this Article; and
(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (1)(ii) of this Article, and the physical place or places where the building or work will remain (paragraph (1)(i) in the "site of the work" definition of this Article).

"Laborers or mechanics."-
(1) Means-
(i) Workers, utilized by a company or subcontractor at any tier, whose duties are manual or physical in nature (including those workers who use

tools or who are performing the work of a trade), as distinguished from mental or managerial;

(ii) Apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards statute, watchmen and guards;

(iii) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR part 541, for the time so spent; and

(iv) Every person performing the duties of a laborer or mechanic, regardless of any contractual relationship alleged to exist between the company or subcontractor and those individuals; and

(2) Does not include (a) workers whose duties are primarily executive, supervisory (except as provided in paragraph (1)(iii) of this definition), administrative, or clerical, rather than manual, (for avoidance of doubt, this includes the Company's Operations Manager, Construction Quality Control Manager, Quality Control Specialist, and Material Control Specialist), and (b) notwithstanding anything to the contrary in paragraph (1)(iii) of this definition. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics.

"Public building or public work" means building or work, the construction, prosecution, completion, or repair of which, as defined in this Article, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

"Site of the work."-

(1) Means

(i) The primary site of the work. The physical place or places where the construction called for in the agreement will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is-

(A) Located in the United States; and

(B) Established specifically for the performance of the agreement or project;

(2) Except as provided in paragraph (3) of this definition, includes fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided-

(i) They are dedicated exclusively, or nearly so, to performance of the agreement or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraphs (1)(i) of "the secondary site of the work" as defined in paragraph (1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a company or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal agreement or contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work," even if the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of an agreement.

"Trainee" means a person registered and receiving on-the job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

"Wages" means the basic hourly rate of pay; any contribution irrevocably made by a company or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the company or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Construction Wage Rate Requirements statute include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

20.20 Construction Wage Rate Requirements

a.

1. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a month, 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, or as may be incorporated for a secondary site of the work, regardless of any relationship which may be alleged to exist between the Company and such laborers and mechanics. Any wage determination incorporated for a secondary site of the

work shall be effective from the first day on which work under the Agreement was performed at that site and shall be incorporated without any adjustment in Agreement price or estimated cost. Laborers employed by the construction Company or construction Sub-Recipient that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

2. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

3. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the Article entitled Apprentices and Trainees. 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.

4. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this Article) and the Construction Wage Rate Requirements (Davis-Bacon Act) poster (WH-1321) shall be posted at all times by the Company and its Sub-Recipients at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.

1. The AO 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 Agreement shall be classified in conformance with the wage determination. The AO shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

   i. The work to be performed by the classification requested is not performed by a classification in the wage determination.
   ii. The classification is utilized in the area by the construction industry.
   iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

2. Subparagraph (b)(1) shall not apply if the class of laborers or mechanics not listed in the wage determination – but employed under this agreement – performs work directly related or attributable to the parties agree that deference shall. In such event, the AO and the Company shall first determine whether the classification must conform to the wage determination or be excluded from this Agreement. To maintain the project timeline, the parties agree that deference shall be given to exclusion.

3. If the Company and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the AO 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 AO to the Administrator of the:

Wage and Hour Division
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 AO or will notify the AO within the 30-day period that additional time is necessary.

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

i. In the event the Company seeks an additional classification under this subparagraph (b), the Company shall not be required to cease or suspend work by the affected laborers or mechanics pending a final determination. The Company may employ such laborers or mechanics at the proposed wage rate and fringe benefits; provided, however, that if the Administrator of the Wage and Hour Division does not approve the requested classification, and a suitable existing classification cannot be agreed upon, the Government shall amend the Agreement to exclude such laborers or mechanics from the scope of the covered work, and no further payment shall be authorized for such unauthorized classifications.

5. The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(3) and (b)(4) of this Article shall be paid to all

workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Company 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.

d. If the Company does not make payments to a trustee or other third person, the Company 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 Company, that the applicable standards of the Construction Wage Rate Requirements statute have been met. The Secretary of Labor may require the Company to set aside in a separate account asset for the meeting of obligations under the plan or program.

20.21 Withholding of Funds

The AO will, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Company under this Agreement, 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 Company or any Sub-Recipient the full amount of wages required by the Agreement. 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, all or part of the wages required by the Agreement, the AO may, after written notice to the Company, 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.

20.22 Payrolls and Basic Records

a. Payrolls and basic records relating thereto shall be maintained by the Company during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. 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 40 U.S.C. 3141(2)(B) (Construction Wage Rate Requirement statute)), number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the Article entitled Construction Wage Rate Requirements, 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 40 U.S.C. 3141(2)(B), the Company 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. Companies 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.

b.

1. The Company shall submit monthly for each month in which any work under this Agreement is performed a copy of all payrolls to the AO. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this Article, except that full social security numbers and home addresses shall not be included on monthly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at https://www.dol.gov/agencies/whd/forms. The Prime Company is responsible for the submission of copies of payrolls by all subcontractors. The Company and all subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the AO, the Company, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for the Prime Company to require a subcontractor to provide addresses and social security numbers to the Prime Company for its own records, without submission to the AO.

2. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Company or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Agreement and shall certify-

i. That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this Article and that such information is correct and complete;
ii. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full 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 the Regulations, 29 CFR Part 3; and
iii. 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 agreement.

3. The 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 (b)(2) of this Article.

4. The falsification of any of the certifications in this Article may subject the Company or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

c. The Company or subcontractor shall make the records required under paragraph (a) of this Article available for inspection, copying, or transcription by the AO or authorized representatives of the AO or the Department of Labor. The Company or subcontractor shall permit the AO or representatives of the AO or the Department of Labor to interview employees during working hours on the job. If the Company or subcontractor fails to submit required records or to make them available, the AO may, after written notice to the Company and reasonable opportunity to cure, take such action as may be necessary to cause the suspension of any further payment.

20.23 Apprentices and Trainees

a. Apprentices.

1. An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed—

i. Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

ii. In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

2. 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 Company as to the entire work force under the registered program.

3. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this Article, shall be paid not less than the applicable 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.

4. Where a Company 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 Company's or Sub-Recipient'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 journeyman hourly rate specified in the applicable wage determination.

5. 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 determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

6. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Company 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.

b. Trainees.

1. 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, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

2. 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 in 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 in 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 OATELS shall be paid not less than the applicable wage rate in 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 in the wage determination for the work actually performed.

3. In the event OATELS withdraws approval of a training program, the Company 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.

c. Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this Article shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

20.24 Compliance with Copeland Act Requirements

The Company shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this Agreement.

20.25 Sub-agreements (Labor Standards)

a. The Company shall insert in any sub-agreements for construction, alterations and repairs within the United States the Articles entitled-

1. Construction Wage Rate Requirements;
2. Withholding of Funds
3. Payrolls and Basic Records;
4. Apprentices and Trainees;
5. Compliance with Copeland Act Requirements;
6. Contract Work Hours and Safety Standards-Overtime Compensation
7. Disputes Concerning Labor Standards;
8. Certification of Eligibility.

b. The prime Company shall be responsible for issuing the above requirements to any subcontractor or lower tier subcontractor performing construction within the United States with all the Articles cited in paragraph (b).

c.

1. Within 30 days after award of the Agreement, the Company shall deliver to the AO a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each sub-agreement for construction within the United States, including the subcontractor's signed and dated acknowledgment that the Articles set forth in paragraph (a) of this Article have been included in the sub-agreement.

2. Within 14 days after the award of any subsequently awarded sub-agreement, the Company shall deliver to the AO an updated completed SF 1413 for such additional sub-agreement.

d. The Company shall insert the substance of this Article, including this paragraph (d) in all subcontracts for construction within the United States.

20.26 Compliance with Construction Wage Rate Requirements and Related Regulations

All rulings and interpretations of the Construction Wage Rate Requirements and related statutes contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this Agreement.

20.27 Disputes Concerning Labor Standards

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Except as expressly provided otherwise in this Agreement, such disputes shall be resolved in accordance with those procedures and not the Disputes Article of this Agreement. Disputes within the meaning of this Article, Disputes Concerning Labor Standards, include disputes between the Company (or any of its subcontractors) and the agency awarding the Agreement, the U.S. Department of Labor, or the employees or their representatives.

20.28 Certification of Eligibility

a. By entering into this Agreement, the Company certifies that neither it nor any person or firm who has an interest in the Company's firm is a person or firm ineligible to be awarded Government agreements or contracts by virtue of 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).

b. No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government agreement or contract by virtue of 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).

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

20.29 Contract Work Hours and Safety Standards – Overtime Compensation

a. Overtime requirements. No Company or subcontractor employing laborers or mechanics (including apprentices, trainees, helpers, watchmen, and guards) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours. The

foregoing shall not apply to “exempt employees” as defined by the Fair Labor and Standards Act.

b. Violation; liability for unpaid wages. The responsible Company and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this Article.

c. Payrolls and basic records. For the purposes of this Section,

1. The Company and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the Agreement during the Agreement and, for the limited purpose of verifying compliance with applicable wage, hour, and labor standards, shall make them available to the Government until 3 years after Agreement completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

2. For the limited purpose of verifying compliance with applicable wage, hour, and labor standards, the Company and its subcontractors shall allow authorized representatives of the AO or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (c)(1) of this Article. The Company or subcontractor also shall allow authorized representatives of the AO or Department of Labor to interview employees in the workplace during working hours.

d. Sub-agreements. The Company shall insert the provisions set forth in the above paragraphs (a) through (c) of this Section 20.30 in sub-agreements that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier sub-agreements.

20.30 Suspension of Work

(a) The AO may order the Company, in writing, to suspend, delay, or interrupt all or any part of the work of this Agreement for the period of time that the AO determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1)by an act of the AO in the administration of this agreement, or (2)by the AO’s failure to act within the time specified in this agreement (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this agreement(excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the agreement modified in writing accordingly. However, no adjustment shall be made under this article for any suspension,

delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Company, or for which an equitable adjustment is provided for or excluded under any other term or condition of this agreement.

(c) A claim under this article shall not be allowed-

(1) For any costs incurred more than 20 days before the Company shall have notified the AO in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the agreement.

20.31 Insurance - Work on a Government Installation

(a) The Company shall, at its own expense, provide and maintain during the entire performance of this agreement, at least the kinds and minimum amounts of insurance required in 26.27(d) of this document.

(b) Before commencing work under this agreement, the Company shall notify the AO in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective-

(1) For such period as the laws of the State in which this agreement is to be performed prescribe; or

(2) Until 30 days after the insurer or the Company gives written notice to the AO, whichever period is longer.

(c) The Company shall insert the substance of this section, including this paragraph (c), in sub-agreements under this agreement that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the agreement. The Company shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the AO upon request.

(d) Insurance Minimum Amounts

Type	Amount
Workman's Compensation	$100,000
Comprehensive General Liability	$500,000 per occurrence for bodily injury
Comprehensive Automotive Liability	$200,000 per person $500,000 per occurrence for bodily injury $20,000 per occurrence for property damage

20.32 Permits and Responsibilities - Construction

The Company shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Company shall also be responsible for all damages to persons or property that occur as a result of the Company's fault or negligence. The Company shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the Agreement.

20.33 Specifications and Drawings for Construction

a. The Company shall keep on the work site a copy of the drawings and specifications related to any proposed prototype solution accepted by the Government for installation. The Company shall at all times give the AO access to those drawings and specifications. "Specifications", for purposes of this article, is defined as any documents dictating what materials will be used for the project and how those materials are to be installed. 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 difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the AO, who shall promptly make a determination in writing. Any adjustment by the Company without such a determination shall be at its own risk and expense. The AO shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

b. Shop drawings means drawings, submitted to the Government by the Company, Sub-Recipient, or any lower tier Subrecipient pursuant to a construction Agreement, showing in detail

1. the proposed fabrication and assembly of structural elements, and

2. the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials

furnished by the Company to explain in detail specific portions of the work required by the Agreement. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Agreement.

c. If this Agreement requires shop drawings, the Company shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with Agreement requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the AO without evidence of the Company's approval may be returned for resubmission. The AO will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefore. Any work done before such approval shall be at the Company's risk. Approval by the AO shall not relieve the Company from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Agreement.

d. If shop drawings show variations from the Agreement requirements, the Company shall describe such variations in writing, separate from the drawings, at the time of submission. If the AO approves any such variation, the AO shall issue an appropriate Agreement modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

e. The Company shall submit to the AO for approval an electronic copy of all shop drawings as called for under the various headings of these specifications.

ARTICLE 21 - BUY AMERICA-CONSTRUCTION under TRADE AGREEMENTS

(a) Definitions. As used in this Article—

Caribbean Basin country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is–

(i) A commercial product, other than real property, that is of a type customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes (i.e., purposes that are not unique to a government), and—

(a) Has been sold, leased, or licensed to the general public; or

(b) Has been offered for sale, lease, or license to the general public;

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a agreement or sub-agreement at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into a construction material. Construction material means an article, material, or supply brought to the construction site by the COMPANY or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the COMPANY, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the COMPANY, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit.

Cost of components does not include any costs associated with the manufacture of the construction material.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components will be published in the Federal Register for public comment no less frequently than once every 4 years.

Critical item means a domestic construction material or domestic end product that is deemed critical to U.S. supply chain resiliency. The list of critical items is at will be published in the Federal Register for public comment no less frequently than once every 4 years. Designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Designated country construction material means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both-

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the

cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029.

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components".

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

Foreign construction material means a construction material other than a domestic construction material. Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

Free Trade Agreement country construction material means a construction material that-

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed. Least developed country construction material means a construction material that-

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different

construction material distinct from the materials from which it was transformed.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

WTO GPA country construction material means a construction material that-

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Domestic preference

(1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C.1907, the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction material, excluding COTS fasteners. In addition, the Agreement Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.

(2) The COMPANY shall use only domestic or designated country construction material in performing this agreement, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial product or to the construction materials or components listed by the Government as follows:
[Agreements Officer to list applicable excepted materials or indicate "none"]

(4) The Agreement Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that-

(i) The cost of domestic construction material would be unreasonable.

(A) For domestic construction material that is not a critical item or does not contain critical components.

(1) The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;

(2) For construction material that is not a COTS item and does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Agreement Officer will treat the lowest offer of foreign construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(4)(i)(A)(1) of this clause.

(3) The procedures in paragraph (b)(4)(i)(A)(2) of this clause will no longer apply as of January 1, 2030.

(B) For domestic construction material that is a critical item or contains critical components.

(1) The cost of a particular domestic construction material that is a critical item or contains critical components, subject to the requirements of the Buy American statute, is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent plus the additional preference factor identified for the critical item or construction material containing critical components will be published in the Federal Register for public comment no less frequently than once every 4 years.

(2) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is

determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Agreement Officer will treat the lowest offer of foreign construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer, and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(4)(i)(B)(1) of this clause.

(3) The procedures in paragraph (b)(4)(i)(B)(2) of this clause will no longer apply as of January 1, 2030.

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American statute.

(1)

(i) Any COMPANY request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including-

(A) A description of the foreign and domestic construction materials;
(B) Unit of measure;
(C) Quantity;
(D) Price;
(E) Time of delivery or availability;
(F) Location of the construction project;
(G) Name and address of the proposed supplier; and
(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any COMPANY request for a determination submitted after agreement award shall explain why the COMPANY could not reasonably foresee the need for such determination and could not have requested the determination before agreement award. If the COMPANY does not submit a satisfactory explanation, the Agreement Officer need not make a determination.

(2) If the Government determines after agreement award that an exception to the Buy American statute applies and the Agreement Officer and the COMPANY negotiate adequate consideration, the Agreement Officer will modify the agreement to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the COMPANY shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic *Construction* Materials Price Comparison

Construction Material Description	Unit of Measure	Quantity	Price (dollars)*
Item1:			
Foreign *construction* material	_____	_____	_____
Domestic *construction* material	_____	_____	_____
Item2:			
Foreign *construction* material	_____	_____	_____
Domestic *construction* material	_____	_____	_____

[* *Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued)*].
[*List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.*]

[*Include other applicable supporting information.*]

21.2 Restrictions on Certain Foreign Purchases

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Company shall not acquire, for use in the performance of this agreement, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information.

(c) The Company shall insert this article, including this paragraph (c), in all sub-agreements.

ARTICLE 22: MISCELLANEOUS

22.1. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions among the Parties, whether oral or written, with respect to the subject matter hereof.

22.2. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any article of this Agreement invalid or otherwise unenforceable in any respect. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

22.3. Headings. The headings appearing at the beginning of the sections contained in this Agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.

22.4. Counterparts. This Agreement, or modifications thereto, may be executed in counterparts each of which shall be deemed as original, but all of which taken together shall constitute one and the same instrument.

22.5. Defense Priorities and Allocations System (DPAS). This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700).

22.6 Public Release of Information. The Company may publicly disclose information regarding the work performed under this Agreement, including general descriptions of the project and results, provided that such disclosure does not include classified information, controlled unclassified information (CUI), export-controlled information, or any other information whose release is restricted by applicable law, regulation, or written direction of the Agreements Officer.

Nothing in this Article restricts the Company from disclosing information that is already lawfully in the public domain, that is solely the Company's data and not subject to Government-imposed restrictions, or that is required to be disclosed by law or regulation.

The Company shall provide written notice of a plant to publicly release information to the Agreements Officer five (5) business days before planned disclosure and must wait for the AO's determination on whether the information is public information before releasing information that has not previously been reviewed by the U.S. Government.

ARTICLE 23: AGREEMENT ADMINISTRATION AND POINTS OF CONTACTS

23.1 Requirements for the Issuance of Common Access Cards (CAC)

Before CAC issuance, the employee(s) of the selected Offeror (i.e., "COMPANY employee") requires, at a minimum, a favorably adjudicated National Agency Check with Inquiries (NACI) or an equivalent or higher investigation in accordance with Army Directive 2014-05. The COMPANY employee will be issued a CAC only if performance of the production project involves one of the following:

(1) Both physical access to a DOW facility and access, via logon, to DOW networks on- site or remotely;

(2) remote access, via logon, to a DOW network using DOW-approved remote access procedures;

or (3) physical access to multiple DOW facilities or multiple non-DOW federally controlled facilities on behalf of the DOW on a recurring basis for a period of 6 months or more.

At the discretion of the sponsoring activity, an initial CAC may be issued based on a favorable review of the FBI fingerprint check and a successfully scheduled NACI at the Office of Personnel Management.

Additional details related to the CAC Request Process will be provided, if determined necessary, after award of any Agreement.

23.2 CHANGES

23.2.1 Change Order

(a) The Agreements Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the agreement, including changes-

(1) In the specifications (including drawings and designs);
(2) In the method or manner of performance of the work;
(3) In the Government-furnished property or services; or
(4) Directing acceleration in the performance of the work.

(b) Any other written order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Agreements Officer that causes a change will be treated as a change order under this clause; Provided, that the COMPANY gives the Agreements Officer written notice stating-

(1) The date, circumstances, and source of the order; and
(2) That the COMPANY regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Agreements Officer shall be treated as a change under this clause or entitle the COMPANY to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the COMPANY's cost of, or the time required for, the performance of any part of the work under this agreement, whether or not changed by any such order, the Agreements Officer may make an equitable adjustment and modify the agreement in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the COMPANY gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the COMPANY in attempting to comply with the defective specifications.

(e) The COMPANY must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2)

the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Agreements Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) of this clause.

(f) No proposal by the COMPANY for an equitable adjustment shall be allowed if asserted after final payment under this agreement.

23.2.2 Changes and Changed Conditions

(a) The Agreements Officer may, in writing, order changes in the drawings and specifications within the general scope of the agreement.

(b) The COMPANY shall promptly notify the Agreements Officer, in writing, of subsurface or latent physical conditions differing materially from those indicated in this agreement or unknown unusual physical conditions at the site before proceeding with the work.

(c) If changes under paragraph (a) or conditions under paragraph (b) increase or decrease the cost of, or time required for performing the work, the Agreements Officer may make an equitable adjustment (see paragraph (d)) upon submittal of a "proposal for adjustment" (hereafter referred to as proposal) by the COMPANY before final payment under the agreement.

(d) The Agreements Officer will not make an equitable adjustment under paragraph (b) unless-

(1) The COMPANY has submitted and the Agreements Officer has received the required written notice; or

(2) The Agreements Officer waives the requirement for the written notice.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause.

(1) The COMPANY shall promptly, and before the conditions are disturbed, give a written notice to the Agreements Officer of-

(i) Subsurface or latent physical conditions at the site which differ materially from those indicated in this agreement; or

(ii) 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 the agreement.

(b) The Agreements Officer will investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the COMPANY's cost of, or the time required for, performing any part of the work under this agreement, whether or not changed as a result of the conditions, an equitable

adjustment may be made under this clause and the agreement modified in writing accordingly.

(c) No request by the COMPANY for an equitable adjustment to the agreement under this clause shall be allowed, unless the COMPANY has given the written notice required; provided, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Agreements Officer.

(d) No request by the COMPANY for an equitable adjustment to the agreement for differing site conditions shall be allowed if made after final payment under this agreement.

23.2.3 Site Investigation and Conditions Affecting the Work.

(a) The COMPANY acknowledges that prior to commencing construction, it will take steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to:

(1) conditions bearing upon transportation, disposal, handling, and storage of materials;
(2) the availability of labor, water, electric power, and roads;
(3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and
(5) the character of equipment and facilities needed preliminary to and during work performance.

The COMPANY also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this agreement. Any failure of the COMPANY to take the actions described and acknowledged in this paragraph will not relieve the COMPANY from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the COMPANY based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this agreement, unless that understanding or representation is expressly stated in this agreement.

23.2.4 Requests for Equitable Adjustment.

(a) The amount of any request for equitable adjustment to agreement terms shall accurately reflect the agreement adjustment for which the COMPANY believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 3862(a), any request for equitable adjustment to agreement terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the COMPANY:

> I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.
>
> (Official's Name)
>
> (Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including—

> (1) Certified cost or pricing data, if required, and
>
> (2) Data other than certified cost or pricing data, , including actual cost data and data to support any estimated costs, even if certified cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to—

> (1) Requests for routine agreement payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type agreement, or progress payment invoices; or
>
> (2) Final adjustments under an incentive provision of the agreement.

23.3 Agreement Performance Schedule

The parties have agreed to follow a project schedule to not exceed 60 monthsfor the ALINS that were awarded at date the agreement was first signed. In the event the option ALINS are exercised the Company will incorporate the exercised services into the schedule as quickly as possible and to avoid any additional costs to the U.S. Government. The U.S. Government will not pay any more than the stated ALIN amount for exercised option ALINS. The proposed performance schedule will be the basis of the Agreement Performance Schedule.

23.3.1 Agreement Meetings and Conferences

There are five (5) types of meetings contemplated to support this effort.

1. Post-Award Orientation Conference/Preconstruction Conference.
2. Preconstruction Safety Conference.
3. Coordination Meeting - Construction Quality Management.
4. QC Meeting to clarify requirements for the development of the QC Plan.
5. Synchronization meeting - The COMPANY will need to support the meeting with meeting minutes and scheduling; attendees may be in-person and/or virtual.

Post Award conference is to review the agreement to include accident prevention, administrative requirements, personnel requirements, and procedural matters. This conference is very important because it establishes the ground rules for administering the agreement.

Preconstruction meeting is held to review and discuss the COMPANY's safety program. If possible, it should be held after the initial receipt of the COMPANY's Accident Prevention Plan (APP).

The Coordination Meeting is being held to achieve mutual understanding with the COMPANY of its role in quality control. Also, to review the QC Plan with the COMPANY. The Government must receive and review the QC Plan before the meeting. Acceptance of the plan can be accomplished after the meeting. Also to establish a good working relationship between the Government and the COMPANY.

The QC Plan Meeting is to develop a mutual understanding of the QC Plan requirements prior to planning development and submission.

Synchronization meetings occur every two weeks to provide Action Item and Technical Clarification status, schedule updates, discuss potential modifications, if any, and coordinate project issues to reduce project risk.

23.4 Company's Proposal
The U.S. Government and the Company agreed to incorporate the Company's proposal, entitled "XXXXXXXXXXXXXXXXX" into this Agreement by reference. Notwithstanding the order of precedence article of this agreement, where there is a conflict between the agreement or the attachments, the agreement or the attachments will be controlled instead of the proposal incorporated by reference. The Proposal is otherwise treated as an attachment for the purposes of the order of precedence article of this agreement.

23.5 POINTS OF CONTACT

The Agreements Officer is:
Jennifer Hastedt
Agreements Officer

HQ Mission & Installation Contracting Command (MICC)
Theater Support Center (TSC)
2219 Infantry Post Road
JBSA Fort Sam Houston, TX 78234-1361
Office Symbol CCMI-TSC

Teams Phone Number 520-944-7122
Please send all email to usarmy.jbsa.acc-micc.mbx.tsc-div1@army.mil you may CC the AO's NIPR email at Jennifer.L.Hastedt2.civ@army.mil.

The U.S. Government may appoint both primary and alternate Agreements Officer Representative (AORs) with the OTA award. All Agreements Officer Representatives (AORs) will have a letter detailing duties and responsibilities which will be provided to the selected offer with OTA award.

The planned AORs are:

Primary:

Alternates: