Table of Contents

STANDARD ARTICLES FOR PROGRESSIVE DESIGN-BUILD CONSTRUCTION OTHER TRANSACTION AGREEMENT

ARTICLE 1 – DEFINITIONS

ARTICLE 2: SCOPE OF THE AGREEMENT

ARTICLE 3: TERM OF AGREEMENT AND NOTICE TO PROCEED

ARTICLE 4: TERMINATION

ARTICLE 5: CHANGES TO THE AGREEMENT

ARTICLE 6: OBLIGATION AND PAYMENT

ARTICLE 7: BONDING REQUIREMENTS

ARTICLE 8: DISPUTE RESOLUTION

ARTICLE 9: CONFIDENTIAL AND PROPRIETARY INFORMATION

ARTICLE 10: DATA RIGHTS

ARTICLE 11: SECURITY

ARTICLE 12: TITLE TO AND DISPOSITION OF PROPERTY

ARTICLE 13: SAFEGUARDING CONTROLLED UNCLASSIFIED INFORMATION AND CYBER INCIDENT REPORTING

ARTICLE 14: GOVERNING LAW AND JURISDICTION

ARTICLE 15: STATUTORY AUTHORITY AND APPLICABLE LAW

ARTICLE 16: FORCE MAJEURE

ARTICLE 17: ASSIGNMENT

ARTICLE 18: ORDER OF PRECEDENCE

ARTICLE 19: SECURITY PROHIBITIONS AND EXCLUSIONS

ARTICLE 20: PROGRESSIVE DESIGN-BUILD RESPONSIBILITY

ARTICLE 21: DESIGN

ARTICLE 22: CONSTRUCTION

ARTICLE 23: RESPONSIBILITY AND INDEMNIFICATION

ARTICLE 24: COMPLIANCE WITH APPLICABLE LABOR LAWS

ARTICLE 25: LIQUIDATED DAMAGES FOR CONSTRUCTION

ARTICLE 26: SUSPENSION OF WORK

DRAFT

ARTICLE 27: BUY AMERICAN ACT REQUIREMENTS UNDER TRADE AGREEMENTS

ARTICLE 28: SMALL BUSINESS SUBCONTRACTORS

ARTICLE 29: SUBCONTRACTOR AGREEMENT

ARTICLE 30: CONGRESSIONAL AUTHORIZATION AND LIMITATION ON CONSTRUCTION

ARTICLE 31: NATIONAL DEFENSE PRIORITY RATING AND SPECIAL AUTHORITY

ARTICLE 32: MISCELLANEOUS

OPTIONAL ARTICLES FOR OTA TEMPLATE

ARTICLE XX: GOVERNMENT FURNISHED PROPERTY

ARTICLE XX: CYBERSECURITY REQUIREMENTS

ARTICLE XX: FOREIGN ACCESS TO TECHNOLOGY AND EXPORT CONTROL

ATTACHMENTS

ATTACHMENT 1 SCOPE OF SERVICES (SOS)

ATTACHMENT 2 MILESTONE AND PAYMENT SCHEDULE

DRAFT

STANDARD ARTICLES FOR PROGRESSIVE DESIGN-BUILD CONSTRUCTION OTHER TRANSACTION AGREEMENT

ARTICLE 1 – DEFINITIONS

1.1 A/E (Architect-Engineer) means the licensed professional, firm, or team responsible for planning, design, and preparation of technical drawings and specifications for the project.

1.2 Administrative Agreements Officer (AAO) means a warranted Agreements Officer delegated authority to administer delegated functions in support of the Agreement.

1.3 Adequate Security means protective measures commensurate with the consequences and probability of loss, misuse, unauthorized access to, or modification of information.

1.4 Agreement or OTA refers to the Other Transaction Agreement executed between the Government and the Design-Builder for the purpose of executing a Progressive Design-Build project. This Agreement is authorized under 10 U.S.C. 2808a. It is not a procurement contract, grant, or cooperative agreement and is not subject to the Federal Acquisition Regulation (FAR).

1.5 Agreements Officer (AO) is the warranted Government official with authority to enter into, administer, and/or terminate this Agreement.

1.6 Agreements Officer's Representative (AOR) is the individual designated by the Government to monitor technical and administrative performance and provide oversight of the Agreement.

1.7 Confidential Information means information and materials determined by the Disclosing Party to be of a confidential, proprietary, or Trade Secret nature and is designated in writing as such prior to the time of their disclosure. 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 marking, shall constitute Confidential or proprietary Information or a Trade Secret if such Disclosing Party, within thirty calendar days after disclosure, notifies the Receiving Party in writing describing the material or information and indicating that it is confidential, proprietary, 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 proprietary or a Trade Secret by the Design-Builder on its own behalf or on behalf of their subcontractors or suppliers.

1.8 Controlled Unclassified Information (CUI) is information that requires safeguarding, or dissemination controls pursuant to and consistent with applicable law, regulations, and Government-wide policies, but is not classified. Instructions for the use, marking, dissemination, and storage of CUI can be found in DoD Instruction 5200.48, "Controlled Unclassified Information (CUI).

1.9 Data means recorded information, regardless of form or method of recording, including technical data and software. Data does not include financial, administrative, cost, pricing, or management information.

1.10 Date of Completion is the date on which all work is completed or the date on which the period of performance ends.

1.11 Days means calendar days unless otherwise stated.

DRAFT

1.12 Deliverable Property includes the following described items acquired or produced by the Design-Builder that are or should be allocable or properly chargeable to this Agreement under sound and generally accepted accounting principles and practices:

(i) Parts, materials, inventories, and work in process;
(ii) Special tooling and special test equipment to which the Government is to acquire title;
(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph 1.12(ii) of this Article; and
(iv) Drawings and technical data, to the extent the Design-Builder or subcontractors are required to deliver them to the Government by other Articles of this Agreement.

1.13 Design-Builder means the Awardee of this Other Transaction Agreement.

1.14 Foreign Firm or Institution means a firm or organization organized under the laws of a country other than the United States, including entities owned or controlled by foreign governments, firms, or individuals.

1.15 Guaranteed Maximum Price (GMP): The maximum price payable to the Design-Builder for the complete performance of Phase 2 Services under this Agreement. The GMP constitutes a fixed, non-adjustable ceiling on the Government's total financial liability for the defined project scope. The Design-Builder assumes all risk for costs, overhead, or expenses incurred in the performance of the work that exceed the GMP. The GMP includes all direct and indirect costs, fees, contingencies, and any potential allowances as required to complete the Project.

1.16 Government means the United States of America, acting through the U.S. Army Corps of Engineers (USACE).

1.17 Milestone means a defined and scheduled event signifying the completion of a major deliverable or a set of related deliverables as identified in the Statement of Services. For the construction portion of the agreement, Government shall make monthly payments as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the agreement, as approved by the AO.

1.18 Off-Ramp refers to a contractual mechanism that allows the Government to discontinue the Progressive Design-Build relationship if a fair and reasonable GMP for construction cannot be achieved. Upon off-ramp, the Government retains rights to the completed design to continue the project through another delivery method or contractor.

1.19 Party means the Government or the Design-Builder.

1.20 Parties means the Government and the Design-Builder, collectively.

1.21 Progressive Design-Build (PDB) refers to a collaborative project delivery method where a single entity, the Design-Builder, is responsible for both design and construction. Under this delivery method, the project scope, design, and contract price are developed progressively with active owner (i.e. the Government) collaboration.

1.22 Property refers to tangible personal property used in performance of the Agreement, excluding items consumed during execution of the work.

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1.23 System for Award Management (SAM) refers to the official U.S. Government system where entities register to do business with the Federal Government.

1.24 Sensitive Compartmented Information Facility (SCIF) is an accredited facility where sensitive compartmented information may be stored, processed, or discussed.

1.25 Scope of Services (SOS) refers to a Government-provided document outlining the tasks, requirements, and deliverables for specific phases of the project.

1.26 Termination for Convenience means the exercise of the Government's right to completely or partially terminate performance of work under this Agreement when it is in the Government's interest in accordance with Article 4.

1.27 Termination for Default means the exercise of the Government's right to completely or partially terminate the Agreement in accordance with Article 4.

1.28 Trade Secret means all forms and types of financial, business, scientific, technical, economic, or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

(i) The owner thereof has taken reasonable measures to keep such information secret; and
(ii) The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

1.29 Unique Entity Identifier (UEI) is the 12-character alphanumeric identifier assigned to entities registered in SAM.

1.30 U.S. Army Corps of Engineers (USACE) is the Federal agency responsible for managing this solicitation and executing the Agreement.

1.31 Work includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

ARTICLE 2: SCOPE OF THE AGREEMENT

2.1 Background

This requirement will be executed using a Progressive Design-Build (PDB) model under Other Transaction authority pursuant to 10 U.S.C. § 2808a which permits the Department of Defense to execute transactions for facility repair and construction projects, including all associated planning, design, and engineering efforts. An Other Transaction (OT) is a special acquisition instrument authorized by Congress.

As a transaction other than a standard contract, grant, or cooperative agreement, this OT is exempt from the Federal Acquisition Regulation (FAR) and its supplements (e.g., DFARS). This flexible authority enables a more streamlined and collaborative approach to project execution. The award of the subject OT to the Design-Builder utilizing a qualifications-based selection (QBS) process shall constitute a competitive procedure allowing for the execution of a follow-on production contract or transaction.

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The Government intends to establish a collaborative, integrated team environment where the selected Design-Builder works closely with the Government to refine requirements, advance the design, and align scope, cost, and schedule within the established affordability constraints.

2.2 General Services

2.2.1 The Government shall provide the Design-Builder with Project Criteria describing program requirements and objectives for the Project. Project Criteria may include conceptual documents, design specifications, design performance specifications, and other technical materials and requirements prepared by or for Government use.

2.2.2 If Project Criteria have not been developed prior to the execution of this Agreement, the Design-Builder will assist in developing Project Criteria.

2.2.3 The Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations for different and innovative approaches to the design and construction of the Project. The Parties shall meet to discuss written evaluation of Project Criteria and agree upon what revisions, if any, should be made to such criteria.

2.3 Agreement Structure – Phased Services

2.3.1 Phase 1 Services. Design-Builder shall perform the services of design, pricing, and other services for the Project based on Project Criteria, as may be revised in accordance with Section 2.2, as set forth in Attachment 1, Scope of Services (SOS). Design-Builder must perform such services to the level of completion required for the Parties to establish a Guaranteed Maximum Price (GMP) for award of the Phase 2 Agreement. The GMP for Phase 2 shall be developed during Phase 1 on an "open-book estimate" basis. Design-Builder's compensation for Phase 1 Services is set forth in [Article TBD herein or designated location]. The level of completion required for Phase 1 Services is defined in Attachment 1, SOS (see defined deliverables).

2.3.2 Phase 2 Services. Design-Builder's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing, and commissioning of the Project, and the provision of warranty services, all as further described in the Phase 2 agreement.

2.3.3 Pricing Structure and GMP. This Agreement is structured as a fixed-price OT utilizing milestone-based payments in support of the above-mentioned Phased services provided. Upon completion of the Phase 1 services, or as otherwise designated in the SOS, Design-Builder shall submit a GMP proposal for the completion of the Phase 2 design and construction. Upon negotiation of a fair and reasonable price for the GMP for Phase 2, and subject to the availability of funds, the Parties may execute the Phase 2 award.

(a) The Design-Builder guarantees that the total price to the Government for the complete execution of Phase 2 Services shall not exceed the established GMP. The specific documents used as a basis for the GMP shall be identified in the Phase 2 bilateral modification.

(b) The Design-Builder does not guarantee any specific line item provided as part of the GMP and has the sole discretion to apply savings due to underruns in one line item to cover overruns in any other line item.

(c) The Design-Builder will be responsible for completing the work and paying all costs of completion that may exceed the GMP at its own risk in accordance with this Agreement.

2.3.4 Transition from Phase 1 to Phase 2 is contingent upon mutual agreement of scope, schedule, and fixed pricing, and will be implemented through a bilateral modification. The Government reserves the right to not proceed to Phase 2. If the Parties cannot agree regarding the scope or price of Phase 2, or if the Government does not receive sufficient funding to execute a modification for Phase 2, the Parties will "off ramp" at the conclusion of Phase 1 services. If the Parties cannot agree on a GMP for construction by the time designated in the [SOS], the Parties will "off ramp" at such time.

2.3.5 Should unforeseen events or agreed-upon changes affect the construction timeline, a revised schedule shall be negotiated by the Parties. Any such revision requires a formal bilateral modification to this Agreement to become effective. Design-Builder shall be responsible for performance of the work set forth in the SOS. The Design-Builder shall provide all documentation required in accordance with the deliverables table set forth in the SOS.

2.4 Joint Risk Register

2.4.1 The Design-Builder shall develop and maintain a Joint Risk Register in close coordination with the Government. The purpose of the register is to proactively identify, analyze, and mitigate project risks throughout both Phase 1 and Phase 2. During Phase 1, the register shall serve as a foundational, open-book component for collaboratively developing and negotiating the Phase 2 GMP proposal. The Government shall have the right to review and approve the Risk Register and any substantive updates. The specific format, content, and review procedures shall be defined in the SOS.

ARTICLE 3: TERM OF AGREEMENT AND NOTICE TO PROCEED

3.1. Term of this Agreement

The term of this Agreement commences upon the effective date of the [bilaterally executed SF XX] and continues as defined in the SOS. 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. Notice to Proceed Authority

The AO will issue a written Notice to Proceed (NTP) to authorize the Design-Builder to commence performance under this Agreement. The NTP shall specify the scope of work, period of performance, and funding authorized. No work shall begin until the Design-Builder receives a written NTP executed by the AO.

3.3 Phased Performance Structure

Performance under this Agreement shall be executed in phases consistent with a PDB approach as identified in Article 2 above.

Authorization to proceed beyond each phase requires an Agreement modification executed by the AO and subsequent NTP.

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ARTICLE 4: TERMINATION

4.1 Termination Provisions

4.1.2 The Government may terminate performance of work under this Agreement, in whole or in part, if the AO determines that a termination is in the Government's interest (termination for convenience) or because of the contractor's actual or anticipated failure to perform its obligations in accordance with 4.2 Termination for Default. The AO shall initiate termination by delivering a written Notice of Termination to the Design-Builder, specifying type of termination, the extent of the termination, and its effective date. The Parties will negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination, which may include non-cancelable commitments.

4.1.3 Upon receipt of a Notice of Termination, and unless otherwise directed by the AO, the Design-Builder shall immediately proceed with the following obligations:

(a) Stop work as specified in the notice and direct its subcontractors and suppliers to do the same.
(b) Place no further orders for materials, services, or facilities, except as may be necessary for completing any portion of the work not terminated.
(c) Terminate all subcontracts and orders to the extent they relate to the terminated work.
(d) Take any action necessary, or that the AO may direct, for the protection and preservation of the property related to this project in which the Government has or may acquire an interest.
(e) Complete performance of any work not terminated.

4.1.4 If the Government terminates this Agreement for convenience, it shall pay the Design-Builder for all work satisfactorily performed up to the date of termination, plus reasonable and documented demobilization costs and costs incurred to settle obligations with subcontractors and suppliers entered into prior to the Design-Builder's receipt of the termination notice.

4.2 Termination for Default

(a) If the Design-Builder fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, or is otherwise in substantial breach of a provision in this Agreement, the Government may, by written notice to the Design-Builder, terminate the right to proceed with the work (or the separable part of the work) that has been delayed or impacted by the breach. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Design-Builder and its sureties shall be liable for any damage to the Government resulting from the Design-Builder's refusal or failure to complete the work within the specified time, whether or not the Design-Builder's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Design-Builder's right to proceed shall not be terminated nor the Design-Builder charged with damages under this clause, if the AO finds that delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Design-Builder, as identified in Article 16, Force Majeure, and the Design-Builder notifies the AO within 10 days from the beginning of such delay.

(c) If, after termination, it is determined that the Design-Builder was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

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(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

2.3. Extending the Term

The Parties may extend, by mutual written agreement, the term of this Agreement if opportunities within the scope set forth in Article 2 reasonably warrant. Any extension shall be formalized through modification of the Agreement by the AO and the Design-Builder and in accordance with procedures outlined in Article 5, Changes

2.4. Special Termination

Representations and Covenants Regarding Foreign Ownership, Control, or Influence (FOCI)

(a) Representation. The Design-Builder represents that it is not under foreign ownership, control, or influence (as defined by 32 C.F.R. § 2004.40 and other applicable U.S. law) that would pose an unacceptable risk to U.S. national security.

(b) Duty to Disclose. The Design-Builder shall immediately provide written notification to the AO if it becomes aware of any actual or proposed change in its ownership or control, or that of any parent Design-Builder, that could result in a new foreign interest or a change in the level of existing foreign interest. This includes any transaction that could be subject to review by the Committee on Foreign Investment in the United States (CFIUS).

(c) Right to Terminate for National Security. If the Government determines, at its sole discretion, that a change in the Design-Builder's ownership, control, or influence status constitutes an unacceptable risk to national security, the Government may terminate this Agreement for cause. Such a termination will be initiated with a Notice of Termination and be effective immediately upon receipt.

ARTICLE 5: CHANGES TO THE AGREEMENT

(a) General. This Agreement may only be modified by a written instrument formally executed by the Government's AO.

(b) Bilateral Modifications. All substantive changes to this Agreement require the mutual written consent of both Parties. This includes, but is not limited to, changes to the SOS, period of performance, total fixed price, or milestone payment schedule.

Either Party may propose such a modification. The proposing Party shall provide a detailed justification outlining the technical, schedule, and financial impacts of the proposed change. Following review and negotiation, any agreed-upon modification will be formalized in a bilateral modification signed by both the AO and an authorized representative of the Design-Builder. The Government is not obligated to pay for any work beyond the existing scope or milestones until such a modification is executed.

(c) Unilateral Administrative Modifications. The AO may unilaterally issue administrative modifications that do not affect the substantive rights of the Parties. Such changes are limited to actions like correcting typographical errors, changing administrative data (e.g., paying office information), or updating the names of Government personnel assigned to the Agreement. These administrative modifications do not require the Design-Builder’s signature.

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ARTICLE 6: OBLIGATION AND PAYMENT

6.1 Obligation

(a) The Government's liability to make payments to the Design-Builder is limited to only those funds obligated under the Agreement or by modification to the Agreement. The Government is not obligated to reimburse Design-Builder for expenditures in excess of the amount of obligated funds allotted by the Government.

(b) If modification becomes necessary in performance of this Agreement, pursuant to Article 5, Changes to the Agreement, the Parties shall execute a revised Schedule of Milestones and Payment for prospective milestones within the agreed fixed-price structure.

6.2 Payments

(a) Basis for Payment. Payments shall be made in fixed amounts based on the successful completion and Government acceptance of the payable milestones defined in Schedule of Milestones and Payment. Each milestone payment represents the full and fair value received by the Government for the work accomplished.

(b) Phase 2 Cost-Loaded Schedule and Schedule of Values (SOV). For Phase 2 execution, progress payments shall be tied to a SOV derived from an approved cost-loaded and resource-loaded schedule. The Design-Builder maintains flexibility to invoice for actual costs that vary (more or less) from individual SOV line items without requiring a formal modification, provided the aggregate of all payments does not exceed the overall GMP.

(c) Allowances and Shared Savings. The Phase 2 SOV may include specific line items designated as Allowances.

1. Shared Savings: If the final actual costs of an Allowance item are less than the estimated line-item value, the realized savings shall be shared between the Government and the Design-Builder based on the percentage split negotiated in the Phase 2 bilateral modification.

2. Overruns: If actual costs exceed the estimated Allowance value, the Design-Builder shall absorb the overrun utilizing its internal line-item flexibility in the SOV. Allowance overruns shall never exceed the overall GMP.

(d) Invoicing and Payment Process.

- Progress Verification: The Design-Builder shall document progress against the milestones (and Phase 2 SOV) in the monthly Progress Report, as required by the SOS.
- Invoice Submission: Following the Agreements Officer's Representative (AOR)'s verification of a complete milestone or SOV progress, the Design-Builder shall submit a corresponding invoice through the Resident Management System (RMS) or the Construction Management Platform (CMP), whichever is in place at time of award and consistent with attached specifications.
- Payment: The USACE Finance Center will process payment within 14 calendar days of a properly submitted and accepted invoice in RMS or CMP. Detailed invoice submission procedures are specified https://rms.usace.army.mil/rms_manuals&help_files.html

(e) Funding Limitation. The Government's total financial liability under this Agreement shall not exceed the amount of funds obligated.

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6.3 Financial Accountability

The Design-Builder shall maintain records sufficient to demonstrate completion of milestones and deliverables required under this Agreement.

The Government retains the right to verify milestone completion, validate performance against the SOS, review documentation supporting deliverables. All payments are based solely on successful completion and acceptance of agreed milestones.

6.4 Prompt Payment Requirements

Payment is considered made on the date of an electronic funds transfer (EFT). All days referred to in this Article are calendar days, unless otherwise specified.

6.4.1 Invoices

(a) Types of invoice payments.

(i) Payment in accordance with the Schedule of Milestones and Payment. The Government will pay no later than 14 days after receipt of a proper invoice.

(ii) Final payments based on completion and acceptance of all work under the Agreement. Final payments will be made the later of the following two events:

(1) The 30th day after receipt of a proper invoice from the Design-Builder.

(2) The 30th day after Government acceptance of the work or services.

(b) A "proper invoice" includes items (i) through (xi) below:

(i) Name and address of the Design-Builder

(ii) Invoice date and invoice number.

(iii) Agreement number.

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., discount for prompt payment terms).

(vi) Name and address of Design-Builder official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) For payments in accordance with the Schedule of Milestones and Payment, substantiation of the amounts requested.

(ix) Taxpayer Identification Number (TIN).

(x) Electronic funds transfer (EFT) banking information.

(xi) Any other information or documentation required by the Agreement.

(c) If the invoice does not comply with requirements 6.4.1(b)(i-xi) of this Article, the Government will notify the Design-Builder within 7 days after receipt and identify the invoice deficiencies. When computing any interest penalty owed, the Government will consider its timeliness in notifying the Design-Builder of an improper invoice.

(d) *Interest penalty*. The Government will automatically pay an interest penalty to the Design-Builder if payment is late and the conditions listed below are met. However, when the due date falls on a Saturday, Sunday, or legal holiday, the Government may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) There was no disagreement over quantity, quality, Design-Builder compliance with any Agreement term, condition, or requested milestone payment amount.

(iii) In the case of a final invoice for any balance of funds due the Design-Builder for work or services performed, the amount was not subject to further Agreement settlement actions between the Government and the Design-Builder.

(e) *Computing penalty amount*. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315. The Government will not pay an interest penalty if payment delays are due to disagreement between the Parties over the payment amount or other issues involving Agreement compliance, or on amounts temporarily withheld or retained in accordance with the terms of the Agreement. The Parties will resolve claims involving disputes, and any interest that may be payable in accordance with Article 8, Disputes.

(f) *Discounts for prompt payment*. The Government will pay an interest penalty automatically if the Government improperly takes a discount for prompt payment. The interest penalty will be calculated in accordance with 5 CFR part 1315.

(g) Additional interest penalty. The Government will pay a penalty amount, calculated in accordance with 5 CFR part 1315 in addition to the interest penalty amount only if-

(i) The Government owes an interest penalty of $1 or more;
(ii) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and
(iii) The Design-Builder makes a written demand to the Government for additional penalty payment within 40 days after the date the invoice amount is paid, and the demand specifically identifies that late payment interest is due under a specific invoice; requests payment of all overdue late payment interest penalty; attaches a copy of the invoice; and states that payment of the principal has been received, including the date of receipt.

6.4.2. Flow Down Requirements. The Design-Builder must include in each subcontract under this Agreement the following:

(a) Prompt payment for subcontractors. A payment Article that obligates the Design-Builder to pay the subcontractor for satisfactory performance within 7 days from when Design-Builder receives payment from the Government under this Agreement.

(b) Interest for subcontractors. An interest penalty Article that obligates the Design-Builder to pay to the subcontractor an interest penalty for each payment not timely made -

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and
(ii) Computed at the Treasury-established rate from the day after the due date until paid.

(c) Subcontractor Article Flow Down. An Article requiring each subcontractor to include a payment and interest penalty article and require all lower tier subcontractors to do the same.

6.4.3 Subcontract Article interpretation. The Articles required by paragraph 6.4.2 of this Article shall not be construed to impair the right of the Design-Builder or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that-

(a) Enable the Design-Builder or any subcontractor to retain (without cause) a specified percentage for satisfactory work, otherwise due, without paying interest penalties, as long as it is agreed upon in the contract,
(b) Withhold all or part of a payment if the request doesn't comply with subcontract terms, or

(c) Permit such withholding without incurring any obligation to pay a late payment penalty if a formal notice is provided to the subcontractor and a copy to the AO, where the notice identified the amount to be withheld, the cause for withholding, and the remedial actions to be taken by contractor to receive payments on such amounts.

6.4.4 Subcontractor payment entitlement. The Design-Builder may not request payment from the Government of any amount withheld or retained in accordance with paragraph 6.4.3 of this Article until the Design-Builder has determined and certified to the Agreement's Officer that the subcontractor is entitled to the payment of such amount.

6.4.5 Prime-subcontractor disputes. A dispute between the Design-Builder and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under an Article included in the subcontract pursuant to paragraph 6.4.3 of this Article does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

6.4.6 Preservation of prime-subcontractor rights. Except as provided in paragraph 6.4.5 of this Article, this Article shall not limit or impair any remedies otherwise available to the Design-Builder or a subcontractor in the event of a dispute involving late payment or nonpayment by the Design-Builder or deficient subcontract performance or nonperformance by a subcontractor.

6.4.7 Non-recourse for Design-Builder interest penalty. The Design-Builder's obligation to pay an interest penalty to a subcontractor pursuant to the Articles included in a subcontract under paragraph 6.4.3 of this Article shall not be construed as an obligation of the Government for such interest penalty.

6.4.8 Overpayments. If the Design-Builder becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid, the Design-Builder must remit the overpayment amount to the payment office cited in the Agreement, with a copy to the Agreement's Officer, and identify the circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment); the affected Agreement number and milestone payment; and the Design-Builder point of contact.

ARTICLE 7: BONDING REQUIREMENTS

(a) Amount of required bonds. The Design-Builder must provide performance (Standard Form 25) and payment (Standard Form 25-A) bonds, or other Government-approved security, to the AO in the amount of 100% of the Phase 2 Agreement GMP amount as a condition for issuance of a Notice to Proceed (NTP). The Design-Builder must submit the required security within [number of days] days Phase 2 Agreement execution. Failure to do so may result in termination of the remainder of the Agreement. Bonds shall be issued by a surety acceptable to the Government and listed in U.S. Treasury Department Circular 570 or otherwise approved by the AO. The AO may approve alternative security (e.g., letter of credit or guarantee) and may reduce requirements as risk decreases.

(b) If the GMP is to be modified in an amount that increases the overall construction price by more than $50,000, a consent of surety must be obtained.

(c) 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.

ARTICLE 8: DISPUTE RESOLUTION

The Parties will communicate in good faith and cooperate to resolve any disagreement or claim arising under this Agreement in a timely and efficient manner. This Article provides the sole and exclusive procedure for resolving such disputes.

(a) Disputes Generally:
Each assertion by the Design-Builder that it is entitled to money against the Federal Government, not otherwise included in the GMP Agreement, relating to this Agreement must be submitted, in writing, to the AO for a decision. Each such assertion shall be submitted within 3 years after the underlying facts of the assertion have accrued. Each such assertion must include a sum certain for each legally or factually divisible assertion of government fault allegedly entitling the contractor to compensation.

(b) Fraudulent assertion:
This section does not authorize an AO to settle, compromise, pay, or otherwise adjust any assertion involving fraud. If an AO suspects fraud related to the Agreement, the AO need not issue a decision related to any assertion submitted under that Agreement.

(c) Issuance of a Decision:
The AO will issue a decision in writing on any submitted assertion within 180 days of receipt of a written request from the contractor.

(d) Appealing a Dispute in Federal Court:
Either Party may bring an action directly on the assertion in the United States Court of Federal Claims ("COFC"), notwithstanding any Agreement provision, regulation, or rule of law to the contrary. The aggrieved party shall have the right to pursue monetary remedies in the COFC pursuant to the Tucker Act, 28 U.S.C. § 1491(a)(1).

(e) Mediation
The parties agree that it is in their mutual interest to solve things at the lowest and most efficient level. Either Party may request mediation at any time after receipt of the AO Decision, including before or after appeal to the COFC.

(f) Failure to agree to any adjustment shall be a dispute under the Disputes Article. The Design-Builder must proceed diligently with performance of this Agreement as directed by the AO, pending final resolution of any request for relief, claim, appeal, or action arising under the agreement.

ARTICLE 9: CONFIDENTIAL AND PROPRIETARY INFORMATION

(a) Exchange of Information. The Parties anticipate exchanging information they consider proprietary or confidential. This may include "Government Confidential Information" disclosed by the Government and "Trade Secrets" or "Confidential Information" disclosed by the Design-Builder (collectively, "Proprietary Information"). Neither Party is obligated to disclose any information unless it is required for the performance of this Agreement.

(b) Duty of Confidentiality. To the extent permitted by law, the Party receiving Proprietary Information (the "Receiving Party") agrees to protect it from unauthorized use or disclosure. The Receiving Party shall not disclose such information to any third party, except as expressly permitted herein. All Proprietary Information remains the property of the Party that disclosed it (the "Disclosing Party").

(c) Authorized Disclosures. A Receiving Party may disclose Proprietary Information only:

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(i) To its employees, subcontractors, and consultants who have a need to know for the performance of this Agreement and who are bound by similar confidentiality obligations;
(ii) As required by law or a court order, provided that the Receiving Party gives the Disclosing Party prompt written notice to allow it to seek a protective order; or
(iii) With prior written authorization from the Disclosing Party.

(d) Exceptions. The duty of confidentiality does not apply to information that:
(i) Is or becomes publicly available through no fault of the Receiving Party;
(ii) Is identified with a suitable notice or legend indicating it is not confidential;
(iii) Was already in the Receiving Party's possession without restriction, as proven by written records;
(iv) Is lawfully received from a third party without an obligation of confidentiality; or
(v) Is independently developed by the Receiving Party without reference to the Disclosing Party's Proprietary Information, as proven by written records.

(e) Return of Information. Upon request, the Receiving Party shall promptly return all tangible copies of the Disclosing Party's Proprietary Information. However, one (1) copy may be retained for archival or audit purposes, subject to the continuing obligations of this Article.

(f) Term of Obligation. 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 (5) years after the expiration or termination of this Agreement.

(g) Flow-Down. Each Party shall flow down the requirements of this Article to all subcontracts and team member agreements where the exchange of Proprietary Information is anticipated.

ARTICLE 10: DATA RIGHTS

(a) "Unlimited rights" means the rights of the Federal Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner or form, and for any purpose, and to have or permit others to do so on its behalf.

(b) The Government shall have-
Unlimited rights, in all drawings, designs, plans, specifications, notes, surveys, maps, and other works developed in the performance of this Agr1eement, including the right to use the same on any other Federal Government design or construction without additional compensation to the Design-Builder.

The Design-Builder hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design or architectural or original works patent or copyright laws. The Contractor will assign such rights (with or without registration) to the Government upon the request of the Agreement's Officer.

Except as otherwise specifically provided for in this contract, the Design-Builder shall not use, release, reproduce, distribute, or publish any data or works produced in the performance of this Agreement, nor authorize others to do so, without express written permission of the AO.
The Design-Builder for a period of three (3) years after completion of the Agreement agrees to furnish the original or copies of all such works on the request of the AO.

(c) Government Re-Use of Design. The Government will not ask for additional originals or copies of the design works after the Design-Builder provides all required design documentation and record drawing documentation under this Agreement. Further, if the Government uses the design for other projects

without additional compensation to the Design-Builder for re-use, the Government releases the Design-Builder from liability in the design on the other projects, due to defects in the design that are not the result of fraud, gross mistake as amounts to fraud, gross negligence or intentional misrepresentation.

(d) Rights Upon Termination ("Off-Ramp")
In the event this Agreement is terminated for any reason prior to completion, the Government's rights as specified in this Article shall apply to all Data created or generated up to the effective date of termination. This includes, but is not limited to, all design deliverables, drawings, specifications, calculations, and models. The Government shall have the full right to use, modify, and build upon such Designs to complete the project with a different entity. In such an event, Government releases the Contractor from liability in the design on the other projects, due to defects in the design that are not the result of fraud, gross mistake as amounts to fraud, gross negligence or intentional misrepresentation.

ARTICLE 11: SECURITY

(a) General Security Requirements
The Design-Builder and all its personnel, including subcontractors, shall comply with all applicable security policies, procedures, and emergency management exercises for the Government installation or facility where work is performed.

Installation Access: All personnel must comply with local access control procedures, which may include background checks (e.g., NCIC-III), personal identity verification, vehicle searches, and the wearing of ID badges. The Design-Builder is responsible for providing all information necessary to facilitate these checks. Specific access requirements for [Insert Installation Name or "the project site"] will be provided by the AO's Representative (AOR).

Force Protection Conditions (FPCON): The Design-Builder must adjust its security posture as directed by the Government in response to changes in the FPCON level. During higher threat levels (e.g., FPCON Charlie/Delta), the Government may restrict or postpone site access and services, which will resume when the threat is reduced to an acceptable level.

(b) Information Security and Handling
The Design-Builder shall be capable of handling and protecting unclassified information in accordance with all applicable standards.

Controlled Unclassified Information (CUI): All personnel must be capable of properly handling, receiving, storing, and transmitting CUI, including information marked as For Official Use Only (FOUO).

Secure Transmission: All CUI must be transmitted using a Government-approved, controlled means, such as encrypted email, the DoD SAFE (Safe Access File Exchange) website, or other methods as directed by the AOR.

(c) Required Training
The Design-Builder shall ensure its personnel and all subcontractor personnel complete the following Government-mandated training. Certificates of completion for all required training shall be provided to the AOR within 14 days of completion.

Operations Security (OPSEC) Training: All personnel must complete initial OPSEC awareness training within 30 days of the Agreement award and annually thereafter. This training can be accessed at the Center for Development of Security Excellence (CDSE) website https://securityawareness.dcsa.mil/opsec/index.htm or as otherwise directed by the AOR.

Antiterrorism (AT) / iWATCH Training: All personnel assigned to a DoD installation must complete the local iWATCH / AT awareness training program within 45 days of the Agreement award and annually thereafter. This training provides guidance on identifying and reporting suspicious activity. Register on https://jkodirect.jten.mil/Atlas2/page/login/Login.jsf and select **Non-Government Personnel / Sponsored Account Registration** (the AAO or AOR will approve) title of the training is Level I Antiterrorism Awareness Training.

(d) Classified Information
No work under this Agreement is expected to be classified. However, should a requirement for access to classified information arise, such access will be governed by the National Industrial Security Program Operating Manual (NISPOM), 32 C.F.R. Part 117 (https://www.dcsa.mil/Industrial-Security/National-Industrial-Security-Program-Oversight/32-CFR-Part-117-NISPOM-Rule/), and all applicable DoD security regulations.

ARTICLE 12: TITLE TO AND DISPOSITION OF PROPERTY

The Government will not take title to Design-Builder-acquired or Design-Builder-produced property, except property the Agreement identifies as Deliverable Property, unless the Parties agree otherwise. The Design-Builder shall be responsible for the maintenance, repair, protection, and preservation of all property at its own expense during the term of the Agreement.

ARTICLE 13: SAFEGUARDING CONTROLLED UNCLASSIFIED INFORMATION AND CYBER INCIDENT REPORTING

(a) Adequate Security Requirement
The Design-Builder shall provide adequate security for all information systems that store, process, or transmit Covered Defense Information (CDI) or other Controlled Unclassified Information (CUI).

NIST SP 800-171: At a minimum, the Design-Builder must implement the security requirements of the National Institute of Standards and Technology (NIST) Special Publication 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations," as soon as practical.

Variances: Any request to vary from a NIST SP 800-171 requirement must be submitted in writing to the AO for consideration by the DoD Chief Information Officer (CIO).

Cloud Services: If using an external cloud service provider for CUI, the Design-Builder must ensure the provider meets security requirements equivalent to the FedRAMP "Moderate" baseline and complies with the cyber incident reporting duties of this Article.

(b) Cyber Incident Reporting

Definition: A "Cyber Incident" is an action that affects a covered information system, the CUI residing on it, or the Design-Builder's ability to perform operationally critical work.

72-Hour Reporting Deadline: When the Design-Builder discovers a Cyber Incident, it shall rapidly report it to the DoD within 72 hours via the DIBNet portal: http://dibnet.dod.mil.

Required Certificate: To submit a report, the Design-Builder must have a DoD-approved medium assurance public key infrastructure (PKI) certificate.

Initial Review: Upon discovering an incident, the Design-Builder must immediately review its systems to identify the scope of the compromise, including what data, computers, and user accounts were affected.

(c) Post-Incident Actions and Cooperation

Malicious Software: If malicious software is discovered, it must be submitted to the DoD Cyber Crime Center (DC3) at https://www.dc3.mil/. Do not send it to the AO.

Media Preservation: The Design-Builder shall preserve and protect forensic images of all affected systems and relevant network data for at least 90 days from the date of the incident report to allow DoD to request it for analysis.

Access for Forensic Analysis: Upon request, the Design-Builder shall provide DoD with access to any additional information or equipment necessary to conduct a forensic analysis and damage assessment.

(d) Protection of Design-Builder Proprietary Information
The Government shall protect any proprietary or attributional information submitted by the Design-Builder under this Article from unauthorized use or release. When releasing information for law enforcement or national security purposes, the Government will take appropriate measures to minimize the inclusion of the Design-Builder 's proprietary data.

(e) Flow-Down Requirement
The Design-Builder shall include the substance of this entire Article in all subcontracts, at any tier.

ARTICLE 14: 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 8: Disputes of this Agreement.

ARTICLE 15: STATUTORY AUTHORITY AND APPLICABLE LAW

(a) Compliance with the Law. The Design-Builder must, in the performance of all work under this Agreement, comply with all applicable Federal, State, and local laws and regulations. Nothing in this Agreement shall be construed as relieving the Design-Builder of any obligation to comply with such applicable laws.

(b) Applicable Federal Laws and Public Policy Requirements, include but are not limited to:

- Nondiscrimination - Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.).
- Trafficking in Persons - Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. Chapter 78), and Executive Order 13627.
- Debarment and Suspension -Pursuant to Executive Order 12549, the Design-Builder certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal agency.
- Drug-Free Workplace - Compliance with the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690), including maintaining a drug-free workplace.
- Certification Regarding Lobbying (31 U.S.C. § 1352)
- Copeland Anti-Kickback Act, 18 USC 874

- Procurement Integrity Act, 41 U.S.C. §2101-2107
- National security and export control compliance, to include the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Part 120, et seq.); Export Administration Regulations (EAR), 15 C.F.R. Parts 730–774; and National Industrial Security Program Operating Manual (NISPOM), 32 C.F.R. Part 117, as applicable.
- In accordance with applicable appropriations restrictions (e.g., Pub. L. 114-53 and successor provisions), the Government shall not enter into this Agreement with any corporation that has an unpaid Federal tax liability that has been finally assessed and is not being paid in a timely manner, or a felony conviction under Federal law within the preceding 24 months, unless the Government has considered suspension or debarment and determined that further action is not necessary to protect its interests.

(c) Flow-Down Requirement
The Design-Builder shall ensure that all applicable provisions of this Article are flowed down to subrecipients and lower-tier participants, as appropriate to the nature of the work.

ARTICLE 16: FORCE MAJEURE

(a) Definition
A "Force Majeure Event" is a cause beyond a Party's reasonable control that delays or prevents its performance under this Agreement. Such events include, but are not limited to: acts of God or of the public enemy, Acts of the Government in either its sovereign or contractual capacity, fire, flood, epidemics, pandemics, quarantine restrictions, strikes, unusually severe weather, earthquake, war, rebellion, insurrection, terrorism, riots, freight embargoes or blockades, or other similar events.

(b) Excusable Delay
Neither Party shall be considered in breach of this Agreement or be held liable for any failure or delay in performance resulting from a Force Majeure Event.

(c) Obligations of the Affected Party
It is understood that any such failure or omission resulting from a Force Majeure event is to be cured as soon as is practicable after the occurrence of one or more of such causes. The party affected by the Force Majeure event shall provide prompt written notice to the other party, explaining the nature of the event and its anticipated impact on performance. The Party affected by the Force Majeure Event shall make all reasonable efforts to mitigate the effects of the event and to resume performance as soon as practicable.

(d) Equitable Adjustment
In the event that a Force Majeure Event causes a delay to the project, the Design-Builder shall be entitled to an equitable adjustment to the period of performance and the project schedule; no adjustment to the Agreement price shall be made due to Force Majeure events.

Only schedule relief may be granted unless the Government directs a change in scope, in which case a bilateral modification will be executed.

ARTICLE 17: ASSIGNMENT

(a) General Prohibition
Neither Party shall assign its rights or delegate its obligations under this Agreement to any other entity without the prior, explicit written consent of the other Party.

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(b) Exceptions for the Government
This article shall not be construed to prevent the Government from delegating its administrative authority over this Agreement to a different Agreements Officer within USACE.

(c) Exception for the Design-Builder
This article shall not be construed to preclude the Design-Builder from assigning its rights to monies due or to become due under this Agreement to a bank, trust company, or other financing institution, pursuant to the Assignment of Claims Act (31 U.S.C. § 3727 and 41 U.S.C. § 6305). However, Design-Builder shall not furnish or disclose to any assignee under this contract any classified document, this agreement, or information related to work under this contract until the AO authorizes such action in writing.

ARTICLE 18: ORDER OF PRECEDENCE

Should any conflict or inconsistency arise among the documents comprising this Agreement, the following descending order of precedence shall govern:

(a) First, the main body of this Agreement (All Articles – see also 23.14 Specifications and Drawings).

(b) Second, the SOS.

(c) Third, all other elements of the accepted Phase 2 proposal.

(d) Lastly, any design products including, but not limited to, plans, specifications, engineering studies and analysis, shop drawings, equipment installation drawings, etc. Design products must conform to all the articles of agreement in the order of precedence herein.

No attachment incorporated after the initial execution of this Agreement shall be construed to amend the main body of the Agreement or any earlier attachment unless it specifically states its intent to do so and clearly identifies the article or section being amended.

ARTICLE 19: SECURITY PROHIBITIONS AND EXCLUSIONS

(a) Specific Technology Prohibitions
In accordance with applicable national security statutes and Department of Defense (DoD) security policies, the Design-Builder is strictly prohibited from providing to the Government, or utilizing in the performance of this Agreement, any equipment, software, system, or service prohibited by the following Acts and mandates:

- Consolidated Appropriations Act, 2023 (Section 102, Division R): Prohibition on covered applications, including TikTok or any successor application developed or provided by ByteDance Limited, on any information technology used in the performance of this Agreement.
- National Defense Authorization Act (NDAA) for FY 2018 (Section 1634): Prohibition on any hardware, software, or service developed or provided, in whole or in part, by Kaspersky Lab or its covered entities.
- John S. McCain NDAA for FY 2019 (Section 889) & DoD Telecommunications Security Mandates: Prohibition on covered telecommunications equipment or services—specifically video surveillance and telecommunications equipment produced by Huawei, ZTE, Hytera, Hikvision, or Dahua (or their affiliates)—used as a substantial or essential component or critical technology of any system. Furthermore, this prohibition extends to "covered defense telecommunications equipment or services" from "Covered Foreign Countries," which explicitly includes both The

People's Republic of China and The Russian Federation. This scrutiny is strictly enforced for systems supporting "Covered missions," defined as DoD nuclear deterrence and homeland defense missions.

- American Security Drone Act of 2023 (NDAA FY 2024, Sections 1823-1826): Prohibition on the delivery, use, or operation of any Federal Acquisition Security Council (FASC)-prohibited unmanned aircraft system (UAS/drones) manufactured or assembled by covered foreign entities.

(b) Sanctions and Country-Specific Prohibitions
Regardless of connection to this specific Agreement, the Design-Builder shall not engage in transactions or acquire supplies/services that violate the following geopolitical sanctions:

- Office of Foreign Assets Control (OFAC) Regulations: Prohibitions administered by the Department of the Treasury (31 CFR Chapter V) regarding blocked persons and restricted imports/transactions (e.g., Cuba, North Korea). The Design-Builder must screen entities against the OFAC Specially Designated Nationals (SDN) List and the Consolidated Screening List.
- Accountability and Divestment Act of 2007: Prohibition on conducting restricted business operations in Sudan.
- Iran Sanctions Act & International Emergency Economic Powers Act: Prohibitions on engaging in certain activities, exporting sensitive technology, or engaging in significant transactions with Iran, its Revolutionary Guard Corps, or its agents.

(c) Federal Acquisition Supply Chain Security Act (FASCSA) Orders
The Design-Builder shall not provide or use any covered article, product, or service produced by a source that is prohibited by an applicable FASCSA Order issued by the Department of Defense (DoD), Department of Homeland Security (DHS), or Director of National Intelligence (DNI).

(d) Design-Builder Diligence and Continuous Monitoring
The Design-Builder shall conduct a reasonable inquiry to ensure compliance with these Acts prior to award and throughout the project lifecycle. During performance, the Design-Builder shall review the System for Award Management (SAM.gov) at least once every three (3) months to check for newly issued FASC-covered drone entities or FASCSA exclusion orders.

(e) Mandatory 72-Hour Reporting and Remediation
If the Design-Builder identifies, or is notified by any Subcontractor at any tier, of a violation of any statute or prohibition listed in this Article, the Design-Builder shall:

- Initial 72-Hour Report: Submit a written report within 72 hours (three (3) business days) of discovery to the DoD Cyber Crime Center (DC3) via the Defense Industrial Base (DIB) Network Portal, and simultaneously submit the report to the AO.
- Report Contents: The report must include the Agreement number, the specific Act/Order violated, detailed product information (including brand, model number, OEM, manufacturer/distributor part numbers, CAGE code, and facility details), operational impact/functionality, availability of alternative compliant products, any waiver justifications, and mitigation actions implemented or recommended.
- 30-Day Follow-Up Report (Telecom Specific): For incidents involving covered telecommunications equipment or services, the Design-Builder shall submit a detailed follow-up report within thirty (30) business days of discovery detailing further mitigation actions taken and efforts to prevent future use or provision of covered equipment.
- Remediation: Promptly make any necessary modifications or replacements to remove the prohibited product or service at the Design-Builder's sole expense.

DRAFT

(f) Subcontractor Flow-Down
The Design-Builder shall insert the substance of this Article in all subcontracts and lower-tier agreements executed for the performance of this Agreement, ensuring sub-tier compliance with all cited statutes.

(g) Quick Reference Compliance Links
The Design-Builder shall utilize the following official Government portals to maintain compliance and execute required reporting under this Article:

Resource	URL / Link	Purpose
DIBNET Reporting Portal	https://dibnet.dod.mil	Mandatory portal for submitting the 72-hour report upon discovery of prohibited tech/services.
OFAC SDN List	https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists	Treasury Department's list of individuals and companies owned or controlled by targeted countries.
Consolidated Screening List	https://www.trade.gov/consolidated-screening-list	Search engine consolidating multiple export screening lists (Commerce, State, Treasury).
System for Award Management	https://www.sam.gov	Required every 3 months to check for new FASCSA orders and FASC-prohibited drone entities.

ARTICLE 20: PROGRESSIVE DESIGN-BUILD RESPONSIBILITY

Applicable Codes and Standards. All design and construction work performed under this Agreement shall comply with the specific codes and standards listed in the SOS. At a minimum, this shall include applicable Unified Facilities Criteria (UFC) and industry-standard building, electrical, mechanical, and fire protection codes.

ARTICLE 21: DESIGN

21.1 Standard of Care and Design Responsibility

(a) Responsibility of Design-Builder: The Design-Builder is responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other non-construction services furnished by the Design-Builder under this Agreement. The Design-Builder must, without additional compensation, correct or revise any errors or deficiencies in its 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) Professional Standard: 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 and engineering professions practicing under similar conditions at the same time and locality. Notwithstanding the above, in the event

DRAFT

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) No Waiver of Rights: The Government's review, approval of, or payment for any services required under this Agreement shall not be construed as a waiver of any rights under this Agreement or any cause of action arising from the Design-Builder's performance. The Design-Builder remains liable to the Government for damages caused by its negligent performance.

(d) 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.

21.2 Site Investigation and Conditions Affecting the Work

(a) Design-Builder acknowledges that it has taken 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. This includes:

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 configuration and characteristics of the surface and subsurface ground conditions;
5. the character of equipment and facilities needed preliminary to and during work performance; and
6. Any other relevant factors.

(b) Design-Builder 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 Design-Builder to take the actions described and acknowledged in this paragraph will not relieve Design-Builder 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.

(c) The Government assumes no responsibility for any conclusions or interpretations Design-Builder makes based on the information provided by the Government.

21.3 Permits and Responsibilities – Design

The Design-Builder shall, without additional expense to the Government, be responsible for obtaining all necessary licenses and permits and for complying with all applicable Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Design-Builder is also responsible for all damages to persons or property that occur to the extent caused by Design-Builder's fault or negligence. The Design-Builder is also 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.

21.4 Design and Construction Coordination

The Design-Builder is responsible for the seamless integration and coordination of all design and construction activities and staff. The Design-Builder's construction management key personnel shall be

actively involved throughout the design process to ensure constructability, manage the project schedule, integrate subcontractor input, and facilitate an efficient flow from design to procurement and construction.

21.5 Management of Design Revisions

(a) Approval Required: The Design-Builder must obtain the approval of the Designer of Record (DOR) and the written concurrence of the Government before implementing any revision to a Government-concurred design, before proceeding with the revision.

(b) Changes at Design-Builder's Expense: Unless a change is initiated by the Government or results from incorrect criteria furnished by the Government, any revision proposed by the Design-Builder that results in additional cost shall be solely at the Design-Builder's expense.

(c) Tracking and Documentation: The Design-Builder shall track all approved revisions to the reviewed and accepted design and incorporate them into the as-built design documentation in accordance with agreed-upon procedures. The Designer of Record must document its professional concurrence on the as-builts for any revisions in the stamped and sealed drawings and specifications.

ARTICLE 22: CONSTRUCTION

22.1 Differing Site Conditions

(a) The Design-Builder shall promptly, and without further disturbing the site, provide 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 Design-Builder'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 for an equitable adjustment under this Article will be allowed unless the Design-Builder 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 Design-Builder for an equitable adjustment to the Agreement for differing site conditions shall be allowed if made after final payment under this Agreement.

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

(a) The Design-Builder 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 Design-Builder 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

DRAFT

operation of equipment, or by workmen, the Design-Builder 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 Design-Builder shall protect from damage all existing improvements and utilities

1. 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 Design-Builder.

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

22.3 Cleaning Up

The Design-Builder shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Design-Builder must 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 Design-Builder shall leave the work area in a clean, neat, and orderly condition satisfactory to the AO.

22.4 Permits and Responsibilities – Construction

The Design-Builder 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 Design-Builder shall also be responsible for all damages to persons or property that occur as a result of the Design-Builder's fault or negligence. The Design-Builder 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.

22.5 Material and Workmanship

(a) Materials and Workmanship
All equipment and materials incorporated into the work covered by this Agreement shall be new and of the most suitable grade for their intended purpose, unless specified otherwise. Any references in the specifications to a trade name or catalog number shall be regarded as establishing a standard of quality, not as limiting competition. The Design-Builder 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) All work shall be performed in a skillful and workmanlike manner. The AO may require, in writing, the removal of any employee deemed incompetent, careless, or otherwise objectionable.

(c) Superintendence
The Design-Builder shall directly superintend the work or provide a competent superintendent on the worksite at all times, who has the authority to act for the Design-Builder and is satisfactory to the AO.

22.6 Inspection of Construction

(a) The Design-Builder shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Design-Builder shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the AO and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(b) Government inspections and tests are for the sole benefit of the Government and do not-

1. Relieve the Design-Builder of responsibility for providing adequate quality control measures;
2. Relieve the Design-Builder of responsibility for damage to or loss of the material before acceptance;
3. Constitute or imply acceptance; or
4. Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this- section.

(c) The presence or absence of a Government inspector does not relieve the Design-Builder from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the AO's written authorization.

(d) The Design-Builder shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Agreement's Officer. The Government may charge to the Design-Builder any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(e) The Design-Builder shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Design-Builder shall promptly segregate and remove rejected material from the premises.

(f) If the Contractor does not promptly replace or correct rejected work, the Government may-

(1) By contract or otherwise, replace or correct the work and charge the cost to the Contractor; or
(2) Terminate for default the Contractor's right to proceed.

(g) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Design-Builder, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Design-Builder or its subcontractors, the Design-Builder shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Agreement's Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(h) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Agreement's Officer determines can be accepted separately. Acceptance shall be final and conclusive

except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

22.7 Availability and Use of Utility Services

(a) The Government shall make all reasonably required amounts of utilities available to the Design-Builder from existing outlets and supplies, as specified in the Agreement. Unless otherwise provided in the Agreement, the amount of each utility service consumed shall be charged to or paid for by the Design-Builder at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the AO. The Design-Builder shall carefully conserve any utilities furnished without charge.

(b) The Design-Builder, at its expense and in a workmanlike manner satisfactory to the AO, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Design-Builder shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

22.8 Layout of Work

The Design-Builder 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 Design-Builder 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 Design-Builder shall be responsible for executing the work to the lines and grades that may be established or indicated by the AO. The Design-Builder 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 Design-Builder 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 Design-Builder.

22.8 Operations and Storage Areas

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

(b) Temporary buildings (*e.g* storage sheds, shops, offices) and utilities may be erected by the Design-Builder only with the approval of the AO and shall be built with labor and materials furnished by the Design-Builder without expense to the Government. The temporary buildings and utilities shall remain the property of the Design-Builder and shall be removed by the Design-Builder 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 Design-Builder must use only established roadways, or use temporary roadways constructed by the Design-Builder when and as authorized by the AO. 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 Design-Builder shall protect them from damage. The Design-Builder shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

22.9 Use and Possession Prior to Completion

(a) Upon agreement with Design-Builder, the Government shall have the right to take possession of or use any completed or partially completed part of the work but shall not interfere, hinder, or obstruct Design-Builder in the completion of its work or services. Before taking possession of or using any work, the AO shall furnish the Design-Builder 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 Design-Builder of responsibility for complying with the terms of the Agreement. The Government's possession or use shall not be deemed an acceptance of any work under the Agreement.

(b) While the Government has such possession or use, the Design-Builder 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 Design-Builder, an equitable adjustment shall be made in the Agreement price or the time of completion, and the Agreement shall be modified in writing accordingly.

22.10 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 Design-Builder shall fully cooperate with the other 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 Design-Builder shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

22.11 Safety

(a) Accident Prevention
The Design-Builder shall provide and maintain work environments and procedures that safeguard the public, Government personnel, and property. The Design-Builder shall comply with the standards issued by the Secretary of Labor at 29 C.F.R. Part 1926 and 29 C.F.R. Part 1910, and with the latest version of the U.S. Army Corps of Engineers Safety and Health Requirements Manual (EM 385-1-1).

(b) Noncompliance
If the AO becomes aware of any condition that poses a serious danger, the AO will notify the Design-Builder and request immediate corrective action. If the Design-Builder fails to act promptly, the AO may issue an order stopping all or part of the work until satisfactory action is taken. No equitable adjustment will be made for a stop-work order issued under this provision.

(c) Site Safety and Health Officer (SSHO)
The Design-Builder shall employ a competent and qualified SSHO at the project site, whose qualifications shall be submitted to the Government for approval. The SSHO's duties and qualifications shall be in accordance with EM 385-1-1.

22.12 Warranty of Construction

(a) Scope of Warranty:
In addition to any other Warranties in this Agreement, the Design-Builder warrants that all work performed conforms to the Agreement requirements and is free of any defect in equipment, material, or

design furnished, or workmanship performed by the Design-Builder or any of its subcontractors or suppliers at any tier.

(b) Construction Warranty Period:
This warranty shall continue for a period of one (1) year from the date of final acceptance of the entire work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one (1) year from the date the Government takes possession.

(c) Remedy
The Design-Builder must, at its own expense, remedy any failure to conform or any defect that is discovered within the warranty period. In addition, the Design-Builder must remedy at its expense any damage to Government owned or controlled real or personal property when that damage is the result of the Design-Builder's failure to conform to the Agreement requirements, or any defect of equipment, material or workmanship.

(d) Replacement of work damages
The Design-Builder must restore any work damaged in fulfilling the terms and conditions of this article. Its warranty with respect to work repaired will run for one (1) year from the date of repair or replacement. The AO shall notify the Design-Builder, in writing, withing a reasonable time after the discovery of any failure, defect, or damage.

(e) Failure to Remedy
If the Design-Builder fails to remedy a defect within a reasonable time after receiving notice, the Government has the right to replace or repair the defective work at the Design-Builder's expense.

(f) Subcontractor Warranties
The Design-Builder must obtain all standard commercial warranties from manufacturers and subcontractors and, if directed by the AO, shall enforce these warranties on behalf of the Government.

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

22.14 Specifications and Drawings

The Design-Builder shall keep on the work site a copy of the drawings and specifications and shall at all times give the AO access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of 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 without such a determination shall be at Design-Builder's own risk and expense.

ARTICLE 23: RESPONSIBILITY AND INDEMNIFICATION

To the fullest extent permitted by law, the Design-Builder shall indemnify, defend, and hold harmless the U.S. Government and its officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to reasonable attorneys' fees) arising out of or resulting from the performance of the work under this agreement. This indemnification applies to any claim or loss attributable to bodily injury, sickness, disease, death, or to injury to or destruction of tangible property. This obligation shall only apply to the extent that such claim, damage, or expense is caused by the negligent acts or omission of the Design-Builder, its subcontractors, or anyone directly or indirectly employed by them whose act they may be liable.

The Government shall not indemnify the Design-Builder or any other entity. The Government shall be responsible for its own acts and omission and those of tits employees, as determined by the applicable law. Nothing in this Agreement shall be constructed to limit the Government's rights, claims or defenses that arise as a matter of law.

ARTICLE 24: COMPLIANCE WITH APPLICABLE LABOR LAWS

The Design-Builder shall comply with all applicable federal, state, and local labor laws in the performance of this Agreement.

24.1 Definitions for Article 24

"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 Design-Builder or construction subcontractor on a particular building or work at the site thereof, including without limitations-

(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 or work;
(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

DRAFT

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 Design-Builder or subcontractor and those individuals; and

(2) Does not include workers whose duties are primarily executive, supervisory (except as provided in paragraph (1)(iii) of this definition), administrative, or clerical, rather than manual. 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 Design-Builder 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 Design-Builder 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 Design-Builder 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.

24.2 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 week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any relationship which may be alleged to exist between the Design-Builder 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 Design-Builder 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 (c) of this Article) and the Construction Wage Rate Requirements (Davis-Bacon Act) poster (WH-1321) shall be posted at all times by the Design-Builder 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 Design-Builder must complete and submit to the AO the Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, if any class of laborers or mechanics that is not listed in the wage determination applicable to the contract is to be employed under the contract. Upon receipt of a complete SF 1444, the AO will submit a report to the Administrator, Wage and Hour Division, for approving, modifying, disapproving, or rendering a final determination, of the additional classification and wage rate including any amount designated for fringe benefits.

(2) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraph (c) of this clause must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

24.3 Withholding of Funds

The AO shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Design-Builder under this Agreement or any other Federal Agreement with the same Design-Builder, or any other federally assisted Agreement subject to prevailing wage requirements, which is held by the same Prime Design-Builder, 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 Design-Builder 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 Design-Builder, 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.

24.4 Payrolls and Basic Records

(a) Payrolls and basic records relating thereto shall be maintained by the Design-Builder 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)), daily and weekly 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 Design-Builder 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 Design-Builder shall submit weekly for each week 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 weekly 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 weekly 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 Design-Builder is responsible for the submission of copies of payrolls by all subcontractors. The Design-Builder 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 Design-Builder, 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 Design-Builder to require a subcontractor to provide addresses and social security numbers to the Design-Builder for its own records, without weekly submission to the AO.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Design-Builder 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 weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 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 weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this Article.

(4) The falsification of any of the certifications in this Article may subject the Design-Builder 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 Design-Builder 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 Design-Builder or subcontractor shall permit the AO or

DRAFT

representatives of the AO or the Department of Labor to interview employees during working hours on the job. If the Design-Builder or subcontractor fails to submit required records or to make them available, the AO may, after written notice to the Design-Builder, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

24.5 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 Design-Builder 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 Design-Builder 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 Design-Builder'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 Design-Builder 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 Design-Builder 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.

24.6 Compliance with Copeland Act Requirements

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

24.7 Subcontracts (Labor Standards)

(a) The Design-Builder shall insert in any subcontracts for construction, alterations and repairs within the United States the Articles entitled-

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

(b) The Design-Builder shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the Articles cited in paragraph (a).

(c)(1) Within 14 days after award of the Agreement, the Design-Builder shall deliver to the AO a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract 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 subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract, the Design-Builder shall deliver to the AO an updated completed SF 1413 for such additional subcontract.

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

24.8 Contract Termination - Debarment

A breach of the Agreement Articles entitled Construction Wage Rate Requirements, Contract Work Hours and Safety Standards-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Construction Wage Rate Requirements and Related Regulations, or Certification of Eligibility may be grounds for termination of the Agreement, and for debarment as a Design-Builder and subcontractor as provided in 29 CFR 5.12.

24.9 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.

24.10 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. 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 Design-Builder (or any of its subcontractors) and the agency awarding the Agreement, the U.S. Department of Labor, or the employees or their representatives.

24.11 Certification of Eligibility

(a) By entering into this Agreement, the Design-Builder certifies that neither it nor any person or firm who has an interest in the Design-Builder'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.

24.12 Contract Work Hours and Safety Standards – Overtime Compensation

(a) *Overtime requirements*. No Design-Builder 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.

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

(c) *Payrolls and basic records*.

(1) The Design-Builder and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the Agreement during the Agreement and 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 weekly 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) The Design-Builder and its subcontractors shall allow authorized representatives of the AO or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this Article. The Design-Builder or subcontractor also shall allow authorized representatives of the AO or Department of Labor to interview employees in the workplace during working hours.

(d) *Subcontracts*. The Design-Builder shall insert the provisions set forth in paragraphs (a) through (d) of this Article in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Design-Builder shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this Article.

ARTICLE 25: LIQUIDATED DAMAGES FOR CONSTRUCTION

If the Design-Builder fails to complete the work by the date specified in the agreement regarding the construction period of performance, the Design-Builder shall pay Liquidated Damages to the Government in the amount of $[INSERT AMOUNT] per calendar day for each calendar day of unexcused delay until the work is completed or accepted.

ARTICLE 26: SUSPENSION OF WORK

(a) The AO may order the Design-Builder in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time specified within the order that the AO determines appropriate for the convenience of the Government.

The order shall be specifically identified as a suspension order issued under this Article. Upon receipt of the order, the Design-Builder shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work suspension.

(b) Prior to the expiration of the time specified within the suspension of work order, or within any extension of that period to which the parties shall have agreed, the AO shall either-

> (1) Lift the suspension of work order; or
> (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

If a suspension of work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Design-Builder shall resume work.

(c) The AO shall make an equitable adjustment in schedule or contract price, or both, and the agreement shall be modified in writing, accordingly, if the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (i) by an act of the AO in the administration of this contract, or (ii) by the AO's failure to act within the time specified in this contract (or within a reasonable time if not specified).

(d) 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 Design-Builder, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Agreement.

(e) An adjustment under this clause shall not be allowed-

> (1) For any costs incurred more than 20 days before the Design-Builder 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 adjustment request, 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 contract.

ARTICLE 27: BUY AMERICAN ACT REQUIREMENTS UNDER TRADE AGREEMENTS

27.1 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 (as defined in paragraph (1) of the definition of "commercial product" at Federal Acquisition Regulation (FAR) 2.101);
> (ii) Sold in substantial quantities in the commercial marketplace; and
> (iii) Offered to the Government, under a contract or subcontract 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 Design-Builder 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 Design-Builder, 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 Design-Builder, 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.

Critical item means a domestic construction material or domestic end product that is deemed critical to U.S. supply chain resiliency.

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, a Free Trade Agreement (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. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(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 non-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 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.

27.2 Construction materials.
(1) This Article 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 AO 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 Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs 27.2(3) and 27.2(4) of this clause.

(3) This requirement does not apply to information technology that is a commercial product or to the construction materials or components listed by the Government as follows:
[AO to list applicable excepted materials or indicate "none"].

(4) The AO may add other foreign construction material to the list in paragraph (3) of this Article 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, 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;

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

(ii) The application of the restriction of the Buy American statute 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.

27.3 Request for determination of inapplicability of the Buy American statute
(1)(i) Any Design-Builder request to use foreign construction material in accordance with paragraph 27.2(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 27.2(3) of this Article.

(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 27.4 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 Design-Builder request for a determination submitted after contract award shall explain why the Design-Builder could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Design-Builder does not submit a satisfactory explanation, the AO need not make a determination.

(2) If the Government determines after Agreement award that an exception to the Buy American statute applies and the AO and the Design-Builder negotiate adequate consideration, the AO 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 (4)(i) of Section 27.2.

(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 this Section based on unreasonable cost**, the** Design-Builder 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)*
Item 1:			
Foreign Construction Material			
Domestic Construction Material			
Item 2:			
Foreign Construction Material			
Domestic Construction Material			

DRAFT

[* *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.*]

ARTICLE 28: SMALL BUSINESS SUBCONTRACTORS

(a) Phase 1 Collaborative Development of Small Business Participation
The Parties acknowledge that as of the effective date of this Agreement, no specific small business participation goals have been established, and no specific small business subcontracting firms have been identified.

During Phase 1, as the Project scope and requirements are collaboratively defined, the Design-Builder shall actively identify potential small business subcontractors and negotiate small business subcontracting goals. The finalized small business participation plan, including specific firm identifications, scopes of work, and agreed-upon goals, shall be developed on an "open-book" basis during Phase 1 and submitted as an integral part of the Phase 2 Guaranteed Maximum Price (GMP) proposal described in Article 2.

(b) Identification of Small Business Subcontractors(s)
Upon mutual agreement of the Phase 2 scope, schedule, and GMP, the specific small business partners identified during Phase 1 shall be documented in the table below and formally incorporated into this Agreement via the Phase 2 bilateral modification:

Category	Commitment (To be completed during Phase 1)
Small Business Partner:	[Insert Small Business Name and CAGE Code]
Design-Builder's Attestation:	The Design-Builder attests that the entity identified above qualifies as a small business under the applicable size standard for the work it will perform.
Minimum Scope of Work:	[Insert Detailed Description of Tasks to be performed by the Small Business Partner]
Associated Deliverables	[Identify Deliverable(s) to which the Small Business Partner is contributing]
Agreed Participation Goal	[Insert percentage of total Phase 2 contract value or specific dollar commitment]

The Design-Builder shall ensure performance is executed in accordance with the commitments finalized in the table above and its teaming arrangement with the identified Small Business subcontractors(s).

(c) Flow-Down
If the identified Small-Business subcontractor further subcontracts a portion of its work, the Design-Builder shall ensure that such subcontracts do not dilute the significance of the small business's participation in the overall project.

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ARTICLE 29: SUBCONTRACTOR AGREEMENT

(a) Purpose and Intent
The Government recognizes that the success of the project under this Agreement depends on the close cooperation and integration of the Design-Builder and its subcontractors. By executing this Agreement, the Design-Builder assumes the responsibilities of its subcontractors.

(b) Exchange of Proprietary Information

Work under this Agreement may require access to proprietary or confidential information from a subcontractor. To the extent that such data is received, the Design-Builder agrees that it shall remain the property of the disclosing party and shall be used solely for the performance of this Agreement.

The obligation to protect such information applies only to information that is received in writing and is clearly marked as proprietary or confidential. The Design-Builder agrees to use the same degree of care to protect the subcontractor's information as it uses to protect its own.

(c) Identified Subcontractors

Subcontractors	Project Role

ARTICLE 30: CONGRESSIONAL AUTHORIZATION AND LIMITATION ON CONSTRUCTION

(a) Statutory Limitation
The Parties acknowledge that construction activities contemplated under this Agreement are subject to statutory authorization and appropriation of funds. No construction effort shall be commenced unless and until the project is authorized in the National Defense Authorization Act and funded through applicable appropriations.

(b) The Government shall not authorize, direct, or permit construction activities until statutory authorization of the project is enacted; and appropriated funds for construction are available and obligated.

(c) No action taken, communication made, or work performed under Phase 1 shall constitute a constructive change, implied authorization, or direction to commence construction. The Design-Builder shall not rely on any such action or communication as a basis to initiate Phase 2 activities absent express written authorization from the AO.

ARTICLE 31: NATIONAL DEFENSE PRIORITY RATING AND SPECIAL AUTHORITY

(a) Defense Priorities and Allocations System (DPAS): This is a rated order certified for national defense use. The Contractor is required to comply with all provisions of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700).

(b) Priority Rating and Requirements:
1. Rating: This agreement is assigned a DX priority rating in support of the LGM-35A Sentinel program.

DRAFT

2. Precedence: The Design-Builder shall provide preferential scheduling for all work under this agreement, ensuring it takes priority over any DO-rated or unrated orders. The Design-Builder is required to accept this rated order.
3. Flow-down: The Design-Builder shall include the substance of this article in all sub-tier agreements and purchase orders placed to support this project, ensuring the DX priority rating is extended to all levels of the supply chain.

ARTICLE 32: MISCELLANEOUS

Title	Description
Entire Agreement	This Agreement represents the complete and final understanding between the Parties. It supersedes all prior and contemporaneous discussions, negotiations, and agreements, whether oral or written, related to this subject matter.
Severability	If any provision of this Agreement is found to be invalid or unenforceable, it will be interpreted to the fullest extent possible to achieve its original purpose. The remaining provisions of this Agreement will continue in full force and effect.
Headings	The headings used in this Agreement are for reference purposes only and do not affect the interpretation of its provisions.
Counterparts	This Agreement and any modifications may be executed in multiple counterparts. Each counterpart will be considered an original, and all of them together will constitute a single, unified instrument.
Public Release of Information	The Design-Builder 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 AO. Nothing in this Article restricts the Design-Builder from disclosing information that is already lawfully in the public domain, that is solely the Design-Builder's data and not subject to Government-imposed restrictions, or that is required to be disclosed by law or regulation.

OPTIONAL ARTICLES FOR OTA TEMPLATE

ARTICLE XX: GOVERNMENT FURNISHED PROPERTY

(a) Applicability
In the event the Government provides any Government Furnished Property (GFP) to the Design-Builder for the performance of this Agreement, the terms of this Article shall apply. All such GFP will be identified in the Scope of Services (SOS) or in a dedicated GFP List attached to this Agreement. If no GFP is listed, this Article is not applicable.

DRAFT

(b) Use and Liability
The Design-Builder shall use the GFP solely for the performance of this Agreement and assumes the risk for and shall be responsible for any loss, damage, or destruction of the GFP while it is in its possession or control. This liability does not extend to reasonable wear and tear from normal use or to the proper consumption of materials as authorized by the SOS.

(c) Condition and Return
Upon completion or termination of this Agreement, the Design-Builder shall return all GFP to the Government in a condition at least as good as when it was received, with the exception of reasonable wear and tear or authorized consumption.

(d) Disposition
The Design-Builder shall not transfer, sell, or otherwise dispose of any GFP without the prior written authorization of the AO.

ARTICLE XX: CYBERSECURITY REQUIREMENTS

(a) General Applicability and Authority

Authority: The Department of Defense has established the Cybersecurity Maturity Model Certification (CMMC) program, as codified in 32 CFR Part 170, to verify that entities handling sensitive government information have implemented appropriate cybersecurity standards.

Applicability to this Agreement: As a matter of DoD policy, the requirements of the CMMC program are applicable to this Agreement to ensure the protection of Federal Contract Information (FCI).

Required Level: The Government has determined that performance under this Agreement requires the handling of FCI. Therefore, the Design-Builder shall comply with the requirements equivalent to CMMC Level 1.

Flow-Down: The cybersecurity requirements set forth in this Article shall be included in all subcontracts or other sub-agreements where the subcontractor's performance will involve processing, storing, or transmitting FCI.

(b) Definitions

Federal Contract Information (FCI): Information, not intended for public release, that is provided by or generated for the Government under this Agreement. FCI does not include information provided by the Government to the public (such as on public websites) or simple transactional information, such as that necessary to process payments.

Covered Information System: An information system that is owned or operated by the Design-Builder and that processes, stores, or transmits FCI.

(c) Basic Safeguarding Requirements (CMMC Level 1)

The Design-Builder shall apply the following 15 basic safeguarding controls to all Covered Information Systems:

Category	Requirement

Access Control	1. Limit information system access to authorized users.
	2. Limit information system access to the functions and data necessary for the user's job.
	3. Verify and control connections to external information systems.
	4. Control information posted or processed on publicly accessible information systems.
Identification & Authentication	5. Identify information system users and processes acting on behalf of users.
	6. Authenticate (or verify) the identities of those users or processes as a prerequisite to allowing access.
Media Protection	7. Sanitize or destroy information system media containing FCI before disposal or release for reuse.
Physical Protection	8. Limit physical access to information systems, equipment, and their operating environments to authorized individuals.
	9. Escort visitors and monitor visitor activity.
	10. Maintain audit logs of physical access.
	11. Control and manage physical access devices.
System & Communications Protection	12. Monitor, control, and protect organizational communications at system boundaries.
	13. Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
System & Information Integrity	14. Identify, report, and correct information and information system flaws in a timely manner.
	15. Provide protection from malicious code and update malware protection mechanisms when new releases are available.

(d) Self-Assessment and Attestation

Condition of Award: As a condition of award, the Design-Builder must perform a self-assessment against the requirements listed in section (c) and attest that all requirements have been implemented.

Submission: The Design-Builder shall provide this self-assessment and attestation in writing to the AO prior to the execution of this Agreement.

Maintenance: The Design-Builder shall conduct this self-assessment annually and provide an updated attestation to the AO upon request.

ARTICLE XX: FOREIGN ACCESS TO TECHNOLOGY AND EXPORT CONTROL

(a) Overarching Policy

The Parties acknowledge that technology developed under this Agreement may be critical to U.S. national security. Accordingly, access to such technology by foreign firms or institutions must be carefully controlled. The obligations in this Article supplement, and do not supersede, all applicable U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), the Export

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Administration Regulations (EAR), and the National Industrial Security Program Operating Manual (NISPOM).

(b) Definition of Technology Transfer
For the purposes of this Article, a "Technology Transfer" is defined as any sale of the Design-Builder's performer or any sale, license, or disclosure of technology developed under this Agreement to a foreign firm or institution. This does not include:

Sales of commercial products or components resulting from the technology;

Licenses of software or documentation incidental to the sale of such products; or

Transfers to the Design-Builder's foreign subsidiaries or approved foreign subcontractors, limited to the extent necessary for them to perform their role under this Agreement.

(c) Process for Proposed Technology Transfers

Notification: The Design-Builder shall provide the Agreements Officer (AO) with written notice at least sixty (60) days prior to any proposed Technology Transfer. The notice must specify the technology involved, the recipient, and the terms of the proposed transfer.

Government Review: The Government will review the proposed transfer for any potential adverse impacts on national security interests. During this time, the Parties shall endeavor to find alternatives if concerns are identified.

Consent: The AO will advise the Design-Builder in writing whether the Government consents to the proposed transfer. No transfer shall proceed until the Design-Builder receives written consent from the AO. If the Government does not consent, the matter may be addressed under the Disputes article of this Agreement.

(d) Unauthorized Transfer
In the event an unapproved Technology Transfer occurs, the Design-Builder shall, upon Government request, refund all Government funds used in the development of the transferred technology. Furthermore, the Government shall automatically receive a non-exclusive, irrevocable, worldwide, paid-up license to practice or have practiced the subject technology for any and all purposes.

(e) General Export Compliance
The Design-Builder is responsible for its own compliance with all applicable U.S. export control laws and regulations. The Design-Builder shall not export or re-export any controlled products, technical data, or services in violation of these laws.

(f) Flow-Down
The Design-Builder shall include the substance of this Article in all subcontracts, at any tier, that involve the development of new technology or access to existing sensitive technology.

(g) Survival
The obligations set forth in this Article shall survive the termination or expiration of this Agreement and remain in effect for a period of five (5) years.

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ATTACHMENTS

ATTACHMENT	1	SCOPE OF SERVICES (SOS)
ATTACHMENT	2	MILESTONE AND PAYMENT SCHEDULE

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