

TOWN OF MONTVERDE, FL

Stormwater Improvements – Phase 2 Porter Avenue

Bidding Documents For Construction



woodardcurran.com

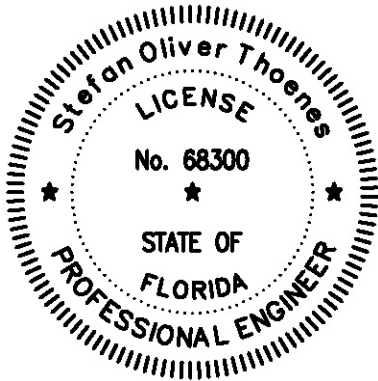
Project No. 0233076.08
Town of Montverde FL

September 2025

SECTION 00 01 07

SEALS PAGE

The engineering material and data contained in these Bidding and Contract Documents were prepared under the supervision and direction of the undersigned, whose seal as registered professional engineer is affixed below.



THIS ITEM HAS BEEN ELECTRONICALLY SIGNED AND SEALED BY STEFAN OLIVER THOENES, PE 68300 STATE OF FLORIDA ON SEPTEMBER 23, 2025 USING A SHA AUTHENTICATION CODE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SHA AUTHENTICATION CODE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.

Stefan Oliver Thoenes, P.E.
Woodard & Curran, Inc. (Engineer)

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SECTION 00 01 10

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SECTION 00 11 16

INVITATION TO BID

Town of Montverde, FL (Owner) invites Bidders to submit sealed Bids for Stormwater Improvements, which includes: clearing and grubbing, tree removal, full depth pavement reconstruction, roadway widening, driveway apron reconstruction, installation of curbing, installation of sidewalk, construction of stormwater Best Management Practices (BMPs), revegetation; and all materials and equipment, construction, and services inherent to the Work in accordance with Florida Department of Transportation (FDOT) Standard Specifications and Standard Details.

The Work shall be substantially complete **within 120 calendar days** from the commencement of Contract Time and completed and ready for final payment **within 150 calendar days** from the commencement of Contract Time.

Communications during the bidding phase (prior to posting of award results) may only be in writing to the Engineer's representatives identified in the Instructions to Bidders. Bidders or persons acting on their behalf may not directly contact, communicate with or discuss any matter relating to the Project or Bidding Documents with the Owner or any of its employees, officers, department heads or elected officials. Violation of this provision may be grounds for disqualification or rejection of a Bid.

The Project being bid is subject to Section 255.20 Florida Statutes and other applicable Laws. This Project is to be funded in part with monies made available through a Florida EPA Grant under the Resilient Florida Program and compliance with certain Federal provisions is required. The contents of these Bidding Documents do not necessarily reflect the views and policies of the EPA, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in the Bidding Documents. Funding is also being provided in part through a Lake County Water Authority Stormwater Grant.

The awarded Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of any resulting Contract and shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the awarded Contractor to carry out these requirements is a material breach of the Contract which may result in termination of the Contract or other legally available remedies.

Bidding Documents may be obtained electronically at no cost for examination and use on or after September 23, 2025 at 10:00 a.m. by registering with the Engineer's bidding team (Issuing Office) via email at MunicipalBids@woodardcurran.com and subject line "**Montverde FL - Stormwater Improvements Design - Phase 2 Porter Avenue**" to obtain the Bidding Documents and other related public information. Instructions for downloading the Bidding Documents and accessing other related public information will then be provided by email. Documents from third parties are not considered official Bidding Documents.

A pre Bid conference will not be held.

Sealed Bids will be received until 3:00 p.m. local time on October 21, 2025 by Owner at Town Hall, 17404 Sixth Street, P.O. Box 56008, Montverde, Florida 34756, Attention: Paul Larino, Town Manager.

Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents, Bidding Documents or any portion thereof provided by third parties, or for modifications to the Bidding Documents not made by official Addenda, including electronic conversion.

Bid security in the amount of 5 percent of the Bid must accompany the Bid in accordance with the Instructions to Bidders.

Federal Minimum Wage Rates as determined by the United States Department of Labor under the Davis-Bacon Act apply to this Project.

Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be qualified, responsive, or eligible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project or the public to make an award to that Bidder. Owner also reserves the right to waive all informalities.

END OF SECTION

SECTION 00 21 13

INSTRUCTIONS TO BIDDERS

ARTICLE 1 – DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions, if any. Additional terms used in these Instructions to Bidders have the meanings indicated below and as may be included in the Supplementary Instructions to Bidders.
- A. *Issuing Office* – The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered identified in the Invitation to Bid.
 - B. *Supplements* – Those portions of the Bidding Requirements to be submitted with and made a condition of a Bid including required submittals.
 - C. *Notice of Intent to Award* – The written notice to the Successful Bidder indicating conditions precedent to receiving a Notice of Award and Agreement for execution.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

- 2.01 Sets of Bidding Documents may be examined and obtained as stated in the Invitation to Bid.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents, Bidding Documents or any portion thereof provided by third parties, or for modifications to the Bidding Documents not made by official Addenda, including electronic conversion.
- 2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate Bidders' qualifications to perform the Work, Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data requested in the Bidding Documents, and within the time frames stipulated upon Owner's request.
- 3.02 Bidders shall meet minimum criteria regarding experience and qualifications set forth in the General Requirements and the Specifications.

ARTICLE 4 – EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

4.01 *Subsurface and Physical Conditions*

- A. Section 00 73 10 of the Supplementary Conditions identifies:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. Copies of reports and drawings referenced in Section 00 73 10, if any, are included in the Bidding Documents as indicated in Section 00 31 00. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.02 of the General Conditions, has been identified and established in Section 00 73 10 of the Supplementary Conditions.
- C. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.02 *Underground Facilities*

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

4.03 *Hazardous Environmental Condition*

- A. Section 00 73 10 of the Supplementary Conditions identifies any reports and drawings known to Owner relating to a Hazardous Environmental Condition identified at the Site.
- B. Copies of reports and drawings referenced in Section 00 73 10, if any, are included in the Bidding Documents as indicated in Section 00 31 00. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.06 of the General Conditions has been identified and established in Section 00 73 10 of the Supplementary Conditions.
- C. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

- 4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions and Section 00 73 10 of the Supplementary Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 4.06 of the General Conditions and Section 00 73 10 of the Supplementary Conditions.
- 4.05 Upon request, Owner may provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall be responsible for obtaining permission and necessary permits and insurance for access to the Site. Bidder shall clean up and restore the Site to its former condition upon completion of any such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.
- 4.06 Reference is made to Article 7 of the General Conditions and Section 00 73 10 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request, Owner will provide to each Bidder for examination access to or copies of contract documents (other than portions thereof related to price) for such other work.
- 4.07 It is the responsibility of each Bidder before submitting a Bid to:
- A. examine and carefully study the Bidding Documents, and the other related data identified in the Bidding Documents;
 - B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
 - C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;
 - D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in Section 00 73 10 of the Supplementary Conditions, as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Section 00 73 10 of the Supplementary Conditions, as containing reliable "technical data";

- E. consider the information known to Bidder; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs;
 - F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
 - G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
 - H. correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
 - I. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
 - J. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 5 – PRE-BID CONFERENCE

- 5.01 A pre Bid conference will not be held.

ARTICLE 6 – SITE AND OTHER AREAS

- 6.01 The Site is identified in the Bidding Documents. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing by email as follows.

Woodard & Curran, Inc.
Stefan Thoenes, P.E.
Email: sthoenes@woodardcurran.com
(and a copy to jcase@woodardcurran.com)

- 7.02 Interpretations or clarifications considered necessary in response to such questions will be issued by Addenda to all parties recorded as having received the Bidding Documents. **Questions must be received by 3:00 p.m. local time on October 2, 2025 to be answered. Questions received thereafter may not be answered.** Only answers in the Addenda will be binding. Oral statements, interpretations, and clarifications may not be relied upon and will not be binding or legally effective.
- 7.03 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer and all parties recorded as having received the Bidding Documents will be notified by email that Addenda has been posted along with instructions for accessing the Addenda.

ARTICLE 8 – BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price and in the form of a certified check, treasurer's or cashier's check, or money order, or a Bid bond on or consistent with the form included in the Bidding Documents in Section 00 43 13 issued by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of the General and Supplementary Conditions, if any.
- 8.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the Contract to such Bidder, and such Bidder has furnished the required Contract security, insurance documentation and met the other conditions of the Notice of Intent to Award or Notice of Award, and executed the Contract Documents, whereupon the Bid security will be released. If the Successful Bidder fails to furnish the required Contract security, insurance documentation, and meet the other conditions as stated in the Notice of Intent to Award or Notice of Award, and execute and deliver the Contract Documents, Owner may

consider Bidder to be in default, annul the Notice of Intent to Award or Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults.

- 8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of 7 days after the Effective Date of the Agreement or 121 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. See Supplementary Instructions to Bidders (if any) for additional information.
- 8.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be returned within 5 days after the Bid opening.

ARTICLE 9 – CONTRACT TIMES

- 9.01 The number of days within which, or the dates by which, the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

ARTICLE 10 – LIQUIDATED DAMAGES

- 10.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

ARTICLE 11 – SUBSTITUTE AND “OR-EQUAL” ITEMS

- 11.01 The Contract, if awarded, will be on the basis of materials and equipment and construction methods or procedures specified or described in the Bidding Documents without consideration of possible substitute or “or-equal” items. Whenever it is specified or described in the Bidding Documents that a substitute or “or-equal” item of material or equipment and construction methods or procedures may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS AND OTHERS

- 12.01 The Bidding Documents may require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner with the Bid.
- 12.02 As required in the Bidding Documents, or within 5 days after Bid opening if requested by Owner, Bidder shall submit a listing and experience statement with pertinent information regarding similar projects and other evidence of qualification for each Subcontractor, Supplier, individual, or entity. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute without an increase in the Bid.

- 12.03 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest responsible Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General and Supplementary Conditions, if any.
- 12.04 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.

ARTICLE 13 – PREPARATION OF BID

- 13.01 The Bid Form and Supplements are included with the Bidding Documents.
- 13.02 Bids are to be completed as indicated in the Bid Form. All blanks on the Bid Form shall be completed in ink or typewritten and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form.
- 13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.
- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a general partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.
- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member or manager and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 13.06 A Bid by an individual shall show the Bidder's name and official address.
- 13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.
- 13.08 All names shall be printed in ink below the signatures.
- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.10 Postal and e-mail addresses and telephone numbers for communications regarding the Bid shall be shown.

- 13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number, if any, shall also be shown on the Bid Form. See Supplementary Instructions to Bidders for additional requirements, if any.
- 13.12 Bidders are advised to carefully review those portions of the Bid Form and Supplements requiring Bidder's representations and certifications that are to be submitted with a Bid or subsequent to the Bid opening, and made a condition of the Bid.

ARTICLE 14 – BASIS OF BID; COMPARISON OF BIDS

14.01 *Bid Pricing*

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed on the Unit Prices Form in Section 00 43 22. Bid prices shall be stated in both words and figures.
- B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price included on the Unit Prices Form in Section 00 43 22. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General and Supplementary Conditions, if any.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between prices written in words and prices written in figures will be resolved in favor of prices written in words.

14.02 *Alternates (if any)*

- A. Bidders shall include a separate price for each alternate described in the Bidding Documents as provided for in the Bid Form and Supplements, if any. The price for each alternate will be considered in accordance with Article 19.

ARTICLE 15 – SUBMITTAL OF BID

- 15.01 With each copy of the Bidding Documents, a Bidder is furnished a copy of the Bid Form, the Bid Security Form and Supplements. An original signed hard copy of the Bid Form, the original of the Bid security, and Supplements as listed in the Bid Form, are to be completed and submitted.

- 15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Invitation to Bid and shall be enclosed in a plainly marked package with the Project title, the name and address of Bidder, and IFB number (if any), and shall be accompanied by the Bid security and other required documents.
- 15.03 If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation **“BID ENCLOSED.” Bids shall be addressed as indicated in the Invitation to Bid.**
- 15.04 Bidders shall be responsible to confirm the ability of overnight mailing or courier services to deliver to the Owner’s offices.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered in hard copy to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Such modifications and withdrawals may not be transmitted by email.
- 16.02 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is re-Bid, that Bidder may be disqualified from submitting a Bid on the Work.

ARTICLE 17 – OPENING OF BIDS

- 17.01 Bids will be opened at the time and place indicated in the Invitation to Bid and, unless obviously non-responsive, read aloud publicly.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, not to be responsible or does not to meet the specified qualification or quality requirements, based on poor references or otherwise. Owner may also reject the Bid of any Bidder if Owner reasonably believes that it would not be in the best interest of the Project or public to make an award to that Bidder. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work.

- 19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 19.03 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data as may be requested in the Bid Form or prior to the Notice of Award.
- 19.04 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities are submitted.
- 19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work in accordance with the Contract Documents.
- A. Owner may conduct reference checks for the Bidder. Poor references may be a basis for deeming Bidder as not responsible. Reference questions will include, but are not limited to, product quality and durability, overall work quality, performance, timely delivery/completion, customer service, and general customer satisfaction.
- 19.06 If the Contract is to be awarded, Owner may award the Contract to the responsive and responsible Bidder, offering the lowest price for the Bid and whose Bid is in the best interests of the Project or public, subject to available funding.
- 19.07 The Owner will issue a Notice of Intent to Award to the Successful Bidder in the form included in Bidding Documents. Within 15 days of receipt of the Notice of Intent to Award, the Successful Bidder shall comply with the conditions set forth therein and provide requested information. After required reviews and approvals by Owner of bonds and insurance documentation and other conditions, the Owner may issue a Notice of Award in accordance with Article 21.

ARTICLE 20 – CONTRACT SECURITY AND INSURANCE

- 20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by such bonds.

- A. In case the bonds or insurance documentation submitted by the Successful Bidder do not meet the requirements of the Contract Documents, and changes are to be made before these documents can be accepted by the Owner, the Successful Bidder is obligated to accept an extension of the date of award of the Contract, or the date of issuance of Notice to Proceed, as the case may be, for that period of additional time required to furnish acceptable documents.

ARTICLE 21 – SIGNING OF AGREEMENT

- 21.01 After required reviews and approvals by Owner of bonds and insurance documentation and other conditions set forth in the Notice of Intent to Award, Owner will issue a Notice of Award to the Successful Bidder. When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by unsigned counterparts of the Agreement along with the other Contract Documents which are identified in the Agreement and attached thereto. Within 10 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. After required reviews and approvals, Owner shall deliver one fully signed set of Contract Documents to Successful Bidder with a complete set of the Drawings.

ARTICLE 22 – RETAINAGE

- 22.01 Provisions regarding retainage are set forth in the Agreement.

ARTICLE 23 – CONTRACTOR’S WARRANTY AND GUARANTEES; CORRECTION PERIOD

- 23.01 Provisions regarding Contractor’s general warranty and guarantees and correction period are set forth in Paragraphs 6.19, 13.06, 13.07, 13.09 and 14.03 of the General and Supplementary Conditions, if any.

ARTICLE 24 – SAFETY AND HEALTH REGULATIONS

- 24.01 The Project is subject to the Safety and Health Regulations of the U.S. Department of Labor set forth in Title 29 CFR, Part 1926 and to all subsequent amendments, as a minimum, and other specific requirements identified in the Supplementary Conditions.

ARTICLE 25 – EQUAL EMPLOYMENT OPPORTUNITY, ANTI-DISCRIMINATION, AND AFFIRMATIVE ACTION

- 25.01 Provisions regarding the requirements for equal employment opportunity, anti-discrimination, and affirmative action programs, if any, are set forth in the Supplementary Conditions.

ARTICLE 26 – WAGE RATE REQUIREMENTS

- 26.01 Wage rate requirements, if any, are set forth in the Supplementary Conditions.

ARTICLE 27 – SUPPLEMENTARY INSTRUCTIONS TO BIDDERS

- 27.01 Supplementary Instructions to Bidders, if any, are included in Section 00 22 13 and may include certain provisions required by Laws and Regulations and funding agencies. Bidders are solely responsible to determine, obtain, review and interpret the full text of applicable Laws and Regulations.

END OF SECTION

SECTION 00 22 13

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS

The following supplement or modify the Instructions to Bidders. This section includes certain provisions required by Laws and Regulations, but does not represent or reflect all applicable provisions and policies or Laws and Regulations, and may only include excerpts and portions thereof. Other required provisions and policies, and Laws and Regulations, shall be deemed to be so included and incorporated herein. Bidders are solely responsible to determine, obtain, review and interpret the full text of applicable Laws and Regulations. Representations, certifications, compliance statements and forms relating to the subject matter in this Section are included in Section 00 45 05 and must be submitted by each Bidder as part of its Bid. Failure to do so may render a Bid non-responsive.

1.01 BID AND AWARD; STATUTORY

- A. The Project is being bid subject to Section 255.20 Florida Statutes, and applicable Laws, and the resulting Contract is subject to the Laws of the State of Florida.
 - 1. Modify Paragraph 19.06 of Section 00 21 13, Instructions to Bidders, to read as follows pursuant to 255.20 Florida Statutes.

“If Owner awards the Contract for the Work, such award shall be to the lowest qualified, responsive, and eligible Bidder.”
- B. Pursuant to Section 287.05701, Florida Statutes, Owner may not request documentation of or consider a vendor's social, political, or ideological interest when determining if Bidder is a responsive Bidder, and Owner may not give preference to Bidder based on Bidder's social, political, or ideological interests.
- C. Pursuant to Article 8 of Section 00 21 13, Instructions to Bidders, and Section 255.051 Florida Statutes, in lieu of a certified check for the Bid security, the requirement shall be satisfied by a Bidder depositing a cashier's check, treasurer's check or bank draft of any national or state bank.
- D. Pursuant to Section 255.20 Florida Statutes, any Bidder may be considered ineligible to bid if the Bidder has been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years.
- E. As permitted under Section 287.087 Florida Statutes, Owner may provide a preference to any Bidder which certifies that it has implemented a drug-free workplace program.

- F. Pursuant to Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a Bid to any public entity to provide any goods or services or construction or repair of a public building or public work; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- G. Pursuant to Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a Bid and may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- H. Pursuant to Section 287.135, Florida Statutes, a company that is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, or is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, (effective October 1, 2016) or is engaged in a boycott of Israel (effective October 1, 2016) or is engaged in business operations in Cuba or Syria is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of \$1,000,000 or more.
- I. Pursuant to Section 287.137, Florida Statutes, a person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a Bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a Bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a Bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity.
- J. Pursuant to 787.06 (13) Florida Statutes, a nongovernmental entity that enters into, renews, or extends a contract with a governmental entity to provide the governmental entity with an affidavit attesting that the nongovernmental entity does not use coercion for labor or services.

1.02 OTHER REQUIREMENTS OF THE FLORIDA STATUTES APPLICABLE TO THE PROJECT

- A. The State of Florida has allowed for local government to make direct purchases of equipment, supplies, and materials that are necessary for the construction of a public works project and be exempt from payment of Florida sales and use tax subject to making direct purchases in accordance with FAC 12A-1.094, Public Works Contracts. See Section 00 73 73 for requirements that may apply after award. **Therefore, Bids shall include all applicable sales and use tax.**
- B. In compliance with the Public Bid Disclosure Act, Section 218.80, Florida Statutes, each permit, license, and/or fee applicable to the Work/Project (before and during construction) will either be paid by the Contractor or by the Owner as indicated below and as specified in the General Conditions and Supplementary Conditions.
1. The Contractor shall procure and pay for permits, licenses and/or fees and give all notices necessary and incidental to the due and lawful prosecution of the Work including those that may be required by the Owner, State of Florida, State Agencies or by other local governmental entities or agencies, except for those identified as provided by the Owner.
 2. **The cost of the permits, licenses and/or fees shall NOT be included in the Bid price and will be reimbursed separately.**
 3. Permits, that are provided and paid for by the Owner, if any, are listed in the Supplementary Conditions.
- C. Pursuant to Chapter 112 Florida Statutes, all Bidders must disclose with their Bid the name of any officer, director, agent, or shareholder who is also an employee of the Owner and the name of any employee of the Owner who owns, directly or indirectly, an interest of 5 percent or more in the Bidder's firm or any of its branches.
- D. Pursuant to Chapter 553 § 60-64 Florida Statutes, Bidder and its Subcontractors shall comply with the Florida Trench Safety Act for trench excavation in which such excavation will exceed a depth of 5 feet. Bidder shall provide the following as required in Section 00 45 05.
- a reference to the trench safety standards that will be in effect during the period of construction of the Project;
 - written assurance that Contractor and/or its Subcontractor performing the trench excavation will comply with the applicable trench safety standards; and

- identification of the cost of compliance with the applicable trench safety standards.
- E. The successful Bidder receiving award of the Contract shall utilize the U.S. Department of Homeland Security's E-Verify Systems to verify the employment eligibility of all persons employed during the term of the Contract to perform employment duties within the State of Florida and all persons, including Subcontractors, assigned by Contractor to perform Work pursuant to the Contract.
- F. Pursuant to Section 119.071(5)(a)2a, Florida Statutes, social security numbers shall only be collected from Bidders by the Owner should such number be needed for identification, verification, and/or tax reporting purposes. To the extent a Bidder collects an individual's social security number in the course of acting on behalf of the Owner pursuant to the terms and conditions of its Bid, Bidder shall follow the requirements of Florida's Public Records Law.
- G. Pursuant to Article 20 of Section 00 21 13, Instructions to Bidders, the performance and payment bond shall comply with the requirements of Section 255.05, Florida Statutes consistent with the Public Construction Bond form included in the Bidding Documents, and the successful Bidder shall execute such bond and record it in the public records of the county where the improvement is located.
- H. For a public works project, lumber, timber, and other forest products must be produced and manufactured in Florida pursuant to Section 255.20, Florida Statutes, and any iron or steel product permanently incorporated in the Project must be produced in the United States pursuant to Section 255.0993 Florida Statutes. See Section 00 73 73 for exceptions.
- I. Each and every provision of any Law and clause required by Law to be inserted shall be deemed to be inserted herein, and the Bidding Requirements shall be read and enforced as though it were included herein and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon application of either party the Bidding Requirements shall forthwith be physically amended to make such insertion.

1.03 NO DIRECT OWNER COMMUNICATIONS DURING BIDDING

- A. Communications during the bidding phase (prior to posting of award results) may only be in writing to the Engineer's representatives identified in the Instructions to Bidders. Bidders or persons acting on their behalf may not directly contact, communicate with or discuss any matter relating to the Project or Bidding Documents with the Owner or any of its employees, officers, department heads or elected officials. Violation of this provision may be grounds for disqualification or rejection of a Bid.

1.04 FEDERAL PROVISIONS

- A. This Project is to be funded in part with monies made available through a Florida EPA Grant under the Resilient Florida Program and compliance with certain Federal provisions is required. The contents of these Bidding Documents do not necessarily reflect the views and policies of the EPA, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in the Bidding Documents. Funding is also being provided in part through a Lake County Water Authority Stormwater Grant. Compliance with certain Federal provisions is required including the following See detailed requirements included in Section 00 73 74.
1. **Minority businesses, women's business enterprises, and labor surplus** per 2 CFR Part 200 Subpart D §200.321 which covers taking affirmative steps to assure firms are used when possible.
 - a. The awarded Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of any resulting Contract and shall carry out applicable requirements of *40 CFR Part 33*.
 2. **Domestic preference for procurement** per 2 CFR Part 200 Subpart D §200.322 which covers providing a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
 - a. ***Build America, Buy America (BABA) Act*** requiring steel, iron, manufactured products, non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall to be produced in the United States.
 3. ***Procurement of recovered materials*** per 2 CFR Part 200 Subpart D §200.323 which covers compliance with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as applicable.
 4. ***Access to records*** per 2 CFR Part 200 Subpart D §200.337 which covers allowing access of records by Federal government representatives.
 5. **Prohibition on certain telecommunications and video surveillance services or equipment** 2 CFR Part 200 Subpart D §200.216 which prohibits obtaining equipment or services from certain foreign entities

6. *Per Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*
 - a. *Equal Employment Opportunity requirements* per 41 CFR 60 and in accordance with Executive Order 11246, “Equal Employment Opportunity”
 - b. *Contract Work Hours and Safety Standards Act* (40 U.S.C. 3701-3708)
 - c. *Davis-Bacon Act, Federal minimum wage rates and Copeland Anti-KickBack Act (40 USC 3145)*. In case of discrepancy between Federal and state wage rates, the higher wage rates shall apply. See Section 00 73 43.
 - d. *Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended*
 - e. *Debarment and Suspension (Executive Orders 12549 and 12689)*
 - f. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*
7. Applicable provisions of the United States Code of Federal Regulations govern the Bidding Requirements and resulting Contract, and any provision in violation of the foregoing shall be deemed null, void and of no effect. Where conflicts between the Code of Federal Regulations and state Laws and Regulations exist, the more stringent requirement shall apply.
8. This Project is subject to the Safety and Health Regulations of the U.S. Department of Labor set forth in Title 29 CFR, Part 1926 and to all subsequent amendments, and to any applicable State Regulations. Bidders shall be familiar with the requirements of these Regulations.

END OF SECTION

SECTION 00 31 00

AVAILABLE PROJECT INFORMATION

INFORMATION	LOCATION OF INFORMATION
Geotechnical Data Geotechnical Report Soil Boring Data Results of Laboratory Testing Roadway Cores	Appendix A
Survey	Shown on Drawings

END OF SECTION

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SECTION 00 41 01

BID FORM

ARTICLE 1 – DEFINED TERMS

- 1.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions and Supplementary Conditions, if any.

ARTICLE 2 – BID RECIPIENT

- 2.01 This Bid is submitted to:

**Town of Montverde
Town Hall
17404 Sixth Street, P.O. Box 56008
Montverde, FL 34756
Attention: Paul Larino, Town Manager**

- 2.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 3 – BIDDER’S ACKNOWLEDGEMENTS

- 3.01 Bidder accepts all of the terms and conditions of the Bidding Documents including, without limitation:
- A. those dealing with disposition of Bid security;
 - B. those included in the Supplementary Instructions to Bidders;
 - C. insurance and bonding requirements (Payment Bond and Performance Bond each equal to 100% of the total Contract Price) set forth in the General Conditions and Supplementary Conditions, if any;
 - D. Contract Times as set forth in the Agreement; and
 - E. provisions for liquidated damages as set forth in the Agreement.
- 3.02 This Bid will remain subject to acceptance for 120 days after the Bid opening or for such longer period of time that Bidder may agree to in writing upon request of Owner.

3.03 Bidder acknowledges receipt of the following Addenda.

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

3.04 Bidder acknowledges the representations and certifications included in Section 00 45 05 are made a condition of the Bid.

ARTICLE 4 – BASIS OF BID

4.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s) based on unit prices included in **Section 00 43 22**. The method for determining award is as set forth in Section 00 21 13.

BID PRICES SHALL INCLUDE SALES AND USE TAX.

TOTAL BID PRICE (from Unit Prices Form Section 00 43 22)

_____ Dollars and _____ Cents \$ _____
(Use words) (Use figures)

4.02 Unit Prices have been computed in accordance with Paragraph 11.03.A of the General Conditions and Supplementary Conditions, if any.

4.03 Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for unit price items will be based on actual quantities determined and based on the unit prices included above, as provided in the General Conditions and Supplementary Conditions, if any.

ARTICLE 5 – TIME OF COMPLETION

- 5.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions and Supplementary Conditions, if any, on or before the dates or within the number of calendar days indicated in the Agreement.
- 5.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 6 – ATTACHMENTS TO THIS BID

- 6.02 The following documents are fully completed, submitted with and made a part of and a condition of this Bid.

☐ 00 43 13 Bid Bond

OR

☐ Required Bid security in the form of _____

Supplements

- ☐ 00 43 22 Unit Prices Form
- ☐ 00 43 40 Information, Schedules and Data **including required documents and submittals specified**
- ☐ 00 45 05 Bidder's Representations and Certifications **including required documents and submittals specified**
- ☐ 00 45 13 Bidder's Qualifications
- ☐ 00 45 19 Non-collusion Affidavit

ARTICLE 7 – COMMUNICATIONS WITH BIDDER

7.01 Communications concerning this Bid shall be addressed to:

Name _____

Title _____

Business Address _____

Telephone No. _____

Email address _____

ARTICLE 8 – Bid Submittal

SUBMITTED ON:
EIN/FEIN:

8.01 This Bid is submitted by:

A Corporation

Corporation Name: _____

State of incorporation: _____

Type: _____
(General Business, Professional, Service, other)

By: _____
(Signature – attach evidence of authority to sign)

Name *(typed or printed)*: _____

Title: _____

(CORPORATE SEAL)
Attest: _____
(Signature of Corporate Secretary)

Business Address: _____

Phone Nos: _____

Email address: _____

Date of qualification to do business as out-of-state corporation: _____

0233076.08
Issue Date: September 2025

Stormwater Improvements – Phase 2 Porter Avenue
Montverde, FL

A Limited Liability Company (LLC)

LLC Name: _____

State in which organized: _____

By: _____
(Signature – attach evidence of authority to sign)

Name *(typed or printed)*: _____

Title: _____

Business Address: _____

Phone Nos: _____

Email address: _____

WOODARD & CURRAN

BID FORM
00 41 01-6

A Joint Venture

First Joint Venturer Name:

By:

(Signature – attach evidence of authority to sign)

Name *(typed or printed)*:

Title:

Business Address:

Phone Nos:

Email address:

Second Joint Venturer Name:

By:

(Signature – attach evidence of authority to sign)

Name *(typed or printed)*:

Title:

Business Address:

Phone Nos:

Email address:

(Each Joint Venturer must sign. The manner of signing for each individual, partnership, corporation and limited liability company that is a party to the joint venture should be in the manner indicated above.)

A Partnership

Partnership Name: _____ (SEAL)

By: _____
(Signature of general partner – attach evidence of authority to sign)

Name *(typed or printed)*: _____

Title: _____

Business Address: _____

Phone Nos: _____

Email address: _____

Individual

Name *(typed or printed)*: _____

By: _____
(Individual signature)

Doing Business as: _____

Business Address: _____

Phone Nos: _____

Email address: _____

END OF SECTION

BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (*Name and Address*):

SURETY (*Name and Address of Principal Place of Business*):

OWNER (*Name and Address*):

BID

Bid Due Date:

Description (*Project Name and Include Location*):

BOND

Bond Number:

Date (*Not earlier than Bid due date*):

Penal sum _____ \$ _____
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

SURETY

Bidder's Name and Corporate Seal (Seal)

Surety's Name and Corporate Seal (Seal)

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: Above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

SECTION 00 43 22

UNIT PRICES FORM

Provide unit pricing for each Bid item in both words and figures. Provide Bid item totals in figures only.

Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between prices written in words and prices written in figures will be resolved in favor of prices written in words.

Unit Prices have been computed in accordance with Paragraph 11.03.A of the General Conditions and Supplementary Conditions, if any. Estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and final payment for unit price items will be based on actual quantities determined and based on the unit prices included below as provided in the General Conditions and Supplementary Conditions, if any.

BID PRICES SHALL EXCLUDE SALES AND USE TAX.

Item No.	Item Description with Unit or Lump Sum Price	Estimated Quantity	Unit	Unit Bid Price	Total Bid Item Price
1	Mobilization/Demobilization (not to exceed 5%)	1	LUMP SUM		
2	Erosion and Sedimentation Controls	1	LUMP SUM		
3	Clear & Grub	1	LUMP SUM		
4	Remove and Dispose Bituminous and Cement Concrete Pavement	4,070	SQUARE YARD		
5	Remove and Dispose Tree	5	EACH		
6	Remove and Relocate Mailbox	1	EACH		
7	Remove and Relocate Water Valves	3	EACH		
8	Type B Stabilization, Imported Materials or Blend of On-Site and Imported Material, 12 inches Thick	4,590	SQUARE YARD		
9	Base Group 04, Lime rock or Recycled Crushed Concrete, 6 inches Thick	4,590	SQUARE YARD		
10	Superpave Asphaltic Concrete, Traffic C, 2 inches Thick	516	TON		
11	Cement Concrete Sidewalk and Driveways, 4 inches Thick	554	SQUARE YARD		
12	Pavement Markings	1	LUMP SUM		
13	Concrete Ribbon Curb, 8-inch	3,372	LINEAR FOOT		

Item No.	Item Description with Unit or Lump Sum Price	Estimated Quantity	Unit	Unit Bid Price	Total Bid Item Price
14	Stormwater Best Management Practices	1	LUMP SUM		
15A	15-inch Class III Reinforced Concrete Pipe	619	LINEAR FEET		
15B	18-inch Class III Reinforced Concrete Pipe	166	LINEAR FEET		
15C	24-inch Class III Reinforced Concrete Pipe	47	LINEAR FEET		
16	FDOT Drainage Manhole	3	EACH		
17	FDOT Ditch Bottom Inlet Type C	9	EACH		
18	Earthwork and Fine Grading	1	LUMP SUM		
19	Soil Amendments and Sodding	1	LUMP SUM		

TOTAL BID PRICE (based on Unit Price Schedule above)

_____ Dollars and
 _____ Cents \$ _____
(Use words) *(Use figures)*

INCLUDE TOTAL BID PRICE (based on Unit Price Schedule above) ON BID FORM

END OF SECTION

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SECTION 00 43 40

INFORMATION, SCHEDULES AND DATA

Bidder has submitted the following items with its Bid.

☐ **SCHEDULE**

Provide a proposed Project Schedule based on a Notice to Proceed on approximately November 20, 2025, a Substantial Completion within 120 days, and final completion within 150 days. The schedule shall be presented in sufficient detail for the Owner to evaluate the Bidder's ability to perform the Work within the Contract Times and shall include:

- milestones related to submittal schedules & material/equipment procurement/order placement;
- milestones related to construction and checkout & functional testing; and
- sequencing to limit impacts from construction.

☐ **WORK PLAN**

Submit a narrative work plan describing the Bidder's approach to the successful execution of the Work to accommodate the proposed Project Schedule and provide for special requirements. Allow for review of submittals, coordination, and development of detailed construction sequencing and coordination, and compliance with special requirements.

Describe:

- how schedule progress will be measured and tracked;
- how the Schedule of Values and cash flow will be determined and how progress for payment will be determined; and
- how documents will be controlled to ensure the appropriate revision is used in design, procurement, and construction/installation.

CERTIFIED BY BIDDER ON:
By:
<i>Authorized person</i>

END OF SECTION

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SECTION 00 45 05

BIDDER'S REPRESENTATIONS AND CERTIFICATIONS

The undersigned, under the penalties of perjury, represents and certifies the following which is made a condition of the Bid.

1.01 BIDDER'S REPRESENTATIONS

- A. Bidder has examined and carefully studied the Bidding Documents and other related data identified in the Bidding Documents.
- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in Section 00 73 10 of the Supplementary Conditions Paragraph 4.02 as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Section 00 73 10 of the Supplementary Conditions Paragraph 4.06 as containing reliable "technical data."
- E. Bidder has considered the information known to Bidder; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph E above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of the Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which the Bid is submitted.

1.02 BIDDER'S CERTIFICATIONS

- A. The Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid and has not solicited or induced any individual or entity to refrain from bidding.
- C. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph:
 - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
 - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish Bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.
- D. Bidder will comply with the requirements of the Contract Documents, and if Bidder is awarded a Contract, agrees to incorporate applicable provisions into all subcontracts and Purchase Orders so that such provisions will be binding upon each Subcontractor or Supplier, including as a minimum, Statutory Requirements, safety and health regulations; and Wage Rate Requirements.

1.03 STATUTORY CERTIFICATIONS

- A. Bidder has not been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years pursuant to Section 255.20 Florida Statutes, and is therefore, eligible to Bid pursuant to Section 255.20 Florida Statutes.
- B. Bidder has implemented a drug-free workplace program. ☐Yes ☐No
- C. Bidder has not been placed on the convicted vendor list, has submitted the Affidavit on Public Entity Crimes included as an attachment to this Section, and therefore is eligible to Bid pursuant to Section 287.133, Florida Statutes.
- D. Bidder has not been placed on the discriminatory vendor list, and therefore is eligible to Bid pursuant to Section 287.134, Florida Statutes.
- E. If the Bid is \$1,000,000 or more, Bidder is not on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, and is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, (effective October 1, 2016) or is not engaged in a boycott of Israel (effective October 1, 2016) or is not engaged in business operations in Cuba or Syria, and is therefore is eligible to Bid, pursuant to Section 287.135, Florida Statutes.
- F. Bidder has not been placed on the antitrust violator vendor list, and therefore is eligible to Bid pursuant to Section 287.137, Florida Statutes.
- G. Pursuant to Florida HB 7063, Bidder certifies it does not use coercion for labor or services as defined in Florida Statute 787.06 and has submitted the attached affidavit with its Bid.
- H. Pursuant to Chapter 112 Florida Statutes, Bidder has disclosed with their Bid the name of any officer, director, agent, or shareholder who is also an employee of the Owner and the name of any employee of the Owner who owns, directly or indirectly, an interest of 5 percent or more in the Bidder's firm or any of its branches.

- I. By submission of its Bid and subsequent execution of this Contract, the Bidder certifies that all trench excavation within its control, and in the control of its Subcontractors, shall be conducted in strict adherence with the Florida Trench Safety Act. Bidder certifies that costs for complying with the Florida Trench Safety Act are included in the various items of the Bid and in the Total Bid Price.
1. Costs for compliance with the Florida Trench Safety Act to be identified with the Bid include the following, with trench to be excavated in linear feet and special shoring requirements, if any, in square feet.

Trench Safety Measure (Description)	Units of Measure (LF, SY)	Unit (QTY)	Unit Cost Extended	Total Cost

- J. If awarded a Contract, Bidder agrees to utilize the U.S. Department of Homeland Security's E-Verify Systems to verify the employment eligibility of all persons employed during the term of the Contract.

1.04 BIDDER'S CERTIFICATIONS REQUIRED BY GRANTS

- A. Bidder will comply with requirements for use of *minority businesses, women's business enterprises, and labor surplus* per 2 CFR Part 200 Subpart D §200.321 and will take affirmative steps to assure firms are used when possible.
1. If Bidder is the awarded Contractor, it shall not discriminate on the basis of race, color, national origin, or sex in the performance of any resulting Contract and shall carry out applicable requirements of 40 CFR Part 33.

- B. Bidder will provide *preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States* (including but not limited to iron, aluminum, steel, cement, and other manufactured products) per 2 CFR Part 200 Subpart D §200.322 and will comply with 2 CFR Part 200 Subpart D §200.323, *Procurement of recovered materials*, as applicable, which covers compliance with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
2. Bidder will comply with *Build America, Buy America (BABA) Act* requiring steel, iron, manufactured products, non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall to be produced in the United States.
- C. Bidder will provide *access to records* by Federal government representatives per 2 CFR Part 200 Subpart D §200.337.
- D. Bidder will comply with requirements for *prohibition on certain telecommunications and video surveillance services or equipment* per 2 CFR Part 200 Subpart D §200.216.
- E. Bidder will comply with the requirements for *equal employment opportunity* per 41 CFR 60 and in accordance with Executive Order 11246 and has submitted the attached “Certificate of Non-Segregated Facilities” with its Bid.
- F. Bidder will comply with the requirements of the *Contract Work Hours and Safety Standards Act* (40 U.S.C. 3701-3708), the *Davis-Bacon Act*, *Federal minimum wage rates and Copeland Anti-KickBack Act* (40 USC 3145).
- G. Bidder will comply with the *Clean Air Act* (42 U.S.C. 7401-7671q.) and the *Federal Water Pollution Control Act* (33 U.S.C. 1251-1387), as amended
- H. Bidder is not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency or from receiving a contract with Federal financial assistance (see <https://www.dol.gov/agencies/ofccp/debarred-list>) and certifies it does not appear on the System for Award Management (SAM) at as a debarred entity (<https://sam.gov/content/home>).
- I. Bidder has disclosed its lobbying activities and submitted the attached “Certification for Contracts, Grants, and Loans” (no lobbying) OR “Standard Form LLL Disclosure of Lobbying Activities” (if applicable) with its Bid.

ATTACHMENTS

- A. Affidavit on Public Entity Crimes
- B. Human Trafficking Affidavit
- C. Certificate of Non-Segregated Facilities
- D. Certification for Contracts, Grants, and Loans (no lobbying) OR
- E. Standard Form LLL Disclosure of Lobbying Activities (if applicable)

SUBMITTED ON:
By:
<i>Authorized person per Bid Form</i>

END OF SECTION

AFFIDAVIT ON PUBLIC ENTITY CRIMES

(SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a), FLORIDA STATUTES)

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY
PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to _____
by _____
(Print individual's name and title)
for _____
(Print name of entity submitting sworn statement)
whose business address is _____

and (if applicable) its Federal Employer Identification Number (FEIN) is
_____. (If the entity has no FEIN, include the Social Security Number of
the individual signing this sworn
statement: _____).

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
- a. A predecessor or successor of a person convicted of a public entity crime; or
 - b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The

ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), **Florida Statutes**, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. **(Indicate which statement applies)**

____ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. **(Attach a copy of the final order)**

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION

287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

(Date)

STATE OF _____

COUNTY OF _____

PERSONALLY APPEARED BEFORE ME, the undersigned authority,
_____ who, after first being

(Name of individual signing

sworn by me, affixed his/her signature in the space provided above on this
_____ day of _____, 2016.

Attest: _____

Notary Public

My commission expires: _____

(Notary Seal)

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HUMAN TRAFFICKING AFFIDAVIT

1. I am over the age of 18 and I have personal knowledge of the matters set forth except as otherwise set forth herein.
2. I currently serve as _____ (Role) of _____ (Company).
3. _____ (Company) does not use coercion for labor or services, as those terms are defined in Florida Statute 787.06.
4. This declaration is made pursuant to Florida Statute 92.525. I understand that making a false statement in this declaration may subject me to criminal penalties.

Under penalties of perjury, I, _____, declare that I have read the foregoing Human Trafficking Affidavit and that the facts stated in it are true.

Further Affiant sayeth naught.

Company Name

Authorized Signatory

Printed Name

Title

Date

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CERTIFICATE OF NON-SEGREGATED FACILITIES

We, _____ (Company)
certify that we do not and will not maintain or provide for our employees any segregated facilities at any of our establishments, and that we do not and will not permit our employees to perform their services at any location, under our control, where segregated facilities are maintained. We understand and agree that breach of this certification is a violation of Equal Opportunity clause required by Executive Order 11246, amended.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom or otherwise.

We further agree that (except where we have obtained identical certifications from proposed Subcontractors for specific time periods) we will obtain identical certifications from proposed Subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that we will retain such certification in our files; and that we will forward the following notice to such proposed Subcontractors (except where the proposed Subcontractors have submitted identical certifications for specific time periods).

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NON-SEGREGATED FACILITIES. A certification of Non-segregated facilities as required by the 9 May 1967 order on Elimination of Segregated Facilities, by the Secretary of Labor (32 Fed. Reg. 7439, 19 May 1967), must be submitted from the provisions either for each subcontract or for all subcontracts during a period (i.e. quarterly, semi-annually, or annually).

NOTE: Whoever knowingly and willfully makes any false, fictitious or fraudulent representation may be liable to criminal prosecution under 18 U.S.C. 1001.

(Name of Company)

By: _____

Date: _____

Title: _____

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CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(name)

(date)

(title)

oOo

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See Reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial filing ☐ b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, if known: Congressional District, if known:		5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable:	
8. Federal Action Number, If known:	9. Award Amount, If known: \$	
10. a. Name and Address of Lobbying Registrant <i>(If individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(Including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred, Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward receipt. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g. "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in Item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Certifying official shall sign and date the form, print his/her name, title and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

SECTION 00 45 13

BIDDER'S QUALIFICATIONS

The following data, statements of experience, personnel, equipment and general qualifications are submitted as a part of the Bid and the Bidder represents and guarantees the truthfulness and accuracy thereof and **its ability to meet the qualifications requirements specified in Section 01 43 05 and the Specifications**. Attach additional sheets as necessary properly cross referenced.

1.01 GENERAL

A. Bidder's organization is a _____
(entity type) and has been in business continuously from the year _____.

B. Bidder has operated under the same business name and organization structure for the last 5 years on at least 5 projects ☐ yes ☐ no

If no, indicate other business names: _____

C. Bidder's organization has had experience in construction comparable to that required by the Contract Documents as a prime contractor for _____ years and as a subcontractor for _____ years.

1.02 BIDDER EXPERIENCE

- A. Identify at least 5 projects in the state the Project is located completed within the past 5 years which are similar in type, character, physical size, and complexity to that required by the Contract Documents.

Client/Owner Name/Address	Project Name/Location	CURRENT Contact Name, Phone, Email	Contract Value	Time Period

1.03 SPECIALTY EXPERIENCE OF BIDDER OR SUBCONTRACTORS

- A. Identify at least 5 projects that included a combination of stormwater, potable water, and pavement/street repair within public streets within the last 10 years

Client/Owner Name/Address	Project Name/Location	CURRENT Contact Name, Phone, Email	Bidder or Subcontractor (Name)	Time Period

- B. Identify at least 5 projects that included pavement and street repair within public streets within the last 10 years.

Client/Owner Name/Address	Project Name/Location	CURRENT Contact Name, Phone, Email	Bidder or Subcontractor (Name)	Time Period

1.04 CURRENT LICENSES

- A. Indicate Bidder and Subcontractor(s) current licenses including design professionals and surveyors.

Name	State	Type	License number

1.05 PERSONNEL

- A. Identify supervisory personnel that are currently employed by the Bidder and available for assignment to the Project (project manager, superintendents, principal foremen and engineers).
1. Identify full-time on-Site superintendent in responsible charge of the Work with at least 10 years' experience as superintendent on comparable projects.
 2. Identify project manager assigned full-time with at least 10 years' experience as project manager on comparable projects.

Name	Title	Years of Experience
	Full time, on-Site Superintendent	
	Full time Project Manager assigned	

- B. Attach detailed resumes of qualifications, previous employers and experience for each supervisory staff listed above.

1.06 PROPOSED DESIGN PROFESSIONALS AND SURVEYORS

- A. The following design professionals and surveyors are to be employed or retained by the Bidder and available for assignment to the Project.

Name	Address	Area of Responsibility	Years of Experience

- B. Attach detailed resumes of qualifications, previous employers and experience for each design professional and surveyor listed above.

1.07 EMERGENCY RESPONSE CAPABILITIES

- A. Describe Bidder's 24 hour/7 days per week emergency response and communication capabilities. Attach additional documentation, as necessary.

[illegible]

1.08 EQUIPMENT

- A. Identify equipment available for use on the Project. Indicate whether owned by Bidder's organization or rented. Attach additional sheets, as necessary.

Type of Equipment	Size or Capacity	Owned or Rented

1.09 BUSINESS INTERESTS

- A. Identify the names and addresses of the members of the Board of Directors of corporation, or the names and addresses of all persons and parties interested in this Bid as partners of a partnership or as individuals. Attach additional sheets, as necessary.

Name	Address	Telephone No.

- B. Identify the bank or banks representing the financial responsibility of the Bidder.

Name of Bank	Address	Contact Name and Telephone No.

1.10 VIOLATIONS

- A. Following is a list of violations Bidder and its main Subcontractors have received or been the subject of, or otherwise been involved in, regarding any state or local ethic laws, regulation, code, ordinance, policy, or standard, or offenses arising out of submission of bids or the performance of work on public works projects or contracts over the last 10 years. Attach additional sheets, as necessary.

Name and Location of the Project	
Nature of the Violation/Offense	
Duration and dates during which the violation/offense took place	

Name and Location of the Project	
Nature of the Violation/Offense	
Duration and dates during which the violation/offense took place	

Name and Location of the Project	
Nature of the Violation/Offense	
Duration and dates during which the violation/offense took place	

1.11 LABOR DISPUTES

- A. Identify labor disputes the Bidder has been the subject of, or otherwise been involved in, during the last 10 years. For these purposes, "labor disputes" shall include picketing or any other activity which disrupted or delayed the work. Attach additional sheets, as necessary.

Name and Location of the Project	
Nature of the Dispute	
Duration and dates during which the dispute took place	
How the dispute was resolved	

Name and Location of the Project	
Nature of the Dispute	
Duration and dates during which the dispute took place	
How the dispute was resolved	

END OF SECTION

SECTION 00 45 19

NON-COLLUSION AFFIDAVIT

_____, being duly sworn,
depose and, under the penalty of perjury, say that the following is true:

1. I am the person responsible within my firm for the final decision as to the price(s) and amount of this Bid or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on the behalf of my firm.
2. The price(s) and amount of this Bid have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restricting competition with any other contractor, competitor, Bidder, or potential Bidder.
3. Unless otherwise required by law, neither the price(s) nor the amount of this Bid have been disclosed to any other firm or person who is a Bidder, competitor, or potential Bidder on the Project, and will not be so disclosed either directly or indirectly prior to Bid opening.
4. No attempt has been made or will be made to solicit, cause, or induce any firm, partnership, corporation, or person to submit or not submit a Bid on this Project, or to submit a Bid higher than the Bid of this firm, or submit an intentionally high or noncompetitive Bid or other form of complementary Bid, or for the purpose of restricting competition.
5. The Bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary Bid.
6. My firm has not offered or entered into a subcontracting agreement regarding the purchase of materials or services from any firm or person, or offered, promised, or paid cash or anything of value to any firm or person, whether in connection with this or any other Project, in consideration for an agreement or promise by any firm or person to refrain from proposing or to submit a complementary Bid on the Project.
7. My firm has not accepted nor been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting a complementary Bid or agreeing to do so, on the Project.

8. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval, or submission of my firm's Bid on the Project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act, or other conduct inconsistent with any of the statements and representations made in this affidavit.

Company Name

Signature

Company Position

Date: _____

Attest: _____

Date: _____

END OF SECTION

SAMPLE NOTICE OF INTENT TO AWARD (C-00 50 55)

TO BE COMPLETED & ISSUED AFTER BID REVIEW ON OWNER LETTERHEAD

Date

*[Bidder Contact
Bidder Company
Bidder Address]*

**SUBJECT: NOTICE OF INTENT TO AWARD
[PROJECT TITLE/OWNER]**

You are notified that your Bid dated _____ for the above Contract has been considered.

You are the apparent Successful Bidder and the Owner intends that the above Contract be awarded to you. The Total Contract Price of the awarded Contract will be \$_____ [Lump Sum OR based on Unit Prices], subject to the following conditions being met and subject to required reviews and approvals [OPTIONAL and specifically, funding agency approval by [_____].]

You must comply with the following conditions precedent **within 15 days** of the date of receipt of this Notice of Intent to Award:

1. Deliver the Contract security (Bonds) and insurance documentation as specified in the General Conditions and Supplementary Conditions (Articles 2 and 5).
2. Deliver the following completed and executed certifications and documents:
 - a.
 - b.
 - c. Items to be provided by Subcontractors:
 -

SAMPLE NOTICE OF INTENT TO AWARD (C-00 50 55)

3. Other conditions precedent:

- *LIST OTHERS IF ANY*

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Intent to Award, and declare your Bid security forfeited.

After confirming that you have complied with the above conditions and required approvals are obtained, Owner will deliver a Notice of Award and the conformed Contract Documents with the Agreement for execution.

INSERT OWNER NAME (Owner)

By: _____
[Name and Title]

Copy to Engineer

SAMPLE NOTICE OF AWARD (C-00 51 00)

TO BE COMPLETED & ISSUED WITH CONFORMED AGREEMENT & CONTRACT ON OWNER
LETTERHEAD

Date

[Bidder Contact
Bidder Company
Bidder Address]

SUBJECT: NOTICE OF AWARD
[PROJECT TITLE/OWNER]

You are notified that your Bid dated [insert date] for the above Contract has been considered, and that you are the Successful Bidder and are awarded a Contract for [insert description].

The Total Contract Price of the awarded Contract is \$_____ [Lump Sum OR based on Unit Prices].

_____ unexecuted counterparts of the Agreement and 1 copy of the Contract Documents [(except for Drawings)] accompanies this Notice of Award. [OR have been transmitted or made available electronically.] [Sets Drawings will be delivered separately from the other Contract Documents.]

You must comply with the following conditions precedent.

- Return all executed counterparts of the Agreement to Owner **within 10 days** of receipt of this Notice of Award.
- [Add others as necessary]

After obtaining required reviews and approvals for Contract execution, Owner shall deliver one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions and Supplementary Conditions, if any.

INSERT OWNER NAME (Owner)

By: _____
[Name and title]

Copy to Engineer

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SECTION 00 52 10

AGREEMENT FORM

THIS AGREEMENT is by and between Town of Montverde, FL (“Owner”) and _____ (“Contractor”). Owner and Contractor hereby agree as follows.

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as Stormwater Improvements, which includes: clearing and grubbing, tree removal, full depth pavement reconstruction, roadway widening, driveway apron reconstruction, installation of curbing, installation of sidewalk, construction of stormwater Best Management Practices (BMP’s), revegetation; and all materials and equipment, construction, and services inherent to the Work.
- 1.02 The Work includes the principal features specified in Section 01 11 00 – Summary of Work.

ARTICLE 2 – THE PROJECT

- 2.01 The Project under the Contract Documents is generally known as “Stormwater Improvements – Phase 2 Porter Avenue”.

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Woodard & Curran, Inc. (Engineer), which is to act as Owner’s representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

- 4.01 *Time of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 *Substantial Completion and Final Payment*
- A. The Work shall be substantially complete within 120 calendar days from the commencement of Contract Times as provided in Paragraph 2.03 of the Standard General and Supplementary Conditions and completed and ready for final payment, in accordance with Paragraph 14.07 of the Standard General Conditions, 150 calendar days from the commencement of Contract Times.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the Standard General Conditions and Supplementary Conditions, if any. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **\$500** for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **\$750** for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraph 5.01.A below based on unit pricing stated in Contractor's Bid attached hereto:

TOTAL PRICE

[IN WORDS] Dollars and [IN WORDS] Cents

[\$[DOLLAR AMOUNT]]

- A. Unit Prices have been computed in accordance with Paragraph 11.03.A of the Standard General Conditions and Supplementary Conditions, if any.
- B. The prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the Standard General Conditions and Supplementary Conditions, if any, estimated quantities are not guaranteed (except for those that may be estimated by the Contractor), and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the Standard General Conditions and Supplementary Conditions, if any. Final payment for unit price items will be based on actual quantities determined and based on the unit prices in the Unit Prices Form.
- C. When the accepted quantity of any item of Unit Price Work performed by the Contractor (as measured in accordance with 9.07 of the General and Supplementary Conditions, if any) differs from the estimated quantity indicated in the attachment(s) to this Agreement for an item of Unit Price Work, no adjustment or allowance will be made for any increased expenses, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting either directly or indirectly from such increased or decreased quantities, or from unbalanced allocation of overhead expense among the Unit Price Work items on the part of the Contractor, or subsequent loss of expected reimbursements therefor.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the Standard General Conditions and Supplementary Conditions, if any. Applications for Payment will be processed by Engineer as provided in the Standard General Conditions and Supplementary Conditions, if any, and the General Requirements.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the Standard General Conditions and Supplementary Conditions, if any, (and in the case of Unit Price Work based on the number of units completed).
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the Standard General Conditions and Supplementary Conditions, if any, and additional retainage allowed by Laws and Regulations.
 - a. 95 percent of Work completed (with the balance of 5 percent being retainage)
 - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance of 5 percent being retainage)
 - c. After 50 percent completion of the Work, Owner shall reduce the amount to be withheld from each subsequent progress payment made to the Contractor 5 percent retainage, pursuant to Section 255.078, Florida Statutes.
 - d. Owner shall not be obligated to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to a construction bond provided pursuant to this Contract, or otherwise the subject of a claim or demand by the Owner or Contractor.
 - 2. Pursuant to Section 255.052 Florida Statutes, the Contractor may, from time to time,

3. withdraw the whole or any portion of the amount retained for payments to the Contractor pursuant to the terms of the Contract, upon depositing with the Owner's chief financial officer:
 - United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills;
 - Bonds or notes of the state of Florida; or
 - Bonds of any political subdivision in the state; or
 - Cash delivered to the State Treasury for the Treasury Cash Deposit Trust Fund; or
 - Certificates of deposit from state or national banks or state or federal savings and loan associations in the state. Certificates of deposit shall possess the eligibility characteristics defined in section 625.52 Florida Statutes.

B. Upon Substantial Completion of the entire construction to be provided under the Contract Documents, Owner shall pay an amount sufficient to increase total payments to Contractor to 98 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

1. Owner shall not be obligated to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to a construction bond provided pursuant to this Contract, or otherwise the subject of a claim or demand by the Owner or Contractor.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General and Supplementary Conditions, if any, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

6.04 *Timely Payment*

- A. Pursuant to the "Florida Prompt Payment Act", Section 255.073, Florida Statutes, when the Contractor receives payment from the Owner for labor, services, or materials furnished by Subcontractors and Suppliers hired by the Contractor, the Contractor shall remit payment due to those Subcontractors and Suppliers within 10 days after the Contractor's receipt of payment.

- B. When a Subcontractor receives payment from the Contractor for labor, services, or materials furnished by sub-subcontractors and sub-suppliers, the Subcontractor shall remit payment due to those sub-subcontractors and sub-suppliers within 7 days after the Subcontractor's receipt of payment.
- C. This provision does not prohibit a Contractor or Subcontractor from disputing, pursuant to the terms of the relevant contract, all or any portion of a payment alleged to be due to another party if the Contractor or Subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute.
- D. The Contractor or Subcontractor must pay all undisputed amounts due within the time limits imposed by this subsection.

ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General and Supplementary Conditions, if any, shall bear interest at the rate of 2 percent per month pursuant to Section 255.073, Florida Statutes.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS AND CERTIFICATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."

- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

8.02 The Contractor certifies, under the penalties of perjury, that:

- A. Contractor has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Statutory*

- A. In accordance with Section 119.0701, Florida Statutes, Contractor agrees to comply with Florida's Public Records Law, including the following.
1. Keep and maintain public records required by the Owner to perform the services under this Agreement.
 2. Upon request by the Owner, provide the Owner with copies of the requested records, having redacted records in total on in part that are exempt from disclosure by law or allow the records to be inspected or copied within a reasonable time (with provision of a copy of such records to the Owner) on the same terms and conditions that the Owner would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by Law.
 3. Ensure that records, in part or in total, that are exempt or that are confidential and exempt from disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion (or earlier termination) of the Agreement if Contractor does not transfer the records to the Owner;
 4. Upon completion (or earlier termination) of the Agreement, Contractor shall within 30 days after such event either transfer to the Owner, at no cost, all public records in possession of the Contractor or keep and maintain the public records in compliance with Chapter 119, Florida Statutes. If Contractor transfers all public records to the Owner upon completion (or earlier termination) of the Agreement, Contractor shall destroy any duplicate records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion (or earlier termination) of the Agreement, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Owner in a format that is compatible with the information technology systems of the Owner.
 5. The failure of Contractor to comply with Chapter 119, Florida Statutes, and/or the provisions set forth in this Article shall be grounds for immediate unilateral termination of the Agreement by the Owner. The Owner shall also have the option to withhold compensation due Contractor until records are received as provided herein.

6. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**Paul Larino, Town Manager
Town of Montverde, Florida
17404 Sixth Street
P.O. Box 560008
Montverde, Florida, 34756
407-469-2681**

- B. Contractor has certified that it has not been placed on the convicted vendor list pursuant to Section 287.133, Florida Statutes.
- C. Contractor has certified that it has not been placed on the discriminatory vendor list pursuant to Section 287.134, Florida Statutes.
- D. Contractor has certified it is not in violation of Section 287.135, Florida Statutes, and it is not on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, or it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, (effective October 1, 2016) or it is not engaged in a boycott of Israel (effective October 1, 2016) or it is not engaged in business operations in Cuba or Syria.
- E. Contractor has certified that it has not been placed on the antitrust violator vendor list pursuant to Section 287.137, Florida Statutes.
- F. Contractor has certified it does not use coercion for labor or services as defined in Florida Statute 787.06.
- G. Contractor certifies that all trench excavation within its control and by its Subcontractors shall be conducted in strict adherence with the Florida Trench Safety Act pursuant to Chapter 553 § 60-64 Florida Statutes.

- 8.04 Contractor agrees to comply with applicable Federal requirements set forth in the Supplementary Conditions Section 00 73 74 including the following.
- A. Minority businesses, women's business enterprises, and labor surplus per 2 CFR Part 200 Subpart D §200.321.
 - 1. The Contractor shall carry out applicable requirements of 40 CFR Part 33.
 - B. Domestic preference for procurement per 2 CFR Part 200 Subpart D §200.322.
 - 1. Build America, Buy America (BABA) Act
 - C. Procurement of recovered materials per 2 CFR Part 200 Subpart D §200.323
 - D. Access to records per 2 CFR Part 200 Subpart D §200.337.
 - E. Prohibition on certain telecommunications and video surveillance services or equipment 2 CFR Part 200 Subpart D §200.216
 - F. Per Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards
 - 1. Equal Employment Opportunity requirements per 41 CFR 60 and in accordance with Executive Order 11246, "Equal Employment Opportunity"
 - 2. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)
 - 3. Davis-Bacon Act, Federal minimum wage rates and Copeland Anti-KickBack Act (40 USC 3145). In case of discrepancy between Federal and state wage rates, the higher wage rates shall apply. See Section 00 73 43.
 - 4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended
 - 5. Debarment and Suspension (Executive Orders 12549 and 12689)
 - 6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
 - G. Contractor agrees to incorporate these requirements into all subcontracts regardless of tier and Purchase Orders so that such provisions will be binding upon each Subcontractor or Supplier. The Contractor shall maintain reasonable records to demonstrate compliance with these requirements.
- 8.05 The representations and certifications Contractor submitted with its Bid shall remain valid during the period of this Agreement.
- 8.06 Contractor agrees to incorporate the applicable provisions of the Contract Documents into all subcontracts and Purchase Orders so that such provisions will be binding upon each Subcontractor or Supplier.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement and attachments

COMPLETE LISTING AFTER AWARD

- Bid Form (submitted by XXXX and dated XXX)
- Bid Supplements and attachments
- Public Construction Bond
- Insurance certificates
- *List others*

2. Forms listed in 00 60 00
3. Standard General Conditions in Section 00 72 05
4. Supplementary Conditions as listed in Section 00 01 10, Table of Contents
5. General Requirements and Specifications as listed in Section 00 01 10, Table of Contents
6. Drawings as listed in Section 00 01 15, List of Drawing Sheets
7. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed
 - b. Work Change Directives
 - c. Change Orders

B. The documents listed in Paragraph 9.01.A are attached to this Agreement and made a part hereof.

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the Standard General Conditions and Supplementary Conditions, if any.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

A. Terms used in this Agreement will have the meanings stated in the Standard General Conditions and Supplementary Conditions, if any.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Third Party Beneficiaries*

- A. Neither Contractor nor Owner intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party is or will be entitled to assert a right or claim against either of them based upon this Agreement.

10.06 *Prohibition on Gratuities and Kickbacks*

- A. It is unethical for any person to offer, give, or agree to give any employee or for any employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, audit, or in any other advisory capacity in any proceeding or application, request for ruling, determination claim or controversy, or other particular matter, pertaining to any program requirement or an Agreement or subcontract or to any solicitation of proposal therefore.
- B. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a Subcontractor under a Contract to Contractor or higher tier Subcontractor any person associated therewith, as an inducement of the award of a subcontract or order.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

OWNER:
TOWN OF MONTVERDE, FL

CONTRACTOR:
 **(Enter Name of Contractor)** 

By: _____
Paul Larino, Town Manager

By: _____

Printed Name

Title

By: _____

License No. _____

Printed Name

Title

Attest: _____

Attest: _____

Title

Title

Address for giving notices:

Address for giving notices:

Agent for service of process:

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

END OF SECTION

WOODARD & CURRAN

AGREEMENT FORM
00 52 10-12

PUBLIC CONSTRUCTION BOND
(per Section 255.05, Florida Statutes)

CONTRACTOR *(name and address telephone number):*

SURETY NAME (if more than one list each)

Address of principal place of business):

OWNER *(name and address and telephone number):*

Telephone number:

BOND

Bond Number:

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

KNOW ALL MEN BY THESE PRESENTS that we,

(Name of CONTRACTOR)
hereinafter called Principal, of the State of _____, and

(Name of SURETY)
a corporation organized and existing under and by virtue of the laws of the State of _____
and regularly authorized to do business in the State of Florida, as SURETY, are held and firmly bound unto

(Name of OWNER)
a _____, organized and existing under the laws of the State of
Florida, hereinafter called Owner,

in the penal sum of _____ Dollars and _____ Cents
(\$ _____), lawful money of the United States of America, for the
payment whereof well and truly to be made, we bind ourselves, our heirs, executors, and administrators, successors
and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract dated _____, between Principal and Owner for construction of the Construction Contract specified above, the contract being made a part of this Bond by reference, in the time and in the manner prescribed in the Contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1) (Section 713.01), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the Work provided for in the Contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the Contract; and
4. Performs the guarantee of all Work and equipment and materials furnished under the Contract for the time specified in the Contract, then this Bond is void; otherwise it remains in full force.

Principal and Surety acknowledge that the Work for which this Bond has been issued may be one of several such Contract Documents for a group of projects. This Bond does not secure covenants to pay for or to perform design services survey or program management services. The Owner is expected to reasonably account for damages that are caused to Owner with respect to Principal's (Contractor's) default in performance of the scope of the Work incorporated by reference into the Bond, and notwithstanding any contractual or common law remedy permitted to Owner as against Contractor, the obligation of Surety for any damages under this Bond shall be determined by the cost of completion of the Work less the Contract balance unpaid upon default of Contractor for the Work plus liquidated damages at the daily rate stated in the Agreement for delays by the Contractor and/or Surety in reaching Substantial Completion.

The notice requirements for claimants and conditions for entitlement to payment set forth in Section 255.05(2), Florida Statutes and the limitations period to actions upon Section 255.05, Florida Statutes, bonds apply to claimants seeking payment from surety under this Bond. Any action instituted by a claimant under this Bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05, Florida Statutes.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract Documents or other Work to be performed hereunder, or the Specifications referred to therein shall in any way affect its obligations under this Bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to Work or to the Specifications.

The above Surety states that it has read all of the Contract Documents made by the Contractor with the Owner, hereto attached, and the terms and conditions of the Contract and Work, and is familiar therewith and in particular those portions of the Agreement concerning the guaranty of such Contract for a period of one year following the date of the final acceptance of the completed Work under the Contract by the Owner, all of which this Bond includes.

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth above, do each cause this Bond to be duly executed by an authorized officer, agent, or representative.

DATED ON _____

CONTRACTOR AS PRINCIPAL

Contractor's Name and Corporate Seal

By: _____
Signature

Print Name

Title

Attest: _____
Signature

Title

SURETY

Surety's Name and Corporate Seal

By: _____
Signature (*attach power of attorney*)

Print Name

Title

Attest: _____
Signature

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

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SAMPLE NOTICE TO PROCEED (C-00 55 00)

TO BE COMPLETED ON OWNER LETTERHEAD

Date

[Bidder Contact
Bidder Company
Bidder Address]

**SUBJECT: NOTICE TO PROCEED
[PROJECT TITLE/OWNER]**

You are notified that the Contract Times under the above Contract will commence to run on _____. On or before that date, you are to start performing your obligations under the Contract Documents.

[OR for the following portion(s) of the Work:
[Describe the limits of the Work covered if option above chosen]

A Notice to Proceed for the remaining Work will follow.]

In accordance with Article 4 of the Agreement, the number of days to achieve Substantial Completion is _____, and the number of days to achieve readiness for final payment is _____

OR [*the date of Substantial Completion is _____, and the date of readiness for final payment is _____]

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions and Supplementary Conditions if any, provide that you must have delivered to Owner (with copies to Engineer and other identified additional insureds and loss payees) certificates of insurance which you are required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must:

- Comply with Articles 2.05 and 2.06 of the General and Supplementary Conditions (if any)
- *[*add other requirements*]*

INSERT OWNER NAME (Owner)

By: _____
[Name and title]

Copy to Engineer

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SECTION 00 60 00

PROJECT FORMS

The following forms are included in this Section and shall be used for the Project as specified in the General Conditions and Supplementary Conditions if any, and the General Requirements. Completed and execution versions of these forms used during the Project shall be incorporated into the Agreement and made a part thereof.

Submittal Transmittal (Form C-00 62 11)
Application for Payment (Form C-00 62 76)
Request for Interpretation/Information (Form C-00 63 15)
Field Order (Form C-00 63 36)
Work Change Directive (Form C-00 63 49)
Change Request (Form C-00 63 60)
Change Order (Form C-00 63 63)
Notice of Substantial Completion (Form C-00 65 15)
Certificate of Substantial Completion (Form C-00 65 16)
Notice of Completion (Form C-00 65 18)

END OF SECTION

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SUBMITTAL TRANSMITTAL (Form C-00 62 11)

Owner:		Transmittal No.:
Project:		
Contract No.:		
Contract Title:		
Specification Section No.:		

Assign a consecutive, unique number to each submittal and use same on resubmittals. For "Revision", A =original submittal; B = 1st resubmittal; C (and beyond) = additional resubmittals

[illegible]

- ☐ The material and equipment, and requirements for construction/installation contained in Submittal No.(s) _____ have been reviewed and we certify that they are correct and in strict conformance with the requirements specified (no exceptions or deviations)

☐ The material and equipment and requirements for construction/installation contained in Submittal No.(s) _____ have been reviewed and we certify that they are correct and in strict conformance with the requirements specified except for the following deviations (list below or attach listing): _____

CONTRACTOR'S NAME

ADDRESS

BY: _____ DATE: _____

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ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE		Application Period:	Application Date:
To (Owner):	From (Contractor):	Via (Engineer):	
Project:	Contract:		
Owner's Contract No.:	Contractor's Project No.:	Engineer's Project No.:	

Application For Payment Change Order Summary

Approved Change Orders			
Number	Additions	Deductions	
			1. ORIGINAL CONTRACT PRICE..... \$
			2. Net change by Change Orders..... \$
			3. Current Contract Price (Line 1 ± 2)..... \$
			4. TOTAL COMPLETED AND STORED TO DATE (Column F on Progress Estimate)..... \$
			5. RETAINAGE:
			a. X _____ Work Completed..... \$
			b. X _____ Stored Material..... \$
			c. Total Retainage (Line 5a + Line 5b)..... \$
			6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c)..... \$
			7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... \$
			8. AMOUNT DUE THIS APPLICATION..... \$
			9. BALANCE TO FINISH, PLUS RETAINAGE (Column G on Progress Estimate + Line 5 above)..... \$
TOTALS			
NET CHANGE BY			
CHANGE ORDERS			

Contractor's Certification

The undersigned Contractor certifies that to the best of its knowledge: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Payment of:	\$	_____	(Line 8 or other - attach explanation of the other amount)
is recommended by:		_____	(Engineer) (Date)
Payment of:	\$	_____	(Line 8 or other - attach explanation of the other amount)
is approved by:		_____	(Owner) (Date)
Approved by:		_____	Funding Agency (if applicable) (Date)
Approved by:		_____	

**REQUEST FOR
INTERPRETATION/INFORMATION
(Form C-00 63 15)**

RFI #: _____ ☐ **Attachment**

To: _____

From: _____

Attn: _____

Issue Date: _____

Project: _____

Required Reply Date: _____

DISTRIBUTION:

Contractor

Owner

Engineer

☐ _____

☐ _____

☐ _____

☐ _____

☐ _____

☐ _____

☐ _____

☐ _____

☐ _____

REFERENCES:

- Specifications: _____ Section: _____ Page/Paragraph: _____
- Drawings: _____ Issue Date: _____ Detail/Sections: _____
- Work Area: _____ Grid/Level: _____

RFI DESCRIPTION:

From: _____

Tel No: _____ Fax: No: _____

Initial: _____

E-mail: _____

RFI REPLY: (response may be transmitted in separate document)

Possible Cost Effect Yes: ☐ No: ☐

Possible Schedule Effect Yes: ☐ No: ☐

From: _____

Reply Date: _____ xc: _____

Initial: _____

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Field Order (C-00 63 36)

No. _____

Date of Issuance: _____ Effective Date: _____

Project:	Owner:	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		Engineer's Project No.:

Attention:

You are hereby directed to promptly execute this Field Order issued in accordance with General Conditions Paragraph 9.04.A, for minor changes in the Work without changes in Contract Price or Contract Times. If you consider that a change in Contract Price or Contract Times is required, please notify the Engineer immediately and before proceeding with this Work.

Reference: _____
(Specification Section(s)) (Drawing(s) / Detail(s))

Description:

Attachments:

Engineer:

Receipt Acknowledged by Contractor:	Date:
-------------------------------------	-------

Copy to Owner

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Work Change Directive (Form C-00 63 49)

No. _____

Date of Issuance: _____ Effective Date: _____

Project:	Owner:	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		Engineer's Project No.:

Contractor is directed to proceed promptly with the following change(s):

Item No.	Description

Attachments (list documents supporting change):

Purpose for Work Change Directive:

Authorization for Work described herein to proceed on the basis of Cost of the Work due to:

- ☐ Nonagreement on pricing of proposed change.
- ☐ Necessity to expedite Work described herein prior to agreeing to changes on Contract Price and Contract Time.

Estimated change in Contract Price and Contract Times:

Contract Price \$ _____ (increase/decrease) Contract Time _____ (increase/decrease)
days

Recommended for Approval by Engineer:	Date
Authorized for Owner by:	Date
Received for Contractor by:	Date
Received by Funding Agency (if applicable):	Date:

This page intentionally left blank

CHANGE REQUEST (FORM C-00 63 60)

(Design Changes/Deviations/Substitutions)

CR NO.
DATE

Project:

Request Initiated by:

- ☐ Contractor
☐ Owner
☐ Engineer

Impact to Contract Price expected ☐

Impact to Contract Time expected ☐

Change Orders will be processed separately

Request submitted as (format):

Description of Change (☐ documentation attached)

Reason for Change

Response: ☐ This constitutes a Written Amendment to the Agreement.

Review of the proposed change/deviation/substitution by Engineer is for general compatibility with the design concept of the Project. This review does not extend to means, methods, sequences, or procedures of construction or to issues of safety incident thereto. This review shall not relieve the Contractor from responsibility for full compliance with the requirements specified in the Contract Documents and to determine and verify the information contained therein.

Recommended By Engineer for Acceptance (subject to above comments if any) ☐ recommended for processing and approval under a separate Change Order NAME: <i>Signature</i> <i>Date</i>	☐ Approved by Owner (no schedule or cost impact) ☐ Acknowledged by Owner – to be processed and approved under a separate Change Order NAME: <i>Signature</i> <i>Date</i>
Approved by Contractor ☐ Change Order to be requested NAME: <i>Signature</i> <i>Date</i>	

This page intentionally left blank

Change Order (Form C-00 63 63)

No. _____

Date of Issuance: _____ Effective Date: _____

Project:	Owner:	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		Engineer's Project No.:

The Contract Documents are modified as follows upon execution of this Change Order:

Description:

Attachments (list documents supporting change):

CHANGE IN CONTRACT PRICE:

Original Contract Price:

\$ _____

[Increase] [Decrease] from previously approved
Change Orders No. _____ to No. _____:

\$ _____

Contract Price prior to this Change Order:

\$ _____

[Increase] [Decrease] of this Change Order:

\$ _____

Contract Price incorporating this Change Order:

\$ _____

CHANGE IN CONTRACT TIMES:

Original Contract Times: ☐ Working days ☐ Calendar days

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

[Increase] [Decrease] from previously approved Change Orders
No. _____ to No. _____:

Substantial completion (days): _____

Ready for final payment (days): _____

Contract Times prior to this Change Order:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

[Increase] [Decrease] of this Change Order:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

Contract Times with all approved Change Orders:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

RECOMMENDED:

By: _____

Engineer (Authorized Signature)

Date: _____

Approved by Funding Agency (if applicable):

Date: _____

ACCEPTED:

By: _____

Owner (Authorized Signature)

Date: _____

Approved by Funding Agency (if applicable):

Date: _____

ACCEPTED:

By: _____

Contractor (Authorized Signature)

Date: _____

Approved by Funding Agency (if applicable):

Date: _____

Change Order

Instructions

A. GENERAL INFORMATION

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Times. Changes that have been initiated by a Work Change Directive must be incorporated into a subsequent Change Order if they affect Price or Times.

Changes that affect Contract Price or Contract Times should be promptly covered by a Change Order. The practice of accumulating Change Orders to reduce the administrative burden may lead to unnecessary disputes.

If Milestones have been listed in the Agreement, any effect of a Change Order thereon should be addressed.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Times, a Field Order should be used.

B. COMPLETING THE CHANGE ORDER FORM

Engineer normally initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by Contractor, or requests from Owner, or both.

Once Engineer has completed and signed the form, all copies should be sent to Owner or Contractor for approval, depending on whether the Change Order is a true order to the Contractor or the formalization of a negotiated agreement for a previously performed change. After approval by one contracting party, all copies should be sent to the other party for approval. Engineer should make distribution of executed copies after approval by both parties.

If a change only applies to price or to times, cross out the part of the tabulation that does not apply.

Notice of Substantial Completion (C-00 65 15)

Project:	Owner:	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		

This NOTICE of Substantial Completion applies to:

☐ The following Systems, Equipment or specified portions ☐ : All Work under the Contract Documents
:

_____ Date of Substantial Completion for above

The following documents are attached to and made part of this Notice.

_____ Submitted by Contractor _____ Date

This page intentionally left blank

Certificate of Substantial Completion (Form C-00 65 16)

Project:

Owner:

Owner's Contract No.:

Contract:

Engineer's Project No.:

This [tentative] [definitive] Certificate of Substantial Completion applies to:

- ☐ All Work under the Contract Documents: ☐ The following specified portions of the Work:

Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby declared and is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

A [tentative] [definitive] list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as provided in the Contract Documents except as amended as follows:

- ☐ Amended Responsibilities ☐ Not Amended

Owner's Amended Responsibilities:

Contractor's Amended Responsibilities:

The following documents are attached to and made part of this Certificate:

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

Executed by Engineer	Date

Accepted by Contractor	Date

Accepted by Owner	Date

Notice of Completion (Form C-00 65 18)

Project:	Owner:	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		

This NOTICE of Completion applies to:

- ☐ All Work under the Contract Documents: ☐ The following specified portions:

Date of final Completion

The Work to which this Notice applies is ready for inspection by authorized representatives of Engineer and Owner. Contractor has completed all corrections, delivered all required documentation, and the Project, or portion designated above, is complete. The Date of Completion of the Project or portion thereof designated above is hereby declared by the Contractor.

The following documents are attached to and made part of this Certificate:

Final Punchlist

Final Application for Payment

Only the **making and acceptance of final payment** will constitute:

1. A waiver of all claims by Owner against Contractor, except claims arising from any unsettled liens, from Defective Construction appearing after final inspection; from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
2. A waiver of all claims by Contractor against Owner other than those previously timely made in writing and still unsettled.

Submitted by Contractor

Date

This page intentionally left blank

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

SECTION 00 72 05 STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



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A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

**REVISIONS HIGHLIGHTED WITHIN THE TEXT OF THIS SECTION
HAVE BEEN PREPARED BY WOODARD & CURRAN**

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

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SECTION 00 72 05
STANDARD GENERAL CONDITIONS OF THE
CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed. May also be referred to as “Proposal” which may be used interchangeably and shall have the same meaning.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Supplementary Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor and complement the Specifications. Shop Drawings and other Contractor submittals are not Drawings as so defined. May also be referred to as "Plans", which may be used interchangeably and shall have the same meaning. Notes on Drawings are directed to Contractor unless specifically noted otherwise.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 01 of the Specifications which govern the Work in all sections of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times. May also be referred to as "Construction Schedule", which may be used interchangeably and shall have the same meaning.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto. The Specifications are based on the guidelines of the Construction Specifications Institute (CSI) Project Resource Manual, and are directed to Contractor unless specifically noted otherwise. The words "shall be" are included by inference where a colon (:) is used within sentences or phrases in the Specifications.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

B. Additional Terms

1. *Final Completion*—The time at which all Work is completed and ready for final payment in accordance with Paragraph 14.07 of these General Conditions.
2. *Industry Practice*—The written practices, methods, materials, supplies and equipment, as changed from time to time, that are commonly used in the industry applicable to the Project to design, construct and operate facilities and plants, or any practices, methods and acts, which in the exercise of reasonable judgment in light of the facts known at the time, could have been expected to accomplish the desired results consistent with good business practices, reliability, safety and expedition.
3. *Installer*—The entity engaged by Contractor or a Subcontractor for installation, erection, application and similar required operations of a particular portion of the Work at the Site, including who has specialty experience in the Work they are engaged to perform.
4. *Punch List*—A list of open items representing portions of the Work which Contractor, Engineer, Owner reasonably agree is not complete on the date of Substantial Completion but which items will not significantly interfere with the safe, reliable operation and integrity of the Project or its intended use.
- 52.5. *Purchase Order*—A written agreement between Contractor and a Supplier for provision of material and equipment.

6. Warranty Period—The correction period after the date of Substantial Completion per Paragraph 13.07 of these General Conditions.

1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. Intent of Certain Terms or Adjectives:
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.
- C. Day:
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight. See also Paragraph 17.02 of these General Conditions.
- D. Defective:
1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).
- E. Furnish, Install, Perform, Provide:
1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. ~~When Contractor delivers the executed counterparts~~Prior to execution of the Agreement ~~to Owner~~, Contractor shall ~~also~~ deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Prior to execution of the Agreement and b~~B~~efore any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ~~ten~~2 printed or hard copies of the Contract Documents and Drawings ~~and Project Manual~~. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the ~~sixtieth~~90th day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, unless mutually agreed otherwise, ~~whichever date is earlier~~.

2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents and the lead times for equipment and materials per the listing in subparagraph 2.05.A.4;
2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work which will be confirmed in writing by Contractor at the time of submission. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and-
4. a complete listing of equipment and materials with lead times between placing orders and delivery, including normal allowances of time for processing and correcting Shop Drawings.

- B. *Evidence of Insurance:* In accordance with Paragraph 2.01.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 Initial Acceptance of Schedules

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.
 4. Contractor's listing of equipment and materials with lead times must be reflected in the Progress Schedule. All orders for long lead items shall be placed within 30 days after Effective Date of the Agreement if delivery is critical to scheduling. Failure to place orders in accordance with the Progress Schedule may result in full liability for liquidated damages if Milestones and Contract Times are not met.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all and comprise the entire agreement between Owner and Contractor concerning the Work. If any term or provision of any of the Contract Documents, or the application thereof to any party or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remaining provisions of the Contract Documents, or the application of such term or provision to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of each of the Contract Documents shall be valid and shall be enforced to the fullest extent permitted by Laws and Regulations.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies:

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall ~~not~~ be liable to Owner or Engineer for failure to report any such conflict, error, ambiguity, or discrepancy in the Contract Documents unless-if Contractor had actual knowledgeknew or reasonably should have known of such conflict, error, ambiguity, or discrepancy thereof.

B. Resolving Discrepancies:

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 1. A Field Order;
 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
 3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. ~~Unless otherwise stated in the Supplementary Conditions, t~~The data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies), files transmitted in in portable document format (PDF), and other electronic media formats of text, data, graphics or other file types supported by any digital document exchange system implemented for the Project, all of which are understood by all parties to constitute official Project correspondence and submittals. Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- B. ~~(Not Used) Engineer's Review: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.~~

C. Possible Price and Times Adjustments:

1. The Contract Price or the Contract Times, or both, ~~will~~may be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; ~~or~~
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A, or
 - e-d. written notice is submitted after final payment.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- B. *Not Shown or Indicated:*
1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
 2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated ~~or not shown or indicated with reasonable accuracy~~ in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

3. Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, shall not be liable to Contractor for any Claims for losses or damages incurred by Contractor related to Underground Facilities not shown or indicated (including but not limited to all fees and changes of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs).

4.05 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work unless Contractor caused or contributed to such Hazardous Environmental Condition. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of

or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20-5 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured such as a letter from Contractor's insurance company(s) and agents confirming types and limits of coverage) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed, complies with the requirements of Article 5, and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

- b. by any other person for any other reason;
- 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; ~~and~~
- 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle-;
- 7. claims arising out of violation of Laws or Regulations; and
- 8. claims for damages because of negligent acts, errors and omissions arising out of performing or providing professional services.

B. The policies of insurance required by this Paragraph 5.04 shall:

- 1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.~~68~~ inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be ~~listed-included~~ as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
- 2. include at least the specific coverages and be written for not less than the limits of liability provided herein and in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
- 3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
- 4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until ~~at least 30 days~~ prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide) and will contain waiver provisions in accordance with Paragraph 5.07;
- 5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
- 6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.

- b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.
7. In the event general liability insurance is provided on a claims-made policy, the retroactive date of such policy shall not be later than the date of the Notice to Proceed or the Effective Date of the Agreement, whichever is earlier. For construction periods extending beyond the expiration date of an initial claims-made policy, the retroactive date of all subsequent claims-made policies shall not be later than the date of the Notice to Proceed.
- C. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation and related coverage:

<u>Minimum limit of liability</u>	<u>Statutory</u>
<u>Applicable Federal (e.g., Longshoreman's)</u>	<u>Statutory</u>
<u>Employer's Liability</u>	<u>\$1,000,000</u>

2. Contractor's General Liability:

\$1,000,000 per occurrence; \$2,000,000 general aggregate; including:

- Broad Form Property Damage Liability including coverage for acts of terrorism
- Completed Operations and Product Liability
- Contractual Liability
- Independent Contractors
- Explosion, Collapse & Underground Hazards
- Personal Injury Coverage, Exclusion Deleted
- Damage to Rented Premises
- Medical Expenses

Pollution Liability (covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from the Contractor's operations and completed operations maintained for no less than three years after final completion): \$1,000,000

Excess or Umbrella Liability: \$5,000,000 per occurrence; \$5,000,000 general aggregate

3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:

Combined Single Limit of \$1,000,000 for bodily injury & property damage covering Contractor and any vehicles owned, hired and non-owned by the Contractor

See various sections of the Supplementary Conditions for additional modifications and supplements

4. Professional Liability (E&O for engineers, architects or surveyors): \$1,000,000 for each claim with an annual aggregate of at least \$2,000,000 if professional services are required under the Specifications

5. Owners Protective Liability: as may be specified in the Supplementary Conditions

D. Any self-insured retention (not allowed for Worker's Compensation) and/or deductibles must be identified and cannot exceed \$100,000 per occurrence without the prior approval of the Owner. Contractor must provide either an audited financial statement to confirm solvency or a letter of credit guaranteeing the \$100,000 in case of loss for the duration of the Project and for the Correction Period.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations (ongoing and completed) under the Contract Documents.

5.06 *Property Insurance*

- A. ~~Unless otherwise provided in the Supplementary Conditions, Owner~~ may, in its discretion, purchase and maintain property insurance upon the Work at the Site. Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. ~~Contractor shall be responsible for any (subject to such deductible amounts or self-insured retention~~ as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. be written on a Builder's Risk "all-risk" or Special Forms policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against ~~at least the following special form~~ perils or causes of loss, including but not limited to: fire, lightning, flood, pollution, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
5. allow for partial utilization of the Work by Owner;
6. include testing and startup; and
7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued; and

7.8. comply with the requirements of Paragraph 5.06.C of the General Conditions.

- B. ~~(Not used) Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.~~
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, ~~and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.~~
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or

causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:
1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds* (Not used)

- ~~A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.~~
- ~~B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with~~

~~the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.~~

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If ~~either Owner or Contractor~~ has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the ~~other party~~ Contractor in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the ~~objecting party~~ Owner shall so notify the ~~other party~~ Contractor in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. ~~Owner and Contractor shall each provide to the other Owner, such additional information in respect of insurance provided as the other may be reasonably requested.~~ If ~~either party~~ Contractor does not purchase or maintain all of the bonds and insurance required ~~of such party~~ by the Contract Documents, ~~such party~~ Contractor shall notify the ~~other party~~ Owner in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the ~~other party~~ Owner may elect to obtain equivalent bonds or insurance to protect ~~such other party's~~ Owner's interests at the expense of the ~~party Contractor who was required to provide such coverage,~~ and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, startup, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

D. Provision of any instructions:

- 1. will not be effective to assign to Owner, or any of Owner's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 8.09; and
- 2. will not be effective to assign to Engineer, or any of Engineer's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and “Or-Equals”*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item, make or catalogue number, or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *“Or-Equal” Items:* If in Engineer’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an “or-equal” item, in which case review and approval of the proposed item may, in Engineer’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items:

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and

- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Bidding Requirements or Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if the Contractor has submitted a list thereof in accordance with the Bidding Requirements or Supplementary Conditions (which shall be included as an attachment to the Agreement), Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated

for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
 - 1. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any

such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

2. Such agreement between Contractor and the Subcontractor or Supplier shall specifically include dispute resolution provisions similar to those in Article 16 (if any) and provisions required by Laws and Regulations identified in the various Supplementary Conditions.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.
- D. At the Owner's option, Contractor shall defend claims in connection with any alleged infringement of such rights.

6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor observes that the Specifications or Drawings are at variance with any Laws or Regulations, Contractor shall give Engineer prompt written notice thereof, and any necessary changes will be authorized by one of the methods set forth in Paragraph 3.04. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work, except as may be set forth in the Supplementary Conditions.

6.11 *Use of Site and Other Areas*

- A. Limitation on Use of Site and Other Areas:
 - 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
 - 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work, Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings and other closeout submittals specified will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs (if any) and other safety requirements that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.
 - 1. Shop Drawings:
 - a. Submit number of copies specified in the General Requirements.
 - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.
 - 2. Samples:
 - a. Submit number of Samples specified in the Specifications.
 - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. Submittal Procedures:
 - 1. Before submitting each Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

- c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1. or for errors or omissions in a Shop Drawing or Sample.

E. Resubmittal Procedures:

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy in order to obtain required approval of an item with no more than 3 submittals. Engineer will record Engineer's time for reviewing subsequent submittals of Shop Drawings, samples, or other items requiring approval and Contractor shall reimburse Owner for Engineer's charges for such time.
3. In the event that Contractor requests a change of a previously approved item, Contractor shall reimburse Owner for Engineer's charges for its review time unless the need for such change is beyond the control of Contractor.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and in accordance with Subcontractor warranties, manufacturers and Suppliers warranties on equipment and material, and extended or special warranties and will not be defective for the correction period specified in 13.07. Owner and Engineer and ~~its~~ their officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.

1. Contractor shall obtain and preserve for the benefit of the Owner:

- a. manufacturers' and Suppliers' written warranties and guarantees on equipment and material incorporated into the Work;
- b. written warranties and guarantees from each Subcontractor engaged in the performance of the Work; and

2. extended or special warranties.

- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 6. any inspection, test, or approval by others; ~~or~~
 7. any correction of defective Work by Owner; or;
 8. any acceptance by Owner or any failure to do so.
- D. Contractor shall prepare and execute a written general warranty and guarantee applicable to the Work reflecting the provisions of this Paragraph 6.19, Article 13 and other applicable provisions of the Contract Documents pertaining to warranties and guarantees, Subcontractor, manufacturers and Supplier warranties and guarantees, and extended or special warranties and guarantees. Contractor shall submit this written general warranty and guarantee in accordance with Article 14 and the General Requirements.
- E. Provision of any warranties or guarantees:
1. will not be effective to assign to Owner, or any of Owner's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 8.09; and
 - 8.2. will not be effective to assign to Engineer, or any of Engineer's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09.
- ~~D.F.~~ The warranty and guarantee provisions of this Paragraph 6.19 shall be in addition to and not in limitation of any other warranties, guarantees or remedies allowed by Law or required by the Contract Documents.

6.20 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, defend, and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property ~~(other than the Work itself)~~, including the loss of use resulting therefrom but only to the extent caused by any negligent or wrongful act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
1. Without limiting the generality of the preceding Paragraph, the Contractor hereby specifically agrees to indemnify, defend, and hold harmless the Owner and Engineer from all such claims, losses or expenses which arise out of injuries of employees of the Contractor or any of its Subcontractors or Suppliers of any tier related to performance of the Work. It is the Owner's intention that all financial risk of injuries related to the Work be borne by the Contractor, and that the Owner have no financial responsibility, direct or indirect, for any such claims.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of ~~;~~ ~~or the failure to prepare or approve~~ maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications, provided however, that if the claim, cost, loss or damage referred to in this Paragraph 6.20 results from failure of the Engineer to discover a condition, Underground Facilities or object which is underground or otherwise not reasonably observable by the Engineer, and if said failure to discover either was or should have been apparent to the Contractor in that the said condition or object is omitted from the Engineer's maps, Drawings, opinions, reports, surveys, Change Orders, designs or Specifications, then the Contractor shall be liable for indemnification of the Engineer and Owner under Paragraph 6.20 for claims, costs, losses and damages resulting from said failure to discover unless Contractor shall have notified Engineer of the existence

See various sections of the Supplementary Conditions for additional modifications and supplements

and location of such condition or object prior to the occurrence of such claims, costs, losses and damages and in sufficient time for Engineer to have made provisions therefor; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

3. caused by the negligent acts, errors or omissions of any of them.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. ~~The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.~~
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer ~~to whom Contractor makes no reasonable objection~~, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. However, the Owner shall have the right to direct the Contractor to perform the Work according to any sequence schedule set forth in the Contract Documents or established pursuant thereto. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. However, the Engineer shall have the right to direct the Contractor to perform the Work according to any sequence schedule set forth in the Contract Documents or established pursuant thereto.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided ~~in the Supplementary Conditions~~ herein, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.
- B. The Resident Project Representative (RPR) will be Engineer's employee or agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall be through or with the full knowledge and approval of Contractor. The RPR shall perform the following.
1. Schedules: Review the Progress Schedule, schedule of Shop Drawing and Samples submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
 2. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other Project-related meetings, and prepare and circulate copies of minutes thereof.
 3. Liaison:
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's authorized representative, to assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

See various sections of the Supplementary Conditions for additional modifications and supplements

4. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

5. Shop Drawings and Samples:

- a. Record date of receipt of Samples and approved Shop Drawings.
- b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

6. Modifications:

- a. Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer.
- b. Transmit to Contractor in writing, decisions as issued by Engineer.

7. Review of Work and Rejection of Defective Work:

- a. Conduct onSite observations of Contractor's Work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
- b. Report to Engineer whenever RPR believes that any part of Contractor's Work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of Work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

8. Inspections, Tests, and System Startups:

- a. Verify that tests, equipment, and systems startups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems startups.

9. Records:

- a. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of Contractor, Subcontractors, and major Suppliers.
- b. Maintain records for use in preparing Project documentation.

10. Reports:

- a. Furnish periodic reports to Engineer as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Hazardous Environmental Condition or conditions that may impede the compliant operation of existing facilities on Site.

11. Payment Requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

12. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

13. Completion:

- a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of the Punch List (lists of items to be completed or corrected).
- b. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final Punch List (list of items to be completed and deficiencies to be remedied).
- c. Observe whether all items on the final Punch List have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

C. The RPR shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment, including “or-equal” items.
2. Exceed limitations of Engineer’s authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor’s superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor’s Work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-Site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part or determine operational protocol that may affect the compliant operation of existing facilities.

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. However, the Engineer shall have the right to direct the Contractor to perform the Work according to any sequence schedule set forth in the Contract Documents or established pursuant thereto. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.
- F. Engineer will have no responsibility or authority:
 - 1. To order changes in construction which will result in additional costs or which will require extensions of Contract Times;
 - 2. To suspend all or any portion of Contractor's operations;
 - 3. To terminate all or any portion of the Work;
 - 4. To make final acceptance of all or any portion of the Work; and
 - 5. To operate or maintain any portion of the Work.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 Notification to Surety

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 Claims

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than ~~30-14~~ days) after the start of the event giving rise thereto. Failure to comply with this notice requirement shall constitute a waiver of the Claim. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within ~~60-30~~ days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
 - 1. deny the Claim in whole or in part;
 - 2. approve the Claim; or
 - 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

G. Contractor shall not have the right to stop performance of the Work pending resolution of a Claim.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
 - 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
 - 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work. Small tools and manual equipment are not allowable and considered to be included in overhead.
 - 1) Rentals of construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rates published in current edition of the Rental Rate Blue Book® for construction equipment published by EquipmentWatch® (www.equipmentwatch.com). When Contractor-owned equipment is ordered by Owner or Engineer to be held at standby, equipment rental rates shall be 50% of normal rate. Rental or standby shall not include time that equipment is inoperative because of malfunction or breakdown and shall cease when the use thereof is no longer necessary for the Work. The rental rate, shall be determined as follows.
 - a) For equipment already on the Project: the monthly prorated rental rate by hourly use.
 - b) For equipment not on the Project: most cost effective daily, weekly or monthly rate. 1 month normal use = 176 hours.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

- B. Cash Allowances: (Not used)

~~1.—Contractor agrees that:~~

- ~~a.—the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and~~
- ~~b.—Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.~~

- C. Owner's Contingency Allowances:

1. Contractor agrees that Owner's a contingency allowance, if any, is for the sole use of Owner to cover ~~unestimated~~ anticipated costs for certain items.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by Owner's contingency allowances, and the Contract Price shall be correspondingly adjusted. Contractor shall not receive payment for any unused portion of the contingency allowance.

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- ~~D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:~~
 - ~~1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and~~
 - ~~2. there is no corresponding adjustment with respect to any other item of Work; and~~
 - ~~3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.~~

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be ~~15~~10 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of ~~15~~10 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor, provided, however, that on any subcontracted work the total maximum fee to be paid by Owner under this subparagraph shall be no greater than 27 percent of the costs incurred by the Subcontractor who actually performs the Work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 Delays

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, acts of war or terrorism, or acts of God (force majeure).
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of war or terrorism, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. ~~(Not Used) Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:~~
 - ~~1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;~~
 - ~~2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and~~
 - ~~3. as otherwise specifically provided in the Contract Documents.~~
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Except where responsibility for a specific inspection or test is expressly allocated to Owner in the Specifications or by Laws and Regulations, Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense, ~~unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.~~

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. repair such defective land or areas; or
 2. correct such defective Work; or
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor and may be deducted from amounts otherwise due the Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work, including materials, equipment and supplies or as defined in manufacturers' and Suppliers' warranties (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed and the terms of this Paragraph 13.07 will continue to apply.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, or immediately in the case of an emergency, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. Applications for Payments:

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens and provides an indemnity satisfactory to Owner for all claims, costs, losses and damages arising out of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended including liability for liquidated damages and correction of defective work by Owner or others; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use and final testing has been completed in accordance with the General Requirements, Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor in the Punchlist as incomplete) using the Notice of Substantial Completion form included in the Contract Documents, submit the Contractor's written general warranty and guarantee per Paragraph 6.19.D., and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion using the Certificate of Substantial Completion included in the Contract Documents. There shall be attached to the certificate a Punch List (tentative list of items to be completed or corrected before final payment). Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised Punch List (tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the ~~tentative list~~Punch List.

14.05 Partial Utilization

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.
- B. Owner may request in writing that Contractor permit Owner to separately operate any part of the Work although it is not substantially complete subject to the following conditions.
 - 1. A copy of such request will be sent to Engineer and, within a reasonable time thereafter, Owner, Contractor and Engineer shall make an inspection of that part of the Work not substantially complete to determine the status of completion and will prepare a Punch List before final payment.

2. If Contractor does not indicate in writing to Owner and Engineer that such part of the Work is not ready for separate operation by Owner, Engineer will finalize the Punch List and will deliver such list to Owner and Contractor, together with a written recommendation as to the division of responsibilities between Owner and Contractor with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work pending final payment.
3. The Engineer's recommendation and Punch List will become binding upon Owner and Contractor at the time the Owner takes over and separately operates such part of the Work unless otherwise agreed in writing and so informed Engineer.
4. During such separate operation by Owner and prior to Substantial Completion of such part of the Work, Owner shall allow Contractor reasonable access to complete or correct Punch List and to complete other related Work.

14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. Application for Payment:

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, warranties, updated Contractor's written general warranty and guarantee per Paragraph 6.19.D if modified, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, and Engineer has indicated that the Work is acceptable (subject to the provisions of Paragraph 14.09), Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled;
 - e-d. Notice of Completion; and

~~d.e.~~ complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Engineer's Review of Application and Acceptance:

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due:

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted as detailed on the Notice of Completion. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for

such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents;
or;
 5. Contractor commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition or otherwise under any Laws and Regulations in effect at such time relating to the bankruptcy or insolvency; or

6. a petition is filed against Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Contractor under any Laws and Regulations in effect at the time relating to bankruptcy or insolvency; or
 7. Contractor makes a general assignment for the benefit of creditors; or
 8. a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of Contractor is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of Contractor's creditors; or
 9. Contractor admits in writing its inability to pay its debts generally as they become due.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 3. ~~all reasonable~~ claims, costs, losses, and damages (including but not limited to ~~all reasonable~~ fees and charges of engineers, architects, attorneys, and other professionals and ~~all reasonable~~ court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Subject to the requirements in Paragraph 10.05, Owner and Contractor shall attempt in good faith to resolve all unsettled Claims, counterclaims, disputes and other matters in question between them arising out of or relating to the Contract Documents ("Disputes") promptly by negotiation, as follows. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state Rules of Evidence.
1. Either party may give the other party written notice of any Dispute not resolved.
 2. Managers of both parties at levels at least one level above the Project personnel involved in the dispute shall meet at a mutually acceptable time and place within 5 business days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute.
 3. If the matter has not been resolved within 30 days from the referral of the Dispute to the managers, or if no meeting has taken place within 10 days after such referral, either party may initiate mediation as provided hereinafter.
- A.B. Subject to Paragraph 16.01.A, eEither Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B.C. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

~~C.D.~~ If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
2. agrees with the other party to submit the Claim to another dispute resolution process; or
3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

17.07 *Professional Fees and Court Costs Included*

- A. In any action or proceeding to enforce or interpret any contractual provision or to resolve any conflict or dispute relating to or arising from this Contract, the prevailing party shall be entitled to recover, as part of its claim, award or judgment, reasonable attorneys' fees and associated costs and expenses, including expenses of engineering, claims and other consultants.

END OF SECTION

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SECTION 00 73 10

GENERAL SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2007 Edition) included in Section 00 72 05. All provisions that are not so amended or supplemented remain in full force and effect unless amended or supplemented in another Section. The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in this Section have the meanings stated below, if any, which are applicable to both the singular and plural thereof. The address system used herein is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

This Section may include certain provisions required by Laws and Regulations but does not represent or reflect all applicable provisions and policies or Laws and Regulations and may only include excerpts and portions thereof. Other required provisions and policies, and Laws and Regulations, shall be deemed to be so included and incorporated herein. Contractor is solely responsible to determine, obtain, review and interpret the full text of applicable provisions and policies, Regulations, and Laws.

SC-1.01 Defined Terms

In 1.01.A.42 *Specifications*, add “Division 01 sections of” at the beginning of the second sentence. Add the following to the definition.

1. Specifications for this Project are the Florida Department of Transportation (FDOT) Standard Specifications and Design Standards for Road and Bridge Construction (latest editions) as may be modified or superseded by the Owner’s requirements through the direction of the Engineer.

Add the following to 1.01.A.17. *Drawings*.

1. Drawings for this Project include Florida Department of Transportation (FDOT), Standard Plans and Design Standards for Road and Bridge Construction (latest editions) and State of Florida Erosion and Sediment Control Designer and Review Manual (latest update July 2013) as may be modified or superseded by the Owner’s requirements through the direction of the Engineer.

SC-2.05 Before Starting Construction

Pursuant to subparagraph 2.05.A.1 regarding Progress Schedule, do not include weekends in Work hours.

Add the following immediately after Paragraph 2.05.B.

- C. Additionally, within 10 days after the Effective Date of the Agreement, Contractor shall submit a Construction Operations Plan incorporating the schedules submitted pursuant to Paragraph 2.05.A and covering the following.
 - 1. Coordination of Supplier/manufacturer's expected equipment lead times with mobilization
 - 2. Construction methods and sequence of operations
 - 3. Proposed Site access
 - 4. Proposed erosion control measures and proposed measures to minimize impacts to existing vegetation and impacts to water quality in compliance with the General Requirements

SC-2.07 Initial Acceptance of Schedules

Add the following immediately after subparagraph 2.07.A.4.

- 5. Contractor's Construction Operations Plan submitted pursuant to Paragraph 2.05.C. will be acceptable to Engineer if it accurately and reasonably addresses all aspects of the Work.

SC-3.02 Reference Standards

Add the following immediately after subparagraph 3.02.A.1.

- a. The Specifications for this Project are the Florida Department of Transportation (FDOT) Standard Specifications. The Drawings are based on FDOT Standard Plans, and Design Standards for Road and Bridge Construction (latest editions) and State of Florida Erosion and Sediment Control Designer and Review Manual (latest update July 2013), as may be modified or superseded by the Owner's requirements through the direction of the Engineer. References to "Department" in the FDOT documents shall mean Owner or Resident Project Representative for this Project.
- b. **Contractor shall obtain copies of FDOT and State documents applicable to this Project and make available to Owner and Engineer as requested.**

SC-4.01 Availability of Lands

Pursuant to Paragraph 4.01.A, easements and rights-of-way exist for the Project and are reflected on the Drawings. Documentation is included in 00 31 00.

SC-4.02 Subsurface and Physical Conditions

Pursuant to Paragraph 4.02.A,

1. the following reports of explorations and tests of subsurface conditions at or contiguous to the Site are known to Owner:
 - a. Report dated January 6, 2023 prepared by Universal Engineering Sciences, LLC, entitled Geotechnical Exploration Montverde Roadway & Drainage Improvements Porter/Franklin Avenue, Lakeside Drive & First Street, Montverde, Lake County Florida, consisting of 54 pages
2. The following drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) are known to Owner:
 - a. NONE

The “technical data” upon which Contractor may rely shall be limited to facts, measurements, field observations, boring logs, soil type and similar data. “Technical data” shall not include opinions regarding suitability of material, dewatering methodologies, soil stability, slope stabilization methods and other opinions or professional judgments.
3. The reports identified above are not part of the Contract Documents, but the “technical data” contained therein upon which Contractor may rely, as expressly identified and established above, are incorporated in the Contract Documents by reference and may be reflected in the Drawings. Contractor is not entitled to rely upon any other information and data known to or identified by Owner or Engineer.
4. Copies of reports identified above are included as specified in 00 31 00.

SC-4.05 Reference Points

Pursuant to Paragraph 4.05.A, surveys exist for the Project and are reflected on the Drawings.

SC-4.06 Hazardous Environmental Conditions at Site

Pursuant to Paragraph 4.06.A,

1. the following reports regarding Hazardous Environmental Conditions at the Site are known to Owner:
 - a. NONE
2. The following drawings regarding Hazardous Environmental Conditions at the Site are known to Owner:
 - a. NONE

SC-5.04 Contractor's Insurance

Pursuant to Paragraph 5.04.A, in addition to the individuals and entities specified in subparagraph 5.04.B.1, include the following as loss payees.

None

Pursuant to subparagraph 5.04.C.5, also provide Owner's Protective Liability in the amount of \$3,000,000 general aggregate (\$1,000,000 per occurrence for bodily injury & property damage).

SC-6.02 Labor; Working Hours

Add the following immediately after Paragraph 6.02.B.

1. Regular working hours for this Project are 7:00 a.m. to 6:00 p.m., Monday through Friday.
2. Work on weekends and holidays is not permitted.
3. Notify Owner in advance if it is necessary to work more than 11 hours in one day.

SC-6.08 Permits

Add the following immediately after Paragraph 6.08.A.

- B. Owner has not obtained any permits for the Project.

SC-6.09 Laws and Regulations

Add the following immediately after Paragraph 6.09.C.

- D. Contractor shall allow access to the Site and Project records by authorized local, State, and Federal agencies and representatives.

SC-6.13 Safety and Protection

Add the following immediately after Paragraph 6.13.B.

1. Contractor shall comply with the following minimum requirements and is solely responsible to determine, obtain, review and interpret the full text of applicable Laws and Regulations.
 - Hazard Communication Standard 1910.1200 regulated by OSHA, including providing and maintaining Safety Data Sheets, labeling of hazardous substances, and providing required protective equipment and training and instruction to personnel on the Site including Owner and Engineer's personnel
 - Code of Federal Regulations, Chapter XVII-Occupational Safety and Health Administration (OSHA), Department of Labor, Title 29, Part 1926, Safety and Health Regulations for Construction
 - 1926 Subpart AA Confined Spaces in Construction
 - ANSI/ASSE A10 series of safety construction standards including the "Manual of Accident Prevention In Construction" published by The Associated General Contractors of America
 - AASHTO Guide on Occupational Safety on Highway Construction Projects, Subpart N, 1926.550, relating to protection of personnel and equipment under electric lines and construction equipment clearances at overhead electric lines especially during operations using large vehicles

SC-7.01 Related Work at Site

Pursuant to Paragraph 7.01, Owner has not and does not intend to separately contract for other work on the Project at the Site.

SC-9.01 Owner's Representative

Add the following immediately after Paragraph 9.01.A.

- B. Nothing contained in the Contract Documents shall be construed to create a contractual relationship of any kind between the Engineer and Contractor, or between any person or entities other than the Owner and Contractor. The Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Engineer's duties.

SC-14.02 *Progress Payments*

Add the following language at the end of subparagraph 14.02.C.1.

For the purposes of this Paragraph, “Owner” shall mean “Owner’s approving authorities”.

SC-14.07 *Final Payment*

Add the following language at the end of subparagraph 14.07.C.1.

For the purposes of this Paragraph, “Owner” shall mean “Owner’s approving authorities”.

SC-16 DISPUTE RESOLUTION

Add the following immediately after Paragraph 16.01.D.

16.02 Arbitration

- A. All Claims or counterclaims, disputes, or other matters in question between Owner and Contractor arising out of or relating to the Contract Documents or the breach thereof (except for Claims which have been waived by the making or acceptance of final payment as provided by Paragraph 14.09) including but not limited to those not resolved under the provisions of Paragraphs 10.05 or 16.01, will be subject to arbitration in accordance with the rules of Construction Industry Rules of the American Arbitration Association, subject to the conditions and limitations of this Paragraph 16.02. This agreement to arbitrate, and any other agreement or consent to arbitrate entered into, will be specifically enforceable under the prevailing Laws of any court having jurisdiction. Arbitration shall take place in Lake County, Florida.
- B. The demand for arbitration will be filed in writing with the other party to this Contract and with the selected arbitrator or arbitration provider, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the 30-day period specified in Paragraph 16.01.D, and in all other cases, within a reasonable time after the Claim or counterclaim, dispute, or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such Claim or other dispute or matter in question would be barred by the applicable statute of limitations.

- C. No arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
 - 1. the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and
 - 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings.
- D. Consolidation shall be by order of the arbitrator(s) in any pending case, or if the arbitrator(s) fail to make an order, a party may apply to a court of competent jurisdiction for such order. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity shall be specifically enforceable in accordance with the Laws of any court having jurisdiction thereof.
- E. The award rendered by the arbitrator(s) shall be consistent with the agreement of the parties, in writing, and include: (i) a concise breakdown of the award; (ii) a written explanation of the award specifically citing the Contract Document provisions deemed applicable and relied on in making the award.
- F. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the controlling Laws relating to vacating or modifying an arbitral award.
- G. If the parties decline to arbitrate, such Claims, disputes and other matters shall be decided by a court having jurisdiction.

16.03 General

- A. The Contractor will require similar dispute resolution provisions in agreements with its Subcontractors and Suppliers.
- B. Contractor shall not have the right to stop performance of the Work pending resolution of a Claim or dispute.

- C. Notwithstanding any provision contained in this Article or elsewhere in the Contract Documents, the Owner reserves the following rights in connection with Claims and disputes between the Owner and the Contractor:
1. The right to institute legal action against the Contractor in any court of competent jurisdiction in lieu of demanding arbitration pursuant to this Article, in which case the Claims or disputes which are the subject of such action shall be decided by such court, and not by arbitration.
 2. The right to obtain from any court of competent jurisdiction a stay of any arbitration instituted by the Contractor, provided that the application for such stay is made before the appointment of the neutral arbitrator in such arbitration, in which case the Claims or disputes which are the subject of such arbitration shall be decided by such court, and not by arbitration.
 3. The right to require the Contractor to join as a party in any arbitration between the Owner and the Engineer relating to the Project, in which case the Contractor agrees to be bound by the decision of the arbitrator or arbitrators in such arbitration.

END OF SECTION

SECTION 00 73 43

WAGE RATE REQUIREMENTS (FEDERAL)

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2007 Edition) included in Section 00 72 05. All provisions that are not so amended or supplemented remain in full force and effect unless amended or supplemented in another Section. The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated within the Sections listed below, if any, which are applicable to both the singular and plural thereof.

The content of this Section does not represent or reflect all applicable Laws and Regulations and may only include excerpts and portions of certain Laws and Regulations. Other provisions and policies, and Laws and Regulations, shall be deemed to be so included and incorporated herein. Contractor is solely responsible to determine, obtain, review and interpret the full text of applicable Laws and Regulations.

This Project is subject to Federal Minimum Wage Rates determined by the United States Department of Labor under the Davis-Bacon Act (40 USC 3141 et seq.).

Comply with the latest requirements available on the U.S. Department of Labor Wage and Hour Division website at www.dol.gov/whd/govcontracts/dbra.htm.

Wage determination schedules are included at the end of this section.

ATTACHMENTS

- A. Davis Bacon Federal Wages

END OF SECTION

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Superseded General Decision Number: FL20240119

State: Florida

Construction Type: Heavy

County: Lake County in Florida.

HEAVY CONSTRUCTION PROJECTS (Including Sewer and Water Lines)
(EXCLUDING CAPE CANAVERAL AIR FORCE STATION, PATRICK AIR FORCE
BASE, KENNEDY SPACE FLIGHT CENTER AND MALABAR RADAR SITE)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

ENGI0487-033 06/01/2023

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Group 3		
Drill Rig, Horizontal		
Directional Drill		
Operator, Horizontal		
Direction Drill Locator....	\$ 37.01	16.85

Journeyman Oiler shall be paid: 90% of Group 3's rate.

IRON0808-008 01/01/2024

	Rates	Fringes
IRONWORKER, STRUCTURAL AND		
REINFORCING.....	\$ 31.50	16.45

LAB00517-002 05/01/2023

	Rates	Fringes
LABORER: Grade Checker.....	\$ 22.61	11.59

* PAIN1010-011 08/01/2025

	Rates	Fringes
Painter - Brush, Roller &		
Spray.....	\$ 25.86	14.73

* SUFL2009-158 06/24/2009

	Rates	Fringes
CARPENTER, Includes Form Work....	\$ 13.37 **	1.78
CEMENT MASON/CONCRETE FINISHER...	\$ 13.44 **	0.00
ELECTRICIAN.....	\$ 16.71 **	3.51
LABORER: Common or General.....	\$ 10.00 **	0.00
LABORER: Landscape.....	\$ 7.25 **	0.00
LABORER: Pipelayer.....	\$ 11.25 **	1.84
LABORER: Power Tool Operator		
(Hand Held Drills/Saws,		
Jackhammer and Power Saws		
Only).....	\$ 10.63 **	2.20
OPERATOR: Asphalt Paver.....	\$ 11.88 **	0.00
OPERATOR: Backhoe Loader		
Combo.....	\$ 16.10 **	2.44
OPERATOR: Backhoe/Excavator.....	\$ 13.21 **	2.88
OPERATOR: Bulldozer.....	\$ 12.88 **	2.92

OPERATOR: Crane.....	\$ 16.17 **	3.89
OPERATOR: Grader/Blade.....	\$ 16.00 **	2.84
OPERATOR: Loader.....	\$ 13.00 **	1.84
OPERATOR: Mechanic.....	\$ 13.83 **	2.19
OPERATOR: Roller.....	\$ 10.67 **	1.87
OPERATOR: Scraper.....	\$ 11.00 **	1.74
OPERATOR: Trackhoe.....	\$ 20.92	5.50
OPERATOR: Tractor.....	\$ 10.00 **	0.00
TRUCK DRIVER, Includes Dump Truck.....	\$ 11.22 **	1.70
TRUCK DRIVER: Lowboy Truck.....	\$ 11.00 **	0.00
TRUCK DRIVER: Off the Road Truck.....	\$ 12.21 **	1.97

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

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

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

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey

is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

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

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

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

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

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

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

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

Washington, DC 20210

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

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

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

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END OF GENERAL DECISION"

Superseded General Decision Number: FL20240254

State: Florida

Construction Type: Highway

County: Lake County in Florida.

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	◆ Executive Order 14026 generally applies to the contract. ◆ The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	◆ Executive Order 13658 generally applies to the contract. ◆ The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date
0 01/03/2025

	Rates	Fringes
CARPENTER.....	\$ 22.72	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 20.18	1.49
ELECTRICIAN.....	\$ 24.08	3.40
IRONWORKER.....	\$ 24.16	0.00
LABORER: Asphalt, Includes Raker, Shoveler, Spreader and Distributor.....	\$ 16.92 **	0.00
LABORER: Common or General.....	\$ 15.08 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 21.43	3.75
LABORER: Pipelayer.....	\$ 21.63	0.00
LABORER: Grade Checker.....	\$ 17.21 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 23.27	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 21.30	0.00
OPERATOR: Boom.....	\$ 33.61	11.50
OPERATOR: Broom/Sweeper.....	\$ 17.12 **	0.00
OPERATOR: Bulldozer.....	\$ 22.37	3.44
OPERATOR: Crane.....	\$ 32.18	0.00
OPERATOR: Grader/Blade.....	\$ 19.25	0.00
OPERATOR: Loader.....	\$ 18.42	0.76
OPERATOR: Mechanic.....	\$ 29.69	0.00
OPERATOR: Milling Machine.....	\$ 20.86	1.95
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 19.73	0.00
OPERATOR: Piledriver.....	\$ 25.18	0.00
OPERATOR: Roller.....	\$ 18.28	0.00
OPERATOR: Scraper.....	\$ 15.54 **	0.00
OPERATOR: Screed.....	\$ 17.84	0.00
OPERATOR: Tractor.....	\$ 16.00 **	0.68
PAINTER.....	\$ 21.02	0.00
TRAFFIC CONTROL PERSON.....	\$ 15.93 **	0.00
TRUCK DRIVER: Dump Truck.....	\$ 17.33 **	0.00

TRUCK DRIVER: Flatbed Truck.....	\$ 19.46	0.00
TRUCK DRIVER: Lowboy Truck.....	\$ 20.76	0.00
TRUCK DRIVER: Off the Road Truck.....	\$ 16.55 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 18.27	0.00
TRUCK DRIVER: Distributor Truck.....	\$ 21.19	0.00

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

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

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

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an

internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

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

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

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

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

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

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

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

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

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

Administrative Review Board

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

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END OF GENERAL DECISION"

SECTION 00 73 73

STATUTORY REQUIREMENTS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2007 Edition) included in Section 00 72 05. All provisions that are not so amended or supplemented remain in full force and effect unless amended or supplemented in another Section. The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in this Section have the meanings stated below, if any, which are applicable to both the singular and plural thereof. The address system used herein is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

This Section includes certain provisions required by Laws and Regulations but does not represent or reflect all applicable provisions and policies or Laws and Regulations and may only include excerpts and portions thereof. Other required provisions and policies, and Laws and Regulations, shall be deemed to be so included and incorporated herein. Contractor is solely responsible to determine, obtain, review, and interpret the full text of applicable provisions and policies, Regulations, and Laws.

SC-5.01 Performance, Payment, and Other Bonds

Delete Paragraph 5.01.A in its entirety and insert the following in its place.

- A. Contractor shall furnish a performance and payment bond which complies with all requirements of Section 255.05, Florida Statutes consistent with the Public Construction Bond form included in the Contract Documents, in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents and with a surety insurer authorized to do business in the state of Florida as surety. The bond shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

SC-6.02 Labor; Working Hours

Add the following immediately after Paragraph 6.02.B.

- C. Contractor shall utilize the U.S. Department of Homeland Security's E-Verify Systems to verify the employment eligibility of all persons employed during the term of the Contract to perform employment duties within the State of Florida and all persons, including Subcontractors, assigned by Contractor to perform work pursuant to the Contract.

- D. The Contractor shall comply with all of the regulations and applicable Florida Statutes regarding labor standards. The Contractor shall comply with the Department of Labor Safety and Health Regulations promulgated under the Occupational Safety and Health Act of 1970 (PL 91-596) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54). The Contractor understands and agrees to be bound by the equal opportunity requirement of any applicable State and Federal regulations. The Contractor also agrees to similarly bind contractually each Subcontractor.
- E. Pursuant to Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a Bid to any public entity to provide any goods or services or construction or repair of a public building or public work; may not be awarded or perform work as a Contractor, Supplier, Subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list.
- F. Pursuant to Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a Bid and may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- G. Pursuant to Section 287.135, Florida Statutes, a company that is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, or is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, (effective October 1, 2016) or is engaged in a boycott of Israel (effective October 1, 2016) or is engaged in business operations in Cuba or Syria is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of \$1,000,000 or more.
- H. Pursuant to Section 287.137, Florida Statutes, a person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a Bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a Bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a Bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, Supplier, Subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity.
- I. Pursuant to 787.06 (13) Florida Statutes, a nongovernmental entity that enters into, renews, or extends a contract with a governmental entity to provide the governmental entity with an affidavit attesting that the nongovernmental entity does not use coercion for labor or services.

SC-6.03 Services, Materials, and Equipment

Add the following immediately after 6.03.B.

1. Pursuant to Section 255.20, Florida Statutes, lumber, timber, and other forest products produced and manufactured in Florida must be used if such products are available and their price, fitness, and quality are equal. This subsection does not apply to plywood specified for monolithic concrete forms, if the structural or service requirements for timber for a particular job cannot be supplied by native species or if the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.
2. Pursuant to Section 255.0993, Florida Statutes, paragraph (2)(a), any iron or steel product permanently incorporated in the Project be produced in the United States except if: iron or steel products produced in the United States are not produced in sufficient quantities, reasonably available, or of satisfactory quality; the use of iron or steel products produced in the United States will increase the total cost of the project by more than 20 percent; compliances inconsistent with the public interest.
 - a. This requirement does not prevent a minimal use of foreign steel and iron materials if:
 - Such materials are incidental or ancillary to the primary product and are not separately identified in the Project Specifications; and
 - The cost of such materials does not exceed one-tenth of 1 percent of the total Contract cost or \$2,500, whichever is greater. For purposes of this subparagraph, the cost of such materials is that shown to be the value of the iron or steel products as they are delivered to the Project.
 - b. Electrical components, equipment, systems, and appurtenances, including supports, covers, shielding, and other appurtenances related to an electrical system, necessary for operation or concealment, except transmission and distribution poles, are not considered iron or steel products and are exempt from the requirements of paragraph (2)(a).

SC-6.06 Concerning Subcontractors, Suppliers, and Others

Add the following immediately after 6.06.A.

1. Apply the requirements set forth in SC-6.02 above to Subcontractors and Suppliers.

SC-6.09 *Laws and Regulations*

Add the following immediately after Paragraph 6.09.D.

- E. Pursuant to Florida Statute 20.055(5), Contractor and any Subcontractors and Suppliers understand and shall comply with their duty to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.
- F. Pursuant to Section 119.071(5)(a)2a, Florida Statutes, social security numbers shall only be collected from Contractor by the Owner should such number be needed for identification, verification, and/or tax reporting purposes. To the extent Contractor collects an individual's social security number in the course of acting on behalf of the Owner pursuant to the terms and conditions of its Agreement, Contractor shall follow the requirements of Florida's Public Records Law.
- G. Owner is a public agency subject to Chapter 119, Florida Statutes. In accordance with Florida Statutes, 119.0701, Contractor agrees to comply with Florida's Public Records Law, as set forth in the Agreement.
- H. Each and every provision of any law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon application of either party the Contract shall forthwith be physically amended to make such insertion.

SC-6.10 *Taxes*

Add the following immediately after Paragraph 6.10.A.

- 1. Certain requirements have been established that the Owner must follow to make direct purchases for sales tax savings in accordance with FAC 12A-1.094, Public Works Contracts. The State of Florida has allowed for local government to make direct purchases of equipment, supplies, and materials that are necessary for the construction of a public works project and be exempt from payment of Florida sales and use tax as follows.
 - a. The Owner must issue a purchase order directly to the Supplier;
 - b. The Supplier must send the invoice directly to and in the name of the Owner;
 - c. Payment must be made directly to the Supplier;
 - d. The Owner must take title of the equipment, materials, or supplies directly from the Supplier; and
 - e. A Certificate of Entitlement must be completed and attached to the original purchase order.

2. If the Owner decides to reap the benefits of this exemption program, the following process shall be followed.
 - a. Upon execution of the construction Contract, the Contractor shall prepare a list of the equipment, materials, and supplies that are to be purchased directly by the Owner. Supporting documentation verifying line item pricing must be attached as follows.
 - 1) A copy of the Schedule of Values from the Contract;
 - 2) Contractor's quote tabulation with a copy of the awarded Supplier's pricing; and
 - 3) Detailed calculation reflecting original quoted cost, amount of sales tax, and net cost of purchase(s).
 - 4) The Contractor is responsible for securing W-9s for all Suppliers being issued a direct purchase order. The W-9 must match the quote documents and must provide the mailing information along with a contact name, telephone number, and email address.
 - 5) This documentation must be presented for approval no later than the Pre-Construction Conference.
 - b. A purchase order (PO) will be issued for all items approved for Owner Direct purchase.
 - c. To secure a purchase order under this process, the Contractor must provide a packet that includes:
 - 1) A cover sheet with Project information (i.e., name of project, name of Engineer, description of the purchase being made, costs, etc. Format will be agreed upon at the start of the Project, suggested format is to be submitted by the Contractor at the Pre-Construction Conference);
 - 2) Copy of the original quote that has unit cost, amount of sales tax, and total cost;
 - 3) Spreadsheet detailing purchase and each purchase order draw with the balance of the purchase order if multiple deliveries and/or payments are made to provide a clear accounting of the expenditure.
 - d. Owner direct POs will be emailed directly to the Supplier with copies being provided to the Owner, Engineer and the Contractor.

- e. All material, equipment, and supplies that are purchased directly will be shipped to the Site designated at the Pre-Construction Conference for use or for storage. The Contractor is responsible for accepting the material and ensuring all are in good condition prior to acceptance.
- 3. Invoices for all purchases made under this process must include the Owner direct purchase order number and be issued to the Owner. The invoice packet must include the items attached to the Owner direct purchase order as specified above.
- 4. A Change Order, reflecting the various Owner direct purchases, will be generated and approved concurrently with the issuance of the purchase orders.
- 5. A final, close out accounting of all Owner direct purchase orders will be required at the time of final completion of the Project to ensure that no outstanding purchase orders remain.

SC-6.13 Safety and Protection

Add the following immediately after subparagraph 6.13.A.1.

- 2. Contractor and its Subcontractors shall comply with the Florida Trench Safety Act, pursuant to Chapter 553 § 60-64 Florida Statutes, for trench excavation in which such excavation will exceed a depth of 5 feet. The Florida Trench Safety Act is intended to provide for increased worker safety by requiring compliance with sufficient standards for trench safety and includes incorporation of the Occupational Safety and Health Administration's excavation safety standards, 29 C.F.R. s. 1926.650 subpart P.
 - a. As a minimum, comply with the excavation safety standards which are applicable to the Project. Adhere to any special shoring requirements, if any, of the state or the Owner which may be applicable to the Project. If any geotechnical information is available, consider this information in the design of the trench safety system which will be employed on the Project.

SC-6.20 Indemnification

Delete Paragraphs 6.20.A. and 6.20.B. in their entirety and insert the following in their place.

- A. Pursuant to Section 725.06, Florida Statutes, the monetary limitation on the extent of the indemnification under each such provision shall be One Million Dollars or a sum equal to the total Contract price, whichever shall be the greater.
1. Contractor releases and agrees to defend, indemnify and hold harmless the Owner, its officers, elected and appointed officials, employees, and/or agents (collectively, “Owner Indemnified Parties”) from and against any and all losses, liabilities, damages, penalties, settlements, judgments, charges, or costs (including without limitation attorneys’ fees, professional fees, or other expenses) of every kind and character arising out of any and all claims, liens, is entitled to indemnification hereunder. This obligation shall in no way be limited in any nature whatsoever by any limitation on the amount or type of Contractor’s insurance coverage.
 2. The parties agree that to the extent the written terms of this indemnification are deemed by a court of competent jurisdiction to be in conflict with any provisions of Florida law, in particular Sections 725.06 and 725.08, Florida Statutes, the written terms of this indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in fully and complete compliance with all such laws and to contain such limiting conditions or limitations of liability, or to not contain any unenforceable or prohibited term or terms, such that this indemnification shall be enforceable in accordance with and to the maximum extent permitted by Florida law.
 3. The obligation of Contractor under this Article is absolute and unconditional; it is not conditioned in any way on any attempt by an Owner Indemnified Party to collect from an insurer any amount under a liability insurance policy, and is not subject to any set-off, defense, deduction, or counterclaim that the Contractor might have against the Owner Indemnified Party. The duty to defend hereunder is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Contractor, the Owner, and any Owner Indemnified Party. The duty to defend arises immediately upon presentation of a Claim by any party and written notice of such Claim being provided to Contractor. Contractor's defense and indemnity obligations hereunder will survive the expiration or earlier termination of this Contract.
 4. Contractor agrees and recognizes that the Owner Indemnified Parties shall not be held liable or responsible for any Claims which may result from any actions or omissions of Contractor in which the Owner Indemnified Parties participated either through providing data or advice and/or review or concurrence of Contractor’s actions. In reviewing, approving or rejecting any submissions by Contractor or other acts of Contractor, the Owner in no way assumes or shares any responsibility or liability of Contractor or any tier of Subcontractor/subconsultant/Supplier, under this Contract.

- B. In the event the law is construed to require a specific consideration for such indemnification, the parties agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnification and the providing of such indemnification is deemed to be part of the specifications with respect to the services provided by Contractor.

SC-14.02 *Progress Payments*

Add the following after subparagraph 14.02.B.5.d.

6. Pursuant to Section 255.05, Florida Statutes, Owner shall not condition its payment to the Contractor on the production of a release, waiver, or like documentation from a claimant demonstrating that the claimant does not have an outstanding claim against the Contractor, the surety, the payment bond, or the Owner for payments due on labor, services, or materials furnished on the Project if Contractor has furnished and recorded a payment and performance bond for the Project as required by Law and provides the Owner with a written consent from the surety regarding the Project or payment in question, the surety may, in a writing served on the Owner, revoke its consent or direct that the Owner withhold a specified amount from a payment, which shall be effective upon receipt.

SC-14.04 *Substantial Completion*

Add the following immediately following Paragraph 14.04.E.

- F. Pursuant to Section 255.05, Florida Statutes, Owner shall not condition its payment to the Contractor on the production of a release, waiver, or like documentation from a claimant demonstrating that the claimant does not have an outstanding claim against the Contractor, the surety, the payment bond, or the Owner for payments due on labor, services, or materials furnished on the Project if Contractor has furnished and recorded a payment and performance bond for the Project as required by Law and provides the Owner with a written consent from the surety regarding the Project or payment in question, the surety may, in a writing served on the Owner, revoke its consent or direct that the Owner withhold a specified amount from a payment, which shall be effective upon receipt.

SC-17.05 *Controlling Law*

Add the following immediately after Paragraph 17.05.A.

- B. This Contract is subject to all Laws and Regulations of the United States of America (including the U.S. Code of Federal Regulations), the State of Florida and other public authorities, and all amendments thereto. Where any requirements contained herein do not conform to or are inconsistent with such Laws and Regulations to which the Contract is subject or by which it is governed, such Laws and Regulations shall have precedence over any matters set forth herein.
- C. Statutes, Regulations, and portions and summaries thereof which are set forth or referred to in the Contract Documents shall be construed to include all amendments thereto in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids). The Owner and Engineer make no representation as to and assume no responsibility for the correctness or completeness of such statutory matters referred to or set forth herein.
- D. Any provision in violation of the foregoing shall be deemed null, void and of no effect. Where conflicts with Laws and Regulations exist, the more stringent requirement shall apply.

END OF SECTION

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SECTION 00 73 74

GENERAL FEDERAL REQUIREMENTS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2007 Edition) included in Section 00 72 05. All provisions that are not so amended or supplemented remain in full force and effect unless amended or supplemented in another Section. The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in this Section have the meanings stated below, if any, which are applicable to both the singular and plural thereof. The address system used herein is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

This Section may include certain provisions required by Laws and Regulations but does not represent or reflect all applicable provisions and policies or Laws and Regulations and may only include excerpts and portions thereof. Other required provisions and policies, and Laws and Regulations, shall be deemed to be so included and incorporated herein. Contractor is solely responsible to determine, obtain, review and interpret the full text of applicable provisions and policies, Regulations, and Laws.

SC-18 – Add the following new Article 18 immediately after Article 17.

ARTICLE 18 - FEDERAL REQUIREMENTS

18.01 General

- A. Portions of 2 CFR Part 200 and Appendix II to Part 200 (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) shall apply and are incorporated by reference, based on Federal funding applicable to this Project.

18.02 Small, Minority and Women's Businesses

- A. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Contractor to carry out these requirements is a material breach of the Contract which may result in termination of the Contract or other legally available remedies.
- B. If Contractor intends to let any subcontracts for a portion of the Work, Contractor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps will include:
 - 1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

18.03 *Domestic preferences for procurements*

- A. As appropriate and applicable, and to the extent consistent with law, and to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- B. For purposes of this section:
 1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 2. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- C. Pursuant to the Build America, Buy America (BABA) Act, all steel, iron, manufactured products, non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall used in infrastructure projects for federal financial assistance programs must be produced in the United States. Comply with guidance and information included as an attachment to this section and the following.
 1. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

2. All manufactured products used in the project are produced in the United States-this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. All construction materials are manufactured in the United States-this means that all manufacturing processes for the construction material occurred in the United States.

NOTE: The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

18.04 *Procurement of recovered materials*

- A. The Contractor shall comply with 2 CFR Part 200.322, “Procurement of recovered materials” and Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as applicable. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

18.05 *Access to Records*

- B. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity (Owner), or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Contractor’s personnel for the purpose of interview and discussion related to such documents.

18.06 *Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment*

- A. As required by 2 CFR 200.216, recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - 1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 - 2. Telecommunications or video surveillance services provided by such entities or using such equipment; and
 - 3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- B. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- C. See Public Law 115-232, section 889 for additional information.
- D. See also § 200.471.

18.07 *Equal Employment Opportunity*

- A. The Contract is considered a federally assisted construction contract and therefore, the following shall apply as provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- B. During the performance of this Contract, the Contractor agrees as follows:
 - 1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - a. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - 2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - 3. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any Subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

- C. *Notice to Prospective Subcontractors of Requirements for Certifications of Non-Segregated Facilities* is included at the end of this Section. Contractor shall have submitted this form with its Bid and obtained signed copies of this form from each Subcontractor and Supplier at Notice of Award, which signed copies are incorporated into the Contract as attachments to the Agreement. Contractor shall obtain a signed form from additional Subcontractors and Suppliers.

18.08 *Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)*

- A. Where applicable, for contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor will comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Contractor will compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic will be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

18.09 *Davis Bacon Act and Copeland Anti-Kickback Act*

- A. Contractor shall comply with the Davis-Bacon Act (40 USC 3141 et seq.) (see Section 00 73 43) and Copeland Anti-Kickback Act (40 USC 3145) as supplemented by Department of Labor regulations (29 CFR Part 3, “*Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States*”). The Act provides that Contractor or Subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. Owner shall report all suspected or reported violations.

18.10 *Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended*

- A. Contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

18.11 *Debarment and Suspension (Executive Orders 12549 and 12689)*

- A. A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM at <https://sam.gov/content/home>), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

18.12 *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*

- A. Contractor has filed with its Bid, the required “Certification for Contracts, Grants and Loans” OR “Standard Form LLL Disclosure of Lobbying Activities” (if applicable). The Contractor certifies to the Owner and every Subcontractor certifies to the Contractor that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining the Contract if it is covered by 31 U.S.C. 1352. The Contractor and every Subcontractor must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier, up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
 - 1. Certification for Contracts, Grants, and Loans (Lobbying) and Standard Form LLL Disclosure of Lobbying Activities are attached to this section. Contractor shall have submitted one of these forms with its Bid and obtained signed copies of the applicable form from each Subcontractor and Supplier at Notice of Award, which signed copies are incorporated into the Contract as attachments to the Agreement. Contractor shall obtain the applicable signed form from additional Subcontractors and Suppliers.

18.13 *Signage*

- A. Place a physical sign displaying the EPA logo at the construction Site for this Project in an easily visible location that can be directly linked to the Work taking place. The sign must be maintained in good condition throughout the construction period. In cases where the construction Site covers a large area (e.g., lead service line replacement), a sign should be placed in an easily visible location near where the Work is being performed (e.g., entrance to the neighborhood, along a main road through town, etc.). Signage costs are considered an allowable grant expense, provided the costs associated with the signage are reasonable.

- B. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, assistance recipients are encouraged to translate the language on signs (excluding the EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable grant expenses, provided the costs are reasonable.
- C. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, the use of recycled or recovered materials when procuring signs is encouraged.
- D. EPA Logo: Ensure that signage displays the EPA logo. The EPA logo must not be displayed in a manner that implies that EPA itself is conducting the Project. Instead, the EPA logo must be accompanied with a statement indicating that the Owner received financial assistance from EPA for the Project.
- E. Ensure compliance with the sign specifications provided by the EPA Office of Public Affairs (OPA) available at: <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>. As provided in the sign specifications from OPA, the EPA logo is the preferred identifier for assistance agreement projects and use of the EPA seal requires prior approval from the EPA. To obtain the appropriate EPA logo or seal graphic file, the recipient should send a request directly to Londa Scott-Forte (202-564-1504) and Jini Ryan (202-564-1075). Please explain in the message that the EPA logo is to be used on signage at a construction site funded with EPA assistance and copy the EPA Project Officer on the message.

ATTACHMENTS

- A. Certificate of Non-Segregated Facilities
- B. Certification for Contracts, Grants, and Loans (for no lobbying) OR Standard Form LLL Disclosure of Lobbying Activities
- C. Federal Register, OMB 2 CFR Parts 184 and 200, Guidance for Grants and Agreement: Final rule; notification of final guidance implementation of the Build America, Buy America Act provisions of the Infrastructure Investment and Jobs Act and to clarify existing provisions related to domestic preferences
- D. Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure

END OF SECTION

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**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR
CERTIFICATIONS OF NON-SEGREGATED FACILITIES**

A certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32F.R. 7439, may 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$ 10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

DATE _____

(Signature of Bidder or Prospective Contractor)

Address (including Zip Code)

CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(name)

(date)

(title)

oOo

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See Reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial filing ☐ b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, if known: Congressional District, if known:		5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable:	
8. Federal Action Number, If known:	9. Award Amount, If known: \$	
10. a. Name and Address of Lobbying Registrant <i>(If individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(Including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred, Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward receipt. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g. "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in Item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Certifying official shall sign and date the form, print his/her name, title and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 184 and 200

Guidance for Grants and Agreements

AGENCY: Office of Federal Financial Management, Office of Management and Budget.

ACTION: Final rule; notification of final guidance.

SUMMARY: The Office of Management and Budget is revising the OMB Guidance for Grants and Agreements. The revisions are limited in scope to support implementation of the Build America, Buy America Act provisions of the Infrastructure Investment and Jobs Act and to clarify existing provisions related to domestic preferences. These revisions provide further guidance on implementing the statutory requirements and improve Federal financial assistance management and transparency.

DATES: The effective date for the revised guidance is October 23, 2023.

FOR FURTHER INFORMATION CONTACT: Please contact Callie Conroy, Office of Management and Budget, via phone at 202-395-2747; via email at MBX.OMB.Media@OMB.eop.gov.

SUPPLEMENTARY INFORMATION:

Executive Summary

The Office of Management and Budget (OMB) is revising its guidance in title 2 of the Code of Federal Regulations (2 CFR) to add a new part 184 and revise 2 CFR 200.322. The revisions implement the requirement for the Director of OMB to issue guidance to the head of each Federal agency to assist in the implementation of the requirements of the Build America, Buy America Act (BABA), Public Law 117-58, 135 Stat. 429, 70901-70927, Nov. 15, 2021.

As required by BABA, the new part 184 of 2 CFR provides clear and consistent guidance to Federal agencies about how to apply the domestic content procurement preference (Buy America or BABA preference) as set forth in BABA to Federal awards for infrastructure projects. See BABA 70915. For example, the new part 184 includes definitions for key terms, including iron or steel products, manufactured products, construction materials, and materials identified in section 70917(c) (section 70917(c) materials) of BABA. These definitions provide a common system for Federal agencies to distinguish between the product categories established under the statutory text in BABA. The new part also offers standards that define “all

manufacturing processes” in the case of construction materials.

The new part 184 also includes guidance for determining the cost of components of manufactured products. The part 184 text uses a modified version of the “cost of components” test found in the Federal Acquisition Regulation (FAR) at 48 CFR 25.003, which is used for Federal procurement. Using this approach for determining the cost of components of manufactured products in the context of Federal financial assistance aims to provide a consistent approach for industry, with only minor modifications which are explained in this document.

The new part 184 also includes guidance on proposing and issuing Buy America waivers. For example, based on the statutory text of BABA, it restates the circumstances under which a waiver may be justified. The new part also includes guidance on the type of process that a Federal agency should implement to allow recipients to request waivers, including the process a Federal agency should follow in issuing proposed and final waivers.

The revised provision in 2 CFR part 200 specifies that Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184, as required under section 70914(a) BABA, as of the effective date of the guidance, unless specified otherwise.

Background

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, which includes BABA, at sections 70901 through 70927. BABA establishes a domestic content procurement preference for Federal financial assistance obligated for infrastructure projects. That preference is generally referred to in this document as the Buy America preference or BABA preference. The BABA preference applies to three separate product categories: (i) iron or steel products; (ii) manufactured products; and (iii) construction materials. See BABA 70912 and 70914.

BABA required that by May 14, 2022, the head of each covered Federal agency must ensure that “none of the funds made available for a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States [(U.S.).]” BABA 70914(a). BABA is consistent with this the Administration’s policy in Executive

Order 14005, Ensuring the Future Is Made in All of America by All of America’s Workers (E.O. 14005), to “use terms and conditions of Federal financial assistance awards . . . to maximize the use of goods, products, and materials produced in, and services offered in, the [U.S.].”

BABA requires OMB to issue guidance to the head of each Federal agency to “assist in applying new domestic content procurement preferences.” BABA 70915. BABA also allows OMB to amend 2 CFR, if necessary, to provide guidance to Federal agencies on imposing the Buy America preference through the terms and conditions of Federal awards. *Id.*

On April 18, 2022, OMB released M-22-11, entitled “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure” (Memorandum M-22-11). Memorandum M-22-11 provided initial implementation guidance to Federal agencies on the application of the Buy America preference to Federal financial assistance programs for infrastructure, the Buy America waiver process, and other topics. Memorandum M-22-11 also provided “preliminary and non-binding” guidance on the definition of “construction materials” and associated standards for determining when all manufacturing processes of the construction material occur in the U.S. while OMB obtained stakeholder input to refine that definition and the associated standard for “all manufacturing processes” for each construction material.

On April 21, 2022, OMB issued a Notice of Listening Session(s) and Request for Information (RFI) in the **Federal Register**, which explained that OMB was beginning the process of seeking public input for its revised guidance and standards for construction materials. 87 FR 23888 (Apr. 21, 2022).

On February 9, 2023, OMB issued a Notification of Proposed Guidance in the **Federal Register**, which explained that OMB was proposing a new part 184 in 2 CFR chapter I to support implementation of BABA and clarify existing provisions in 2 CFR 200.322. 88 FR 8374 (Feb. 9, 2023).

In accordance with BABA, through this document, OMB is now amending 2 CFR, subtitle A, chapter I by adding a new part 184 to support implementation of BABA. OMB is also amending 2 CFR 200.322 to clarify existing provisions within part 200. The guidance in part 184 is intended to improve consistency in the implementation of BABA requirements across the Federal Government.

Prior to the effective date of the part 184 guidance, OMB will also issue an updated M-Memorandum to replace Memorandum M-22-11. The purpose of the update to Memorandum M-22-11 is to remove direct conflicts between Memorandum M-22-11 and the revised guidance in part 184. Parts and provisions of Memorandum M-22-11 that do not directly conflict with the revised guidance will generally be retained. OMB intends to issue the successor M-Memorandum before the effective date of the new part 184. OMB also intends the updated M-Memorandum to become effective concurrently with part 184. The updated M-Memorandum will continue to provide supplemental guidance to Federal agencies on implementation of BABA, which OMB did not believe was needed in the more succinct part 184 text. Sometimes, when OMB refers to Memorandum M-22-11 in this document, it refers to the initial guidance contained in Memorandum M-22-11, which OMB intends to carry over to the updated M-Memorandum except in cases of direct conflict.

OMB also notes, as explained in response to several commenters, that part 184 is not intended as comprehensive guidance on all topics related to the implementation of BABA. Instead, part 184 is intended to be high-level coordinating guidance for Federal agencies to use in their own direct implementation of BABA, as required under section 70914 of BABA. The guidance will help to ensure clear and consistent application of the key requirements under the statutory text. It is not possible for OMB to issue comprehensive guidance on every issue that may arise for different Federal agencies in the context of directly implementing their own unique Federal financial assistance programs, or on all topics raised by commenters, some of which are beyond the scope of what OMB intended to include in part 184.

BABA is a new and complex statute, which became effective in 2022. As such, establishing governmentwide guidance on these new statutory requirements has been an iterative process. OMB issued initial guidance in 2022 through Memorandum M-22-11. Following notice and comment, OMB is announcing revised guidance, which complements the initial guidance and, following the effective date, replaces it in cases of direct conflict. Federal agencies, in directly implementing BABA, may issue further guidance and provide further information to their recipients and other stakeholders on their own Federal financial assistance programs for infrastructure. OMB may

also issue additional guidance in the future as it receives additional stakeholder feedback from Federal agencies, recipients of Federal awards, contractors, manufacturers, labor organizations, suppliers, industry associations, and others on this guidance. The revised guidance OMB announces in this document is an important next step in OMB's efforts to provide guidance to Federal agencies on implementing the statutory requirements in a coordinated way. The revised guidance is also an important step toward achieving this Administration's policy objectives set forth in E.O. 14005.

Statutory Authority for Final Guidance

OMB is required by section 70915(a) of BABA to issue guidance to the head of each Federal agency to assist in applying new Buy America preferences under section 70914 of BABA. Section 70915(a) of BABA also instructs OMB to, if necessary, amend subtitle A of title 2, Code of Federal Regulations (or successor regulations), to ensure that domestic content procurement preference requirements required under BABA or other Federal law are imposed through the terms and conditions of awards of Federal financial assistance.

OMB is also required by section 70915(b) of BABA to issue standards that define "all manufacturing processes" in the case of construction materials. While Memorandum M-22-11 provided "preliminary and non-binding" guidance on the definition of "construction materials," the new part 184 includes OMB's standards for "all manufacturing processes" for the manufacture of construction materials. In issuing standards, BABA requires OMB to ensure that each manufacturing process required for the manufacture of the construction material and the inputs of the construction material occurs in the U.S. Section 70915(b) of BABA also requires OMB to take into consideration and seek to maximize the direct and indirect jobs benefited or created in the production of the construction material. The standards set forth in the revised guidance are based on industry feedback, agency consultation, and public comments received in response to the proposed guidance for each construction material as detailed further below.

Need for This Final Guidance

The new part 184 provides guidance to Federal agencies on how to implement the BABA requirements and standards in a consistent and coordinated way. In addition to providing clarity to Federal agencies

and recipients of federally funded infrastructure project awards, this part will help to send clear market signals to the industries manufacturing products about what is needed to satisfy the BABA requirements.

The congressional findings at section 70911 of BABA (Findings) recognize several policy justifications for establishing Buy America preferences. The policy rationale in the Findings includes creating demand for domestically produced goods, helping to develop and sustain domestic manufacturing, and supporting millions of domestic manufacturing jobs. Congress also recognized that a robust domestic manufacturing sector is a vital component of the national security of the U.S. In addition, Congress recognized the importance of supporting domestic manufacturers that meet commitments of the U.S. to environmental, worker, and workplace safety protections; and in reinvesting tax dollars in companies and processes using the highest labor and environmental standards in the world. These justifications are consistent with the policies of this Administration set forth in E.O. 14005 to use terms and conditions of Federal awards to maximize the use of goods, products, and materials produced in, and services offered in, the U.S.

The revised guidance announced by OMB in this document adopts a unified scheme addressing how each covered Federal agency should apply the Buy America preference established by section 70914 of BABA to Federal awards for infrastructure. This includes providing key definitions and other provisions on how to classify products in the categories established under BABA. The revised guidance also includes other provisions providing manufacturing standards for each identified construction material. OMB is committed to ensuring strong and effective Buy America implementation consistent with BABA, other applicable law, and E.O. 14005.

Summary of Comments

On February 9, 2023, OMB solicited feedback from the public through proposed guidance published in the **Federal Register** on February 9, 2023. See 88 FR 8374 (Feb. 9, 2023). The period for public comments closed on March 13, 2023. Comments were received via *Regulations.gov* at Docket No. OMB-2023-0004. OMB received approximately 1,950 public comments from a broad range of interested stakeholders, such as States and State departments of transportation, local governments, manufacturers, labor

organizations, suppliers, construction contractors, industry associations, universities, foreign governments, and individuals.

Section-by-Section Discussion

OMB developed this revised guidance following review and consideration of comments received on the notification of proposed guidance. In this document, OMB summarizes significant comments received in response to its proposal and any substantive changes made to each section of the revised guidance. Minor changes to the language of the guidance are not addressed in all cases. These include minor plain language revisions, the addition of paragraph headings, and other minor editorial changes in the part 184 text. For sections where no substantive changes are discussed, the substantive proposal from the notification of proposed guidance was adopted.

Summary of Significant Changes Made in This Final Guidance as Compared to the Proposed Guidance

Section 184.1 was revised to clarify that the policy in the part 184 text applies to products “incorporated into” an infrastructure project. This is consistent with OMB Memorandum M–22–11 and other sections of the part 184 text. A similar change was also made to the definition of “Buy America Preference” in § 184.3.

Section 184.2 was revised to further clarify the non-applicability of part 184 to certain existing Buy America preferences. Section 184.2 was also revised to add an effective date for part 184, a modified effective date for certain projects, and a severability clause.

Section 184.3 was revised to modify certain definitions and add new ones.

The definition of “construction materials” at § 184.3 was revised to apply to “only one” of the listed materials. The list of construction materials was expanded to include engineered wood. Text was added to clarify that drop cable is included within the meaning of fiber optic cable. Language relating to minor additions was also added to the second paragraph of the definition.

The definition of “manufactured products” at § 184.3 was revised to provide an affirmative definition for the term instead of just explaining, in the negative, what the term does not include. The negative element of the definition was moved to the second paragraph of the definition. The second paragraph of the definition also includes clarifying language on items that may be considered components of a manufactured products.

Section 184.3 was also revised to add definitions for terms including component, manufacturer, predominantly of iron or steel or a combination of both, and section 70917(c) materials.

Section 184.4 was revised to provide additional guidance on the categorization of articles, materials, and supplies and how to apply the Buy America preference by item category.

Section 184.5 includes minor changes in terminology but in substance remains similar to the proposed guidance.

Section 184.6 was revised to modify the manufacturing standard for certain construction materials including fiber optic cable. The standard for fiber optic cable was revised to clarify that it incorporates the standards for glass and optical fiber. The standard for plastic and polymer-based products was modified slightly to incorporate the proposed standard for composite building materials, which are a sub-category of plastic and polymer-based products. Because composite building materials are intended as a sub-category of plastic and polymer-based products, the standalone standard for composite building materials was eliminated. A new paragraph (b) was added to clarify that, except as specifically provided, only a single standard applies to a single construction material.

A few editorial changes were made to § 184.7 to provide clarity on the process for requesting and issuing waivers.

Summary of Significant Changes Made in This Final Guidance as Compared to the Initial Guidance in Memorandum M–22–11

Section 184.2 modifies existing guidance in Memorandum M–22–11 by providing an effective date for part 184.

Section 184.3 modifies existing guidance in Memorandum M–22–11 by modifying certain existing definitions and adding new ones.

The definition of “construction materials” at § 184.3 remains similar to Memorandum M–22–11 in applying to “only one” of the listed materials, but further clarifying language is now provided including the second paragraph on minor additions. The list of construction materials is expanded to include fiber optic cable (including drop cable), optical fiber, and engineered wood.

The definition of “manufactured products” at § 184.3 modifies existing guidance in Memorandum M–22–11 by providing an affirmative definition for the term as explained above in the summary of changes relative to the proposed guidance. Other clarifying language is also provided including on

how to categorize products that could fall into multiple categories and on what items may be considered components of manufactured products.

Section 184.3 also modifies existing guidance in Memorandum M–22–11 by adding definitions for terms including “component,” “manufacturer,” “predominantly of iron or steel or a combination of both,” and “section 70917(c) materials.”

Section 184.4 modifies existing guidance in Memorandum M–22–11 to provide additional guidance on the categorization of articles, materials, and supplies and how to apply the Buy America Preference by category.

Section 184.5 modifies existing guidance in Memorandum M–22–11 by offering more detail on how Federal agencies should implement the cost of components test.

Section 184.6 modifies existing guidance in Memorandum M–22–11 by providing revised manufacturing standards for each listed construction material, including materials that were not included in Memorandum M–22–11 such as fiber optic cable, optical fiber, and engineered wood.

A few editorial changes were made, but §§ 184.7 and 184.8 otherwise remain similar to existing guidance in Memorandum M–22–11.

General Comments—Consistency and Uniformity for Buy America Requirements

Many commenters emphasized the need for Federal agencies to apply and implement Buy America preferences in a consistent manner. For example, some commenters urged OMB to preserve the existing body of regulations, interpretations, and determinations related to Federal domestic content preferences as much as possible. Some commenters suggested using definitions already in use under the FAR in the procurement context or using existing Buy America standards implemented by specific Federal agencies with Buy America requirements that existed prior to passage of BABA in 2021. Other commenters suggested maintaining continuity with existing BABA guidance provided by OMB in Memorandum M–22–11.

Other commenters explained that further clarity was needed in the guidance on a variety of specific topics to ensure consistent application by Federal agencies. For example, some suggested establishing a unified certification process for Buy America compliance. Others suggested operational improvements to the Buy America waiver process, such as streamlining and expediting the waiver

process. Other commenters suggested creating a website or database of BABA approved materials or manufacturers. Some also suggested granting broad waivers for certain types of projects (for example, water projects), programs (for example, Broadband Equity, Access, and Deployment (BEAD)), or products (for example, commercial off the shelf (COTS) items).

OMB Response: In general, OMB agrees with commenters on the value of consistent implementation of Buy America requirements. OMB believes the guidance it issues in this document will help to achieve this. OMB will also continue to convene inter-agency workgroups on a recurring basis to ensure, to the extent possible, that Federal agencies implement BABA in a consistent, uniform, efficient, and transparent manner.

In the revised guidance, OMB has aimed to provide general consistency with certain provisions in the FAR. For example, see discussion below of the definition of “predominantly of iron or steel or a combination of both” in § 184.3, the “brought to the work site” language added in § 184.4, and the “cost of components” test used in § 184.5. However, the Buy America requirements established by Congress under BABA are not identical to the Buy American Act requirements implemented in the FAR. The FAR implements the Buy American Act (BAA) (41 U.S.C. 8301–8305). BAA applies to direct Federal procurement—what the Federal Government buys for its own use. By contrast, BABA applies to Federal financial assistance for infrastructure projects—or grants, cooperative agreements, and other Federal awards that Federal agencies provide to recipients constructing such projects. See 2 CFR 200.1. There are many substantive differences between the BAA, implemented in the FAR, and BABA. These differences include the applicable product categories that the domestic content preferences apply to and also the standards that apply to the categories. These differences do not allow for complete consistency on all topics between the FAR and the implementing guidance for BABA in part 184. However, OMB has aimed for a reasonable degree of consistency on certain specific provisions discussed below.

OMB also recognizes that certain Federal agencies, such as the Environmental Protection Agency (EPA) and operating administrations within the U.S. Department of Transportation (U.S. DOT), including the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA),

already had Buy America requirements for Federal financial assistance that applied to Federal awards for infrastructure prior to passage of BABA in 2021. OMB also recognizes that section 70917(b) of BABA states that “[n]othing in this part affects a [BABA preference] for a Federal financial assistance program for infrastructure that is in effect and that *meets* the requirements of section 70914” (emphasis added). This topic is addressed specifically at § 184.2(a) of the guidance, and the discussion of that provision in this preamble. Section 184.2(a) generally allows Federal agencies to maintain Buy America preferences meeting or exceeding the requirements of BABA if the preferences existed before November 15, 2021. However, to the extent existing Buy America preferences did not meet or exceed the requirements for all of the product categories under BABA, these Federal agencies must supplement their existing requirements. For example, BABA established the Buy America preference for the “construction materials” category, which is addressed in several sections of the new part 184 and throughout this preamble. Because the construction material category was first established under BABA—and the term is used there in a novel way—provisions of OMB’s guidance offering definitions and standards related to constructions materials will be used by all Federal agencies with Federal financial assistance programs for infrastructure in their own direct implementation of BABA. See BABA 70912(6)(C), 70914(a), 70915(b), and 70917(b).

Regarding other comments and suggestions for greater consistency on certification procedures, a database of approved products, and other topics, OMB notes that its revised guidance in part 184 is intended to be limited in scope. Some of these topics may possibly be the subject of future guidance for OMB or individual Federal agencies, but are not addressed in the current revised guidance issued in this document. Comments on the waiver process are addressed below.

General Comments—Burden Reduction for Grant Recipients and Industry

Many commenters raised concerns related to the implementation of BABA requirements and the burden these requirements may impose on industry and recipients of Federal financial assistance and their contractors. For example, some of these commenters maintained that OMB’s guidance on Buy America requirements may impose a burden on companies involved in

constructing or providing supplies for federally funded infrastructure projects, which may lead to project delays or increased project costs. Many commenters advocated for changes to the guidance that would reduce the burden for industry. For example, some commenters maintained that OMB should avoid creating new or different definitions that would modify existing guidance in Memorandum M–22–11. These commenters stated that, in some cases, modifying existing guidance might lead to confusion, project delays, or increased project costs.

Several State departments of transportation also explained that they have expended substantial effort and resources to implement OMB’s initial guidance in Memorandum M–22–11. These commenters maintained that any significant changes to the Buy America preferences would create additional administrative burden for them. For example, they noted that significant changes in how to distinguish between product categories may result in voiding existing product categorization lists created by State departments of transportation based on OMB’s preliminary guidance, or in making product categorization more difficult for them. These commenters urged OMB to maintain continuity with the preliminary guidance in Memorandum M–22–11 on how to distinguish between product categories.

OMB Response: Responses to comments regarding the effective date for the guidance are addressed separately under § 184.2(b) below. OMB must ensure that its revised guidance enables Federal agencies to implement the Buy America requirements in a way that is consistent with the text and statutory objectives of BABA and the policy of E.O. 14005. Memorandum M–22–11 provided initial implementation guidance to Federal agencies on the application of the Buy America preference to Federal financial assistance programs for infrastructure, the Buy America waiver process, and other topics. Memorandum M–22–11 also provided “preliminary and non-binding” guidance on the definition of “construction materials” and associated standards for manufacturing processes for an interim period.

BABA requires Federal agencies to ensure that all of the iron, steel, manufactured products, and construction materials used in federally funded infrastructure projects are produced in the U.S., and directs OMB to issue guidance to assist Federal agencies in achieving this objective. BABA 70914(a) and 70915(a). Congress explained its policy rationale for the

Buy America preference in its Findings at section 70911 of BABA, which includes ensuring that entities using taxpayer-financed Federal financial assistance should give a commonsense preference for the materials and products produced by companies and workers in the U.S. BABA 70911(4). The basic statutory requirements of BABA have been effective for all covered Federal agencies since May 14, 2022.

In issuing the revised guidance, OMB is fulfilling its obligations to assist Federal agencies in implementing BABA in a manner consistent with the statutory text and the policies of this Administration set forth in E.O. 14005. Implementing the statutory Buy America preference may impose a burden on some stakeholders in some circumstances; however, clear and consistent implementation of the BABA standards also provides significant opportunity for manufacturers across the U.S. On many topics OMB's discretion is limited, such as in the case of construction material standards, which must "require that each manufacturing process required for the manufacture of the construction material and the inputs of the construction material" occurs in the U.S. BABA 70915(b)(2)(A).

On certain topics, OMB recognized commenters' concerns regarding how its proposed guidance could have created confusion. For example, regarding OMB's product categorization system, which is based on OMB's definitions for the three top-level product categories established by Congress in BABA, OMB discusses below in this preamble how it has aimed to maintain continuity with Memorandum M-22-11 on a key element of the definition of "construction materials" that several commenters were specifically concerned about. Under the revised guidance, OMB returns to its approach under M-22-11 of classifying a combination of two separate construction materials as a manufactured product except in cases where the resulting product is specifically identified by OMB in the list of construction materials at § 184.3. Consistent with the preliminary guidance, this approach, for example, results in a plastic-framed sliding window being treated as a manufactured product, and it results in plate glass, on its own, being treated as a construction material. In this case, OMB recognized the concerns raised by commenters on the proposed guidance. OMB aimed to provide a definition of "construction materials" that would not create additional or excessive burden while also implementing BABA in a manner

consistent with the statutory intent. While recipients may likely have to make some adjustments to ensure consistency with the revised guidance, the structure of the definition of "construction materials" should provide a reasonable degree of continuity for State agencies with product categorization lists based on Memorandum M-22-11.

OMB acknowledges that other elements of the product category definitions, and other provisions of the final guidance, which are explained below, will have some impacts on how products are categorized under BABA relative to Memorandum M-22-11. OMB's definitions for construction materials, iron or steel products, and manufactured products are discussed in more detail below, including OMB's supporting rationale for the final definitions and changes relative to the proposed guidance and Memorandum M-22-11.

OMB also acknowledges that it has provided further specification on certain items from Memorandum M-22-11. As Memorandum M-22-11 itself explained, OMB never intended to leave all provisions of that guidance in place permanently; rather, Memorandum M-22-11 provided initial implementation guidance to Federal agencies on the application of the Buy America preference to Federal financial assistance programs for infrastructure, the Buy America waiver process, and other topics. OMB has consistently explained in public notices on BABA that revised guidance and standards would follow the initial guidance. Memorandum M-22-11 identified itself as "initial" implementation guidance providing "preliminary and non-binding guidance" with regards to construction materials. Three days after the issuance of Memorandum M-22-11, OMB issued the RFI in the **Federal Register**, which explained that OMB was beginning the process of seeking public input for its revised guidance and standards for construction materials. 87 FR 23888 (Apr. 21, 2022). Through the Notification of Proposed Guidance issued by OMB in February 2023, OMB explained that it was seeking notice and comment for this revised guidance, which now modifies 2 CFR. 88 FR 8374 (Feb. 9, 2023). To the extent OMB has made material changes to its initial policy in Memorandum M-22-11, those changes are identified in this document along with OMB's reasons for making them.

OMB has also sought, where possible, to avoid being overly prescriptive; for example, this guidance leaves significant discretion to Federal

agencies to apply the term "minor additions" for purposes of the definition of "construction materials" in the context of their own Federal financial assistance programs for infrastructure.

Section 184.1: Purpose and Policy

Section 184.1 of the revised guidance generally restates the purpose and policy from the statutory text of BABA with minimal modification. OMB received many comments, however, on the topic of whether products and supplies temporarily used on a work site, but not permanently incorporated into an infrastructure project, would be subject to the Buy America preference. Many commenters expressed concern that OMB may have intended to modify its policy in Memorandum M-22-11 on this topic, which stated that BABA only applies to products that are "consumed in, incorporated into, or affixed to an infrastructure project." For example, one commenter observed that the proposed guidance did not include an equivalent provision and requested OMB to restate this clarifying language in the revised guidance in part 184.

OMB Response: OMB made a slight change in § 184.1(b) to replace the phrase "used in the project" with "incorporated into the project." The intention of this change is to clarify that OMB's policy from Memorandum M-22-11 remains unchanged under the revised guidance in part 184 relative to the distinction between temporary use and permanent incorporation. As explained above, OMB has not rescinded Memorandum M-22-11. In cases of direct conflict, certain portions of Memorandum M-22-11 will be superseded by the revised guidance on the effective date of part 184—such as the preliminary standard for construction materials standards—but other parts and provisions of Memorandum M-22-11 that do not directly conflict with the revised guidance will remain in effect. OMB intends to issue an updated M-Memorandum to replace Memorandum M-22-11. The updated version of the memorandum will be revised to remove conflicts with the revised guidance in part 184.

On the issue of permanent incorporation, Memorandum M-22-11 explained that the Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the

infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project. This policy is not modified by the revised guidance issued in this document in part 184.

Section 184.2: Applicability, Effective Date, and Severability

Section 184.2(a)—Non-Applicability of This Part to Existing Buy America Preferences

OMB received a variety of comments on the intended meaning of this section, such as how it would apply to specific Federal agencies. For example, some commenters asked how the revised guidance would apply to agencies like FTA and FHWA with preexisting and long-standing Buy America requirements. Other commenters were confused by the purpose of this provision as it appeared in the proposed guidance.

OMB Response: The purpose of this provision is to identify Buy America preferences to which the revised guidance does not apply. Certain Federal agencies, such as the EPA and operating administrations within the U.S. DOT, such as FHWA and FTA, have Buy America preferences that existed prior to passage of BABA. Section 70917(b) of BABA states that “[n]othing in this part affects a [BABA preference] for a Federal financial assistance program for infrastructure that is in effect and that *meets* the requirements of section 70914” (emphasis added). OMB notes that BABA’s savings provision specifies that existing programs must meet the requirements of section 70914 of BABA. Hence, part 184 does not apply to a Buy America preference implemented by those agencies that either meets or exceeds the requirements of section 70914 of BABA if the preference was applied to Federal awards for infrastructure projects before November 15, 2021. Other provisions of part 184, however, should be used by agencies with existing requirements if they do not have comparable standards. For example, the construction material category—with specific materials identified by OMB in this guidance—is newly created under BABA. This category should be used by agencies that continue to apply their own existing regulations and implementing guidance for other categories. Other procedural elements of the revised guidance, such

as those addressing the waiver process, will also apply to all Federal agencies. Individual Federal agencies are best positioned to provide more specific information on how BABA, part 184, and their existing requirements apply to specific infrastructure projects or Federal financial assistance programs that they oversee and implement.

Section 184.2(b) and (c)—Effective Date of This Part and Modified Effective Date for Certain Infrastructure Projects

OMB received many comments on the effective date for the guidance. Many commenters requested OMB to provide additional time before the guidance becomes effective. For example, some of these commenters indicated that supply chains needed more time to adjust to the guidance. Other commenters indicated that they needed more time to educate and train their staff on how to comply with the guidance. Other commenters indicated that Federal agencies responsible for implementing the guidance needed additional time to update their policies and practices and that recipients and subrecipients of Federal financial assistance subject to the Federal agency policies will then need time to apply those policies and practices. Still other commenters suggested that Federal agencies needed additional time to implement changes to their waiver processes to make it more transparent and efficient before the guidance goes into effect. OMB received many other comments on similar themes asking OMB to provide a delayed effective date for all or some provisions the guidance to allow affected or potentially affected entities more time to prepare for implementation, oversight, and compliance.

Many commenters recommended that OMB adopt a phased or incremental approach that would phase-in the guidance over time. Several commenters suggested delaying implementation until the next construction season in 2024. Some commenters specifically noted concerns related to projects started prior to the effective date of BABA.

Regarding the new standards for construction materials in particular, several commenters also requested phasing-in the standards over a longer period of time or only applying them after confirming that a sufficient domestic supply is available for all Federal infrastructure projects. Again, some commenters also noted concerns about applying requirements for construction materials on projects that began prior to passage of BABA or the

effective date of the statutory BABA requirements.

A number of commenters also questioned the advisability of applying the revised guidance on projects that were already in planning, design, or later implementation phases prior to its issuance, or that had received prior Federal awards either before passage of BABA or under OMB’s initial guidance in Memorandum M–22–11. Some commenters questioned whether this approach would be feasible. Others stated that additional guidance was needed to reduce uncertainty for such projects. Other commenters supported rapid implementation of the BABA standards.

OMB Response: By statute, the Buy America preferences under BABA became effective more than a year ago on May 14, 2022. BABA 70914(a); *see also* Memorandum M–22–11. OMB explained in Memorandum M–22–11 that it was issuing “initial” implementation guidance, including “preliminary” standards, to be followed by issuance of this revised guidance. The Buy America preferences under BABA, including the preliminary and non-binding standards for construction materials under Memorandum M–22–11, have now applied to Federal financial assistance for infrastructure for over a year.

Based on guidance in Memorandum M–22–11, many Federal agencies took the opportunity to propose and issue adjustment period waivers, and waivers for previously planned projects, finding that an adjustment or phase-in period was in the public interest after the BABA requirements initially became effective on May 14, 2022. Memorandum M–22–11 provided that “agencies should consider whether brief, time limited waivers to allow recipients and agencies to transition to new rules and processes may be in the public interest.” These waivers provided additional time beyond the statutory effective date of May 14, 2022 for Federal agencies to implement the statutorily-required Buy America preference. For one example of such an adjustment period waiver, see the “Temporary Waiver of Buy America Requirements for Construction Materials” issued by the U.S. DOT in May 2022. 87 FR 31931. For agencies that took the opportunity to propose and issue adjustment period waivers, the phase-in period provided recipients of Federal financial assistance and their suppliers additional time to adjust to, and plan to comply with, the new Buy America preference established by Congress at section 70914(a) of BABA as implemented by the relevant agency.

Since May 2022, many Federal agencies have also proposed and issued other types of general applicability waivers based on OMB's guidance in M-22-11, which also eased the transition to the new statutory requirements. Consistent with examples provided in Memorandum M-22-11, these other general applicability waivers included *de minimis*, small grant, and minor component waivers that individual Federal agencies and the Made in America Office at OMB found to be in the public interest and consistent with policy following the public comment period required under BABA.

In addition to its guidance on waivers, other sections of Memorandum M-22-11 also functioned as an on-ramp for phasing-in BABA requirements. For example, Memorandum M-22-11 provided preliminary and non-binding standards for the new category of construction materials, including a preliminary definition for that term. The preliminary standards in M-22-11 were less stringent than the standards now provided in the revised guidance. Specifically, the preliminary construction material standards in Memorandum M-22-11 only covered "the final manufacturing process and the immediately preceding manufacturing stage for the [identified] . . . material[s]." Memorandum M-22-11 explained that, following additional stakeholder input, OMB would issue further guidance on the meaning of the term construction materials and revised manufacturing standards for each identified material consistent with section 70915(b) of BABA.

OMB has now received stakeholder input through issuance of the RFI in April 2022 and the proposed guidance in February 2023. Based on consideration of that stakeholder input and the statutory requirements under BABA, the standards provided in the revised guidance now provide specific manufacturing standards for agencies to apply to each listed construction material. Consistent with BABA, the standards now enumerate the list of "all manufacturing processes" to occur in the U.S. BABA 70915(b). This includes "each manufacturing process required for the manufacture of the construction material and the inputs of the construction material." *Id.* A period with less stringent standards for construction materials was already provided by Memorandum M-22-11.

OMB acknowledges that it added three construction materials to its list in the revised guidance in part 184. OMB identified all three materials in the proposed guidance issued in February

2023, with fiber optic cable and optical fiber identified in the proposed part 184 text and engineered wood identified in the preamble as a material that OMB was considering for its final list. To the extent that supply chain concerns arise due to the addition of these materials, or due to the clarification of the applicability of BABA to other construction materials, a Federal agency may use the waiver process described at section 70914(a) of BABA, and in § 184.7 of the guidance, to provide additional relief on the construction materials standards set forth in the revised guidance.

In addition to providing guidance on waivers and preliminary guidance on construction materials, Memorandum M-22-11 also provided initial implementation guidance on many other topics including iron or steel products, manufactured products, the applicability of BABA, the meaning of infrastructure and infrastructure projects, and exemptions to BABA. As discussed in this preamble, OMB acknowledges that the revised guidance makes changes and adjustments on several topics relative to the initial guidance. In many cases, however, OMB believes these changes are modest or limited in scope. The revised guidance remains consistent with the statutory framework provided by Congress in November 2021 and generally consistent with the framework provided by OMB through Memorandum M-22-11 over a year ago in April 2022. Thus, the revised guidance does not represent a wholesale change or replacement of the initial guidance, but only a refinement and revision of certain elements in responses to comments that OMB received related to both the RFI and the proposed guidance. As explained above, OMB is not rescinding the guidance in Memorandum M-22-11, but it is superseded in cases of direct conflict. OMB intends to issue an updated M-Memorandum to eliminate conflicts between the two sources of guidance.

From before the May 2022 effective date of BABA through the present, OMB has actively engaged with a wide array of stakeholders including Federal agencies, manufacturers, labor organizations, suppliers, nonprofits, State and local governments, and other entities and individuals that may be affected by Federal agencies' implementation of OMB's guidance. Engagement activities included public listening sessions, public comment periods, inter-agency coordination with the Federal Government, meetings with industry, and other public engagements. OMB has carefully considered public comments received in response to the

proposed guidance in developing the revised guidance in this document. OMB intends to continue active engagement with stakeholders, but does not believe that an additional phase-in period is needed beyond the phase-in period provided by Memorandum M-22-11 and the adjustment period and other waivers issued by Federal agencies. Accordingly, OMB has decided on an effective date of 60 days after publication for the revised guidance.

OMB acknowledges commenters' concerns about applying the revised guidance on projects that had received prior Federal awards under OMB's initial guidance in Memorandum M-22-11. For infrastructure projects that received prior Federal awards on or after May 14, 2022, but before the effective date of the revised guidance, OMB adds language clarifying that Federal agencies should allow a project that receives a subsequent Federal award within one year of the effective date to be subject to Memorandum M-22-11 instead of the revised guidance. In this case, the project would remain subject to the original version of Memorandum M-22-11 published on April 18, 2022, not the updated or successor version that will remove direct conflicts with part 184. The purpose of this language is to provide additional flexibility for certain projects in the implementation phase.

OMB also includes clarifying language related to projects in the category described in the preceding paragraph that make significant design or planning changes after the effective of the revised guidance. If significant design or planning changes are made to the infrastructure project, the Federal awarding agency may apply the revised guidance to the additional Federal award instead of Memorandum M-22-11. This provision recognizes that, depending on their scope or nature, design or planning changes may warrant application of the revised guidance, such as in cases where the changes introduce novel project elements that were never evaluated under Memorandum M-22-11. However, the provision leaves discretion to the agency to consider the fact-specific circumstances of the project and which guidance should be applied.

OMB also includes language to clarify that even in the case of projects that qualify to continue applying Memorandum M-22-11 to obligations within one year of the effective date, Federal agencies eventually should apply the revised guidance if the projects receive additional Federal awards after the one-year period.

OMB also acknowledges commenters' concerns about applying the revised guidance on other projects that were in the planning, design, or other phases of implementation before the effective date of the revised guidance, but which had not received prior Federal awards. OMB finds that the waiver process is generally the appropriate mechanism for additional relief on these projects. If the Federal agency finds that a waiver is justified under the circumstances—and follows the processes set forth in § 184.7 of the revised guidance—a waiver may be available. The waiver process may also be the appropriate mechanism where the revised guidance may be considered excessively disruptive and contrary to the public interest. OMB will continue working with Federal agencies to identify any additional flexibilities that agencies can deploy to address the concerns raised in the comments about timelines.

Section 184.2(d)—Severability

BABA requires OMB to issue coordinating guidance and standards to Federal agencies on how to apply the statutorily required Buy America preferences. BABA 70915. For the reasons discussed in the preamble, OMB believes that its decisions on all provisions and elements of the revised guidance are well-supported by its authority under BABA and should be upheld in any legal challenge. OMB also believes that its exercise of its authority in the revised guidance reflects sound policy.

In the revised guidance, OMB adopts a unified scheme addressing how each covered Federal agency will apply a Buy America preference to Federal awards for infrastructure. While the unified scheme best serves the statutory objectives of BABA if left intact as adopted by OMB, the benefits of the revised guidance related to coordination across the Federal Government do not hinge on any single element or provision of the guidance. Accordingly, OMB considers individual elements and provisions adopted in the revised guidance to be separate and severable from one another. In the event of a stay or invalidation of any element or provision of the guidance, or any element or provision as it applies to a particular person or circumstance, OMB's intent is to otherwise preserve the revised guidance to the fullest possible extent. The elements that remained in effect would continue to provide vital guidance to Federal agencies to ensure coordinated implementation of the Buy America preference set forth in BABA.

Specifically, in the event that any element or provision of the revised guidance is held to be invalid or unenforceable as applied to a particular person or circumstance, the part 184 text explains that the provision should be construed so as to continue to give the maximum effect permitted by law as applied to other persons not similarly situated or to dissimilar circumstances. If any provision is determined to be wholly invalid and unenforceable, it should be severed from the remaining provisions of the revised guidance, which should remain in effect.

Regarding its coordinating function, the product categorization system provided by the definitions of key terms in § 184.3 and other provisions in § 184.4 ensure that Federal agencies will apply the Buy America preference in consistent, uniform, efficient, and transparent manner. The revised guidance, along with Federal agencies' coordinated efforts to directly implement the guidance, will send an important signal to recipients of Federal awards, contractors, industry, and suppliers on how to comply with BABA. Congress expressly recognizes the need for coordinating guidance and standards from OMB in section 70915 of BABA.

The guidance OMB issues in this document will continue to provide necessary coordinating information to Federal agencies and stakeholders even if individual elements or provisions were stayed or invalidated. For example, although OMB believes that the final list of construction materials in § 184.3 is well-supported and sound policy, if a reviewing court issued a stay or invalidation of OMB's inclusion of any individual item on the list, Federal agencies could still continue to implement the remainder of the revised guidance. This approach would allow Federal agencies to continue to implement statutory requirements under BABA, based on OMB's coordinating guidance, pending further decisions by the court or action by OMB on the stayed or invalidated provisions. The same would also be true if a reviewing court issued a stay or invalidation of OMB's inclusion of any specific types of products or components of products under the definition of "manufactured products."

Similarly, the construction material standards under § 184.6 each provide important coordinating information to Federal agencies, recipients and subrecipients of Federal awards, contractors, manufacturers, suppliers, and other stakeholders in the relevant industries. If any one of the construction material standards were stayed or

invalidated by a reviewing court, the remaining standards should remain in effect. For any stayed or invalidated standard, as an interim measure, for that standard only, a reviewing court could revert to the preliminary and less stringent standard for construction materials that applied under Memorandum M–22–11. In that circumstance, Federal agencies could continue to implement the remaining standards for other construction materials without interruption and meet the statutory requirements under BABA.

Many commenters also expressed concerns on the topic of whether materials identified in section 70917(c) of BABA—referred to collectively in this document as the section 70917(c) materials—should be included in the category of manufactured products. In the revised guidance, as discussed below, OMB defines the circumstances in which section 70917(c) materials may be considered components of manufactured products under the Buy America preference at section 70914(a) of BABA. In the event that a reviewing court stayed or invalidated elements of OMB's guidance as applied to section 70917(c) materials, as an interim measure those materials could be excluded from BABA coverage without impacting the remainder of the guidance. This approach would allow Federal agencies to continue to fully implement remaining provisions of the OMB guidance pending further decisions by the reviewing court or action by OMB on treatment of section 70917(c) materials.

OMB believes that it is in the interest of Federal agencies, recipients and subrecipients of Federal awards, contractors, manufacturers, suppliers, other stakeholders, and the nation as a whole to leave the final coordinating guidance in place to the fullest extent possible and permitted by law. In addition to more fully implementing the statutory requirements of BABA, the revised guidance provides common guidelines, to be implemented by Federal agencies, for all stakeholders. It also provides important market signals to industry—many of which are making significant investments in American manufacturing and production in response to these standards—which will best allow the Federal Government to achieve the statutory objectives provided by Congress under BABA.

Section 184.3: Definitions

Section 184.3—Definition of Component

OMB received many suggestions on how to define the term component, which is used in the cost of components

test in § 184.5. Many commenters believed that OMB should use the definition of component in FAR 25.003. OMB also received suggestions to provide a definition for the related term “end product,” in which components are incorporated. Commenters indicated that it was important to be able to distinguish between end products and their components.

OMB Response: OMB defines component to mean an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: (i) a manufactured product; or, where applicable, (ii) an iron or steel product. This definition is a modified form of the definition used at FAR 25.003. The definition recognizes that the term component is used in the revised guidance in the context of both manufactured products and iron or steel products. Although the revised guidance does not directly use the term end product, the process for identifying end products—as distinguished from components—is generally addressed at § 184.4, at paragraphs (e) and (f), and in the associated preamble text in this document.

Section 184.3—Definition of Construction Materials—General

OMB received many comments on its proposed definition of “construction materials.” Some commenters stated that OMB should include only materials specifically listed in the Findings in section 70911(5) of BABA. Some of these commenters maintained that OMB did not have statutory authority to expand the list beyond the specific items mentioned in the Findings.

Other commenters urged OMB to more closely adhere to the definition of construction materials provided in Memorandum M–22–11. For example, one commenter expressed concern that the newly proposed definition would expand the scope of covered construction materials far beyond the initial guidance. This commenter observed that the proposed definition would include combinations of listed materials that would better be categorized as manufactured products. The commenter explained that this change would lead to significant confusion among contractors, suppliers, and recipients of Federal awards. The commenter also explained that State departments of transportation developed approved products lists and material vendor lists based on Memorandum M–22–11. The commenter feared that OMB’s proposed revision would void months of work put in by State departments of transportation to implement the original

non-binding implementation guidance. For related reasons, many commenters were opposed to OMB adding an “other construction materials” category because it would be too open-ended and create too much uncertainty for both Federal agencies and Federal award recipients.

A few commenters suggested that OMB should consider using the FAR’s definition of construction materials at FAR 25.003. These commenters believed that using a similar definition to the FAR would reduce administrative burden and increase consistency across the Federal Government. However, another commenter observed that the FAR’s definition of construction materials does not match the specific way the term is used in the statutory text of BABA. This commenter suggested that using the FAR definition would be confusing to administer because the more general definition under the FAR would not allow for distinguishing between construction materials and other product categories such as manufactured products. This commenter preferred the structure of a specific list of materials provided by OMB in Memorandum M–22–11.

Other comments suggested that OMB should modify the list of construction materials based on studies on the availability and costs of specific materials. These commenters also maintained that further market research should be completed to verify that any additional construction materials added to the list are produced in the U.S. in the quantities necessary to implement Federal financial assistance programs for infrastructure under the IJA and other laws.

OMB also received many comments on specific construction materials. These comments are discussed further below.

OMB Response: In reaching its final list of construction materials for the guidance, OMB used the list provided by Congress in its Findings at section 70911(5) of BABA for guidance. Congress identified non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall. OMB acknowledges that the congressional findings do not constitute a statutory definition of the term. However, because no statutory definition is provided under BABA at section 70912, the congressional findings were helpful indicators of specific types of materials and items that Congress considers to be “common construction materials used in public works infrastructure projects” that “are not adequately covered by a domestic content procurement preference.” See BABA 70911(5).

The final list of construction materials is generally consistent with the list of items in the Findings in section 70911(5) of BABA and that were previously identified by OMB in Memorandum M–22–11. The list continues to include non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall.

OMB acknowledges the concerns raised over adding additional construction materials to its final list. However, OMB determined that certain items that represent a clear-cut logical extension of materials specifically mentioned in the Findings at section 70911(5) of BABA should also be treated as construction materials. Each new item added to the list in the proposed or revised guidance—fiber optic cable, optical fiber, and engineered wood—represents an extension of items already listed in the Findings and identified in Memorandum M–22–11. For example, the congressional list of “common construction materials” includes “polymers used in fiber optic cables” as an example of “plastic and polymer-based products.” The congressional list also includes “optic glass” as an example of “glass.” These two are the primary constituent elements of fiber optic cable, which are not, in general, incorporated on their own into an infrastructure project related to fiber optic cable. The congressional list also includes both lumber and plastic, which are constituent elements of engineered wood. Accordingly, OMB added these items to its final list.

Based on the structure of the final definition of “construction materials,” which is discussed further below, if these three items were not added they would instead be treated as manufactured products because they consist of inputs of more than one listed item. Fiber optic cable includes inputs of at least plastics and polymers, glass, and non-ferrous metals. Optical fiber includes inputs of at least plastics and polymers and glass. Engineered wood includes inputs of at least lumber and plastics and polymers. Treating these items as manufactured products instead of construction materials would result in a different and less-stringent domestic content preference applying to them. See BABA 70912(6).

OMB believes its decision to set forth in this guidance that Federal agencies should add these three items to its list of construction materials is well-supported by its authority under BABA and reflects sound policy. All three items are direct extensions of common construction materials identified by Congress in its Findings in section 70911(5) of BABA. By treating these

items as construction materials, OMB can define manufacturing standards for each item in § 184.6 of the guidance and seek to maximize the impact of taxpayer-funded Federal awards to enhance supply chains for their production in the U.S. This approach is consistent with the statutory framework in BABA. It will also support key statutory objectives including incentivizing domestic manufacturing of these items.

OMB also believes that adding these three items to its list provides needed clarity on its intent. For example, based on the definition proposed in February 2023, many commenters indicated that further guidance was needed on how to apply BABA to hybrid or composite items—consisting of inputs of more than one construction material—like engineered wood or fiber optic cable. OMB provides further discussion of each of these items below. Except for items specially included in the list, other hybrid or composite products, which combine listed construction materials to make a new product, will be treated as manufactured products. This topic is also discussed below. Further analysis is provided on the inclusion of fiber optic cable, optical fiber, and engineered wood under the topic headings for those items below under both §§ 184.3 and 184.6.

OMB also acknowledges that the congressional list of “common construction materials” in section 70911(5) of BABA includes three items that are not included in OMB’s list of construction materials. These items are steel, iron, and manufactured products. It is clear, however, from sections 70912(2), 70912(6), and 70914(a) of BABA that Congress did not intend iron or steel products or manufactured products to be included in the construction material product category. For example, section 70912(6) of BABA establishes three separate product categories with different domestic manufacturing standards applicable to each one of them.

Based on review of public comments, OMB finds that including additional items to the list of construction materials—such as coatings, paint, or bricks—is not warranted at this time. This decision is discussed further below. In future revisions of part 184, OMB may consider adding new items to its list of construction materials or revising the definition in other ways consistent with BABA.

Another topic related to this definition that received many public comments was OMB’s proposal to change its approach for how to apply the list in distinguishing between

construction materials and manufactured products. Memorandum M–22–11 provided that a construction material is an item that “is or consists primarily of” only one of the listed materials. By contrast, the proposed guidance provided that a construction material is an item consisting “of only one or more of” the listed materials. 88 FR 8374 (emphasis added). Commenters were often confused by this change and observed that it would result in the key example of a manufactured product in Memorandum M–22–11—a plastic-framed sliding window made of glass and plastic—being reclassified as a construction material. Commenters also observed that, based on this proposed change, the construction material category would expand far beyond its current scope to include many item that industry currently considers manufactured products.

OMB acknowledges commenters’ concerns on this topic and has returned to an approach that is more consistent with Memorandum M–22–11. In the revised guidance OMB defines construction materials to mean, “articles, materials, or supplies that consist of only one of” the listed materials. OMB also identifies certain specific exceptions to this provision in the including listed items that contain inputs of other listed items. Another exception to the general rule for distinguishing between construction materials and manufactured products in the revised guidance is in the case of minor additions of other materials to construction materials, which are discussed in paragraph (2) of the definition of “construction materials.” This topic is also discussed further below.

Consistent with the preliminary guidance, the approach in the revised guidance results in the example of a plastic-framed sliding window being treated as a manufactured product. As under Memorandum M–22–11, OMB intends that categorization as a manufactured product should generally be clear if a single item incorporated into an infrastructure project is not specifically identified on the list of construction materials and contains significant inputs of multiple listed or non-listed materials. Maintaining general consistency with Memorandum M–22–11 on this particular topic should prevent imposing unnecessary administrative burden on contractors, suppliers, and recipients, which commenters indicated was of significant concern.

OMB also recognized commenters’ concerns that, under the approach in the proposed guidance, hybrid construction

materials could have many standards applicable to them, which would create many implementation questions and complexities. For example, under the approach in the proposed guidance in February 2023, a product made of glass, plastic and polymer-based products, and copper could have been subject to three or more applicable standards. By contrast, under the approach in the revised guidance, the definition at § 184.3 and the standards at § 184.6 clarify that only a single standard applies to a single item, which is defined at § 184.6 in the case of each item. This approach should reduce administrative burden and ease the implementation of both the “construction materials” definition and associated standards.

To clarify how OMB intends agencies to implement the final definition in practice, following completion of all manufacturing processes for an item listed in paragraph (1) of the definition, if the finished item is combined together with another item listed in paragraph (1), or with a material that is not listed in paragraph (1), before it is brought to the work site, then except as provided in paragraph (2) of the definition regarding minor additions, the resulting article, material, or supply should be classified as a manufactured product, rather than as a construction material. However, the definition also explains that to the extent one of the items listed in paragraph (1), such as fiber optic cable, contains as inputs other items listed in paragraph (1), such as glass or plastics in the case of fiber optic cable, it is nonetheless a construction material. Minor additions to construction materials are addressed in paragraph (2) of the definition. This topic is discussed in further detail below.

Consistent with the example from Memorandum M–22–11, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material. For another example, engineered wood, as a standalone product, should be classified as a construction material. However, if before the engineered wood is brought to the work site, it is combined together through a manufacturing process with glass or other items or materials to produce a new product, which is not listed in paragraph (1), such as a sliding window, the new product should be classified as a manufactured product.

OMB also observes that the manufacturing process standards in § 184.6 for some construction materials include the application of “coatings.” Coatings frequently constitute different materials than the construction material

itself and may or may not be considered minor additions under paragraph (2) of OMB's definition of "construction materials." To clarify OMB's intent, other additions, such as coatings, do not change the categorization of a construction material if they are added through a manufacturing process specifically described in the standard for that construction material at § 184.6. For example, adding a coating to aluminum, even if not considered a minor addition, would not convert the aluminum "construction material" to a "manufactured product" because coatings are specifically identified in the manufacturing processes for non-ferrous metals. However, the coatings themselves do not require domestic sourcing in this scenario if comprised of different materials. In other words, it is not OMB's intent to require domestic sourcing directly for the coating itself. See also discussion at § 184.4(f).

OMB believes the definition provided in the revised guidance on the meaning of construction materials will provide clarity to stakeholders. OMB also believes its approach in the revised guidance will provide continuity with certain key elements of its initial guidance in Memorandum M-22-11.

Section 184.3—Definition of Construction Materials—Inclusion of Non-Ferrous Metals

OMB received several comments on whether and how to include non-ferrous metals in its list of construction materials. Some commenters concurred with OMB's inclusion of non-ferrous metals while others questioned this choice. Other commenters indicated that additional information was needed to help differentiate between a construction material and a manufactured product, including specifically in the case of non-ferrous metals. The commenter maintained the non-ferrous metal category includes complex products that should be considered manufactured products.

Regarding aluminum, one commenter urged OMB to make explicit in its final guidance that primary aluminum is a "construction material." Another commenter asked OMB to specifically define "construction materials" to include aluminum extrusions. Some commenters suggested that the domestic supply of aluminum is inadequate and that it should be excluded on that basis. One commenter requested clarity on whether copper or aluminum wire with a protective coating or sheathing made of plastic should be treated under the new regulations as a construction material or manufactured product.

OMB Response: In reaching its final list of construction materials for the revised guidance, OMB started with the list provided by Congress in its Findings in section 70911(5) of BABA for guidance. More detailed discussion on that approach is provided above. Non-ferrous metals are included on that list and OMB includes that term in the revised guidance without modification.

OMB does not believe it is necessary to further define or provide specific examples of non-ferrous metals in the part 184 text. OMB understands a non-ferrous metal to be a metal not containing, including, or relating to iron or steel. As discussed by commenters, examples include aluminum and copper. OMB addresses how to distinguish between construction materials and manufactured products in other sections of the guidance and associated areas of this preamble. Further discussion of the manufacturing standard for non-ferrous metals is provided in § 184.6. If stakeholders believe that waivers are justified under section 70914(b) of BABA and § 184.8 of the revised guidance in relation to non-ferrous metals, the waiver process would be the appropriate mechanism to address concerns such as non-availability.

Section 184.3—Definition of Construction Materials—Inclusion of Plastic and Polymer-Based Products

OMB received several comments on whether and how to include plastic and polymer-based products in its list of construction materials. Many of these commenters requested further clarity on how differentiate between a construction material and manufactured product, including specifically in the case of plastic and polymer-based products. The commenter maintained the plastic and polymer-based products category includes complex products that should be considered manufactured products. Commenters stated that further clarity was needed on this topic to understand what manufacturing standards would apply to specific items. As an example, one commenter noted that "epoxies and adhesives" can be treated differently by different organizations, which would create uncertainty for manufacturers. Another commenter noted that epoxies, which are used in infrastructure projects, should be specifically addressed, such as by including them in the definition of "plastic and polymer-based products".

Another commenter suggested that providing a definition of "plastic and resin" would be sufficient. This commenter argued that as long as the

composite material is made up of all plastic or resin, then creating a separate category for "composite building materials" was not needed. This commenter added that the term "composite material" is vague and could be interpreted differently by stakeholders.

See also discussion of comments on the topic of composite building materials below.

OMB Response: In reaching its final list of construction materials for the revised guidance, OMB used the list provided by Congress in its Findings in section 70911(5) of BABA for guidance. More detailed discussion on that approach is provided above. Plastic and polymer-based products are included on that list and OMB includes that term in the revised guidance. By a plastic and polymer-based product, OMB refers to a product comprised primarily of inputs of plastics and polymers, but which may also include some minor additions of other materials. OMB discusses how to distinguish between construction materials and manufactured products—including its understanding of the term "minor additions"—in other sections of the guidance and associated areas of this preamble. Further discussion of the manufacturing standard for plastic and polymer-based products is provided in § 184.6.

Section 184.3—Definition of Construction Materials—Modified Inclusion of Composite Building Materials as a Plastic and Polymer-Based Products

Many commenters observed that composite building materials are more appropriately categorized as a subset of plastic and polymer-based products. The commenters raised concerns that if composite building materials were included in a standalone category, it could encompass far more materials than was intended by the use of that term in section 70911(5) of BABA. For example, one commenter stated that composite building materials may include a multitude of materials, such as concrete, reinforced plastics, cement, steel, reinforced concrete, and composite wooden beams. Similarly, some commenters pointed to language in Memorandum M-22-11, which included composite building materials as a subset of plastic and polymer-based products.

One commenter suggested that if a separate category were maintained for composite building materials, the term could be defined as "products made with combinations of polymer and reinforcing fiber, where the polymer and fiber remain as distinct components but

the combination results in properties not found in the individual materials, such as high strength combined with low weight.” Alternatively, some commenters noted that if composite building materials remained a standalone category of construction material, the definition should simply be clarified to ensure that it only includes materials made of plastic and polymers. Some commenters suggested that epoxies should be included in the definition of composite building materials.

OMB Response: After considering public comments on the issue, as well as the language in BABA and Memorandum M–22–11, OMB has adjusted the revised guidance to remove the standalone category for composite building materials. Plastic and polymer-based composite building materials should instead be evaluated under the category of plastic and polymer-based products, described above.

Section 184.3—Definition of Construction Materials—Inclusion of Glass

OMB received many comments on whether and how to include glass products in its list of construction materials. Again, many of these commenters requested further clarity on how to differentiate between a construction material and manufactured product.

Several commenters agreed that OMB should classify glass (including optic glass) as a type of construction material. Other commenters opposed including glass as a construction material. For example, one commenter suggested that OMB’s inclusion of glass in the definition of “construction materials” could threaten safety, reduce competition, and impact costs for Federal recipients because certain glass ceramics are processed and produced internationally. This commenter suggested that OMB should revise its definition of “construction materials” to eliminate glass entirely or, alternatively, provide an exception for all glass used to support safety and chemical protection.

Other commenters requested clarification on the inclusion of “optic glass” in the “glass” category of construction materials. One commenter was unsure if the term should include glass in telecommunications cables, corrective eyewear, or lenses like in a lighthouse. One commenter urged OMB to not create new subsets of definitions for materials such a “optic glass.” Another commenter suggested that optic glass should be included in the manufacturing standard for optical fiber.

Other commenters requested clarification on the application of the guidance to recycled glass. Several commenters had specific questions about optic glass in the context of the broadband industry, with one commenter suggesting that OMB does not need to define “optic glass” as part of the glass construction material because OMB had added “optical fiber” as a separate item to the list of construction materials in § 184.3. Other commenters thought that OMB provided sufficient guidance in the preliminary guidance.

Multiple commenters sought guidance on what types of glass should be considered a construction material versus a manufactured product. Several examples provided by commenters included glass utilized in plate glass, traffic line painting, glass insulator, fiber optic communications, windows, doors, and skylights. One commenter suggested that the distinction could be based on whether glass is: (i) delivered in panes to an infrastructure project; (ii) not treated with coating; (iii) optical or structural glass; or (iv) not used in complex applications or meeting advanced specifications, such as is used in certain types of U.S. DOT and FHWA road-marking projects.

Commenters also had specific questions about these classifications within the context of specific glass products. For example, several commenters requested clarification on the issue of glass beads used for retro-reflective pavement markings. Commenters indicated that there is uncertainty on how to classify these products under Memorandum M–22–11. For example, approaches may differ based on what materials the glass beads are combined with and when. The manufacturing process also includes steps such as selecting a specific formula of glass inputs, blending to customer specifications, formulaic combination using a blending auger machine, and application of complex, multi-purpose coatings. As a result, high-performance glass beads are of a wholly different type of glass than that used for typical construction material purposes, such as windows, doors, insulation, and external glazing. Consequently, one commenter suggested that glass beads should be considered manufactured products. However, another commenter urged OMB to clarify that glass used for retro-reflective pavement markings is a construction material. That commenter noted that those glass beads are never used by themselves. The commenter was concerned that State departments of transportation had reached inconsistent

determinations on this topic based on M–22–11.

OMB Response: In reaching its final list of construction materials for the revised guidance, OMB used the list provided by Congress in its Findings in section 70911(5) of BABA for guidance. OMB notes that Congress specifically identified “glass” in section 70911, “Findings,” as one of several “common construction materials.” While OMB believes that this list is not exhaustive, OMB includes all items in the Findings section as listed construction materials. Thus, OMB has included glass in the revised guidance as a construction material. More detailed discussion on that approach is provided above.

OMB has not included a separate category for optic glass in the revised guidance. The general principles that apply throughout the revised guidance should be used to determine how to treat glass products such as recycled glass and glass beads. Federal agencies may decide to provide additional guidance on those topics for products that are used on infrastructure projects they provide funding for. If stakeholders believe that waivers are justified in the public interest or for other reasons in relation to glass, the waiver process would be the appropriate mechanism to address concerns related to this topic. However, OMB has included a separate category for “optical fiber.” As described in further detail below, OMB believes that given the unique features of the broadband industry, it is appropriate to provide more specific guidance.

OMB discusses how to distinguish between construction materials and manufactured products in other sections of the guidance and associated areas of this preamble. Further discussion of the manufacturing standard for glass is provided in § 184.6. OMB believes that this discussion will provide commenters with the guidance that they need to classify the glass-based products identified above, including glass beads.

Section 184.3—Definition of Construction Materials—Inclusion of Fiber Optic Cable and Optical Fiber

Many commenters—including industry, State and local governments, trade groups, and potential grant recipients—sought additional clarity and guidance from OMB on the treatment of fiber optic cable and optical fiber under BABA. Multiple commenters noted that BABA could have a significant impact on service providers’ ability to participate in the Broadband Equity, Access, and Deployment (“BEAD”) program, which is administered by the National

Telecommunications and Information Administration (“NTIA”), and other Federal broadband programs.

Several commenters, including certain State departments of transportation, supported the OMB’s classification of “fiber optic cable” and “optical fiber” as construction materials in § 184.3. One commenter requested a definition of what counts as “optical fiber” to better implement the requirements under BABA. Several commenters supported the classification but suggested amending § 184.6, which specifies the standards required for a construction material to be considered “produced in the United States.”

Other commenters opposed including either fiber optic cable or optical fiber as new standalone categories of construction materials. Some commenters based their opposition on the statutory text of BABA. Others questioned OMB’s rationale for distinguishing between construction materials and manufactured products. Some also questioned the capacity of domestic supply chains to produce optic fiber and fiber optic cables meeting the Buy America preference for construction materials.

Commenters opposing the classification based on the statutory text of BABA offered a variety of suggestions on interpreting the statutory text. Some commenters believed that Congress enumerated only five items as “common construction materials” in its Findings in section 70911(5) that “are not adequately covered by a domestic content procurement preference.” These commenters noted that while the Findings explicitly identify “polymers used in fiber optic cables” and “optic glass,” they do not explicitly identify fiber optic cable itself as a construction material or any other elements of fiber optic cable. They suggested that Congress, by including only polymers and glass, was excluding fiber optic cable and other inputs of fiber optic cable as “common construction materials” by omission.

One commenter suggested that the inclusion of “fiber optic cable” and “optical fiber” as construction materials would exceed section 70915(b)(2) by reaching back many stages into the manufacturing process. According to that commenter, OMB’s proposed guidance would require a manufactured product, fiber optic cable, to effectively satisfy a compliance test that is more stringent than the 55 percent standard provided by Congress under section 70912(6)(B) by layering construction material manufacturing standards on the principal components of fiber optic cable.

This group of commenters generally suggested that the inclusion of “fiber optic cable” and “optical fiber” as construction materials would run contrary to the intent of BABA. They suggested that OMB instead should consider only components of fiber optic cables and optical fibers, that Congress specifically enumerated, as construction materials.

One commenter suggested that OMB could set the “manufacturing process” standards for these two construction materials in a manner that would create uniform standards for all fiber optic cabling. Another commenter suggested that classifying only optic glass and polymers as construction materials was preferable because it would reduce compliance costs and avoid confusion.

Several commenters also questioned the logical coherence of including “optical fiber” and “fiber optic cable” as construction materials. For “optical fiber,” some commenters sought clarity on how to distinguish between optical fiber and optic glass. These commenters questioned whether OMB intended “optical fiber” to represent “optic glass” or if it was an additional, separate material. One commenter noted that these two terms can be used colloquially in imprecise ways. For instance, a State department of transportation suggested that OMB did not need to make a standalone category for “optic fiber” because OMB had already defined “optic glass” as a construction material in § 184.3. Some manufacturers also stated that a separate definition is not necessary.

However, other commenters warned that the definitions and manufacturing processes of polymers and optic glass in other industries and products may not be appropriate in the context of fiber optic cables. Thus, one commenter suggested that OMB’s guidance should provide separate definitions of “optical fiber,” “optic glass,” and “polymers” that apply to these other construction materials and industries. The commenter suggested that separate definitions of these items in § 184.3 would allow OMB provide a comprehensive standard uniquely applicable to fiber optic cable in § 184.6. The commenter cautioned against layering other standards on top of the fiber optic cable standard. A State department of transportation also suggested that providing specific guidance for each different construction material would avoid misinterpretation.

On comments suggesting that “fiber optic cables” should be classified as a “manufactured product,” commenters provided a variety of rationales. Some noted that while “optic glass” is listed

as a subset of glass products, fiber optic cables are a distinct product. To create a fiber optic cable, these commenters noted that a manufacturer needs to combine several of the listed construction materials, including optic glass and polymers, through multiple, complex, and capital-intensive processes. For example, fiber optic cables are fabricated using optical fiber encased in a sheathing made from various materials by the different manufacturers. Several commenters stated that an end product, such as fiber optic cable, should not be classified as a construction material. Some commenters suggested the appropriate test should be whether you could walk into a store and buy it. For instance, one could buy a roll of fiber optic cable, which would make it an end product, rather than an input into an end product. One commenter suggested that OMB be consistent with other domestic preference regimes—noting that it was unaware of any other domestic preference regime where Congress or any agency had classified a construction material to be made up of other construction materials.

Other commenters focused on Memorandum M–22–11. Under their understanding of OMB’s initial guidance, a fiber optic cable would have been categorized as a manufactured product, unlike the proposed guidance, which would have treated it as a construction material. Several commenters wanted to better understand OMB’s rationale for the classification. Relatedly, several commenters stated that the proposed classification runs counter to congressional intent and the logical meaning of manufactured product. They suggested that OMB should revert to the list of construction materials published in Memorandum M–22–11, which did not include either “fiber optic cable” or “optical fiber” as standalone construction materials.

Relatedly, several commenters suggested that OMB use a single category—instead of spelling out “optical fiber” and “fiber optic cable.” One commenter noted that a broadband grant recipient will only purchase fiber optic cable. Because optical fibers are a construction material for fiber optic cable, rather than an independent final product, every material in optical fibers will already be included in fiber optic cables. Another commenter noted that optical fiber and fiber optic cable ultimately serve a singular, similar purpose.

Several commenters also suggested that OMB consider the capacity of domestic supply chains before

categorizing either “optical fiber” or “fiber optic cable” as construction materials. For example, some commenters emphasized the unique nature of the broadband manufacturing sector, differentiating it from some sectors, like steel, cement, or wallboard, in which the U.S. has established industrial capacity. These commenters believed that other industrial sectors could grow more easily to meet the demand occasioned by the IJA programs and other Federal funding for infrastructure.

Alternatively, other commenters noted that substantial domestic manufacturing capacity already exists for fiber optic cables and that this capacity can be expanded to meet the demands of Federal programs such as BEAD. According to one commenter, more than 100 businesses currently manufacture fiber optic cables in the U.S., representing annual aggregate revenues of approximately \$4 billion utilizing approximately 7,000 total employees. Commenters identified several existing manufacturing companies, including AFL, CommScope, Corning, OFS, and Prysmian. One commenter indicated that the domestic industry for optical cable has grown by 22 percent since 2020 and is expected to continue to grow as these firms and others have announced substantial investments to enhance domestic capacity. While this commenter acknowledged that supply chain constraints have increased delivery intervals for fiber optic cable, the commenter still believed that it was viable to treat fiber optic cable as a construction material. However, the commenter proposed some modifications to “all manufacturing processes,” as detailed below under § 184.6. Other commenters, focusing on the treatment of the electronics that go into a broadband network, stated that industry would have an easier time complying with BABA for fiber optic cables. Others noted the fact that a waiver of Buy America requirements for broadband under the American Recovery and Reinvestment Act (“ARRA”) of 2009 excluded fiber optic cable.

However, several other commenters stated that they believed the U.S. lacks sufficient domestic production capacity. Commenters indicated that there has been a shortage of fiber optic cables and optical fiber for several years due to global supply chain issues—which they predicted will continue for several more years. According to these commenters, infrastructure developers rely on imports or assembly work from other countries, such as Mexico and Korea.

One commenter specifically noted that—even with the doubling of its domestic optical fiber capacity—it would still need to supplement its optical fiber production from Japan and Denmark, its preform inputs from Germany and Japan, and its fiber optic cable and optical connectivity from Mexico. Its domestic facilities rely on a complex web of U.S.-based and international facilities. Commenters also noted that the BEAD program would also greatly increase the demand for fiber, increasing supply chain issues. Consequently, they maintained that excluding foreign sources may make significantly less fiber available for BEAD deployments, leading to an increase in prices and schedule delays. These commenters feared that higher prices and delays would translate into reduced quantity of high-speed broadband mileage built through Federal programs and may also lead to price polarization—as the private market may turn to imported products—which could negatively impact smaller U.S.-based companies in the private market sector. A State department of transportation expressed that this may be a particular issue for utility owners and requested that OMB investigate this issue further.

Given the above concerns, several commenters sought a delay of BABA compliance until 2024 for fiber optic cables, optical fiber, and other materials now listed as construction materials that were not listed in M–22–11. Some of these commenters noted that States have already worked hard to develop contract specifications based on materials listed in Memorandum M–22–11 and requested stability.

Separately, several commenters noted that the actual composition of fiber optic cables may vary greatly, whether in the number of strands of glass and other specifications. For instance, cable designed for residential use may have a limited number of strands, while a transport fiber may have hundreds of strands, and cable designed for underground use may have additional armoring to reduce the chance of the cable being cut. Cable for aerial use may have minimal armor to reduce the weight the poles must bear.

Some commenters requested additional specifications on, or carve outs for, “specialty cables,” which they argued possess substantively distinct characteristics, manufacturing processes, and supply chains. These include drop cables and submarine cables, which have distinct supply chains that commenters claim would not be sufficient for BABA compliance as construction materials. For example,

drop cables are typically classified together with connectivity products as they are cut to very short lengths and are utilized for the last hundred feet from a network to a home, business, or other end user (versus outside plant cables which can span multiple miles and have high fiber count). This leads to a different manufacturing process.

OMB Response: After careful review of the comments, OMB has decided to categorize “optical fiber” and “fiber optic cable” as separate, standalone construction materials in § 184.3. OMB notes that this categorization is consistent with the proposed guidance, although it differs from Memorandum M–22–11, which did not explicitly address the classification of either material. OMB believes that classifying these items as construction materials is consistent with BABA, has a logical basis, and furthers BABA’s goals of enhancing domestic supply chains.

On comments regarding the statutory text, OMB believes that the classification of “fiber optic cable” and “optical fiber” is consistent with BABA. OMB recognizes that Congress identified in its Findings in section 70911(5) several “common construction materials,” including non-ferrous metals, plastic and polymer-based products (including polymers in fiber optic cables), glass (including optic glass), lumber, and drywall. This list also included steel, iron, and manufactured products, which Congress explicitly treated differently in the subsequent parts of BABA. For the reasons set forth above, OMB decided that items that represent a clear logical extension of materials specifically mentioned in the list should be treated as construction materials. This includes fiber optic cable and optical fiber.

OMB notes that Congress had the opportunity to define the term “construction materials” in section 70912, “Definitions.” While section 70912 defines several terms, including “Domestic Content Procurement Preference,” and “Produced in the United States,” which specifically use the term “construction materials,” it does not define “construction materials” itself. OMB also recognizes that the statute intentionally defines “infrastructure” to include “broadband infrastructure,” of which one of the main construction inputs is fiber optic cables. OMB also notes that section 70915 of BABA, “OMB Guidance and Standards,” explicitly requires OMB to “issue guidance . . . to assist in applying new domestic content procurement preferences under section 70914,” which implies that OMB has flexibility to determine what constitutes

a “construction material” as long as it is consistent with the statute.

Because OMB has defined fiber optic cable as a “construction material,” OMB believes it has avoided the issue of “reaching back many stages into the manufacturing process” that one commenter had flagged. In fact, by identifying fiber optic cable and optical fiber as separate, singular construction materials and applying specific standards to each in § 184.6, OMB believes that it will reduce confusion and compliance costs. For example, commenters specifically noted the confusion and compliance costs that may have resulted from attempting to separately apply every construction material standard that applied to different components of fiber optic cable, such as the standard for plastic and polymer-based products.

On OMB’s rationale for the classification of these items as construction materials, OMB believes that the classification of “fiber optic cable” and “optical fiber” is logically consistent with BABA. A fiber optic cable primarily consists of optical fiber, aluminum (in the buffer tube) and plastic and polymer-based products (in the casing or jacketing that surrounds the optical fiber and buffer tube). An optical fiber primarily consists of glass, or plastic, or both. Consequently, OMB does not view the proposed guidance as necessarily adding additional items to the list of construction materials, but rather clarifying the standards for “optic glass” and “polymers used in fiber optic cables” in the context of broadband, creating a coherent and straightforward definition and standard, rather than shoehorning everything into those two definitions.

OMB recognizes, as several commenters noted, that the fiber optic manufacturing sector is unique, relative to other glass or plastic products. Even within the fiber optic manufacturing industry, fiber optic cables can be produced with similar, yet distinct, manufacturing processes, such as is the case for drop cable. Because of these nuances, OMB believes that it would be confusing to industry if it tried to capture these items in the definition and manufacturing process standards for “optic glass” and “polymers used in fiber optic cables.” As a result, OMB believes it is important to separately define “fiber optic cable” and “optic fiber.” Because optic fiber is an input into a fiber optic cable, it is important that the processes of producing optic fiber are captured in the manufacturing process for fiber optic cable. However, per industry guidance in the public comments, they are seen as two separate

items. By spelling out both, OMB believes that its guidance is in line with industry standards, minimizing confusion and compliance costs.

In terms of the capacity of supply chains to produce fiber optic cables, OMB notes that several commenters identified both existing capacity and new investment in domestic fiber optic cable manufacturing. Per the statute, OMB recognizes that key elements of fiber optic cable are “not adequately covered by a domestic content procurement preference” and that Congress has specifically applied the Buy America preference to “broadband infrastructure.” IJA 70911(5) and 70912(5)(J). To the extent justified under section 70914 of BABA, § 184.7 of the revised guidance, and E.O. 14005, relevant Federal agencies retain the flexibility to propose waivers on this topic. Related to concerns about supply chain availability and increased costs, the waiver process recognizes both as potential rationales for the head of a Federal agency to propose a waiver. OMB notes that a waiver was recently issued on April 19, 2023, applicable to certain Federal awards under NTIA’s Middle Mile Grant program for broadband infrastructure.

In addition, OMB has clarified in the revised guidance that “fiber optic cable” includes “drop cable,” a frequently used sub-type of fiber optic cable. Based on public comments, OMB recognizes that the industry sometimes views drop cable as a separate product. However, because the process for creating drop cables is considered less complex than that of a standard fiber optic cable, OMB believes that the standards that apply to fiber optic cables generally—as outlined in § 184.6—are appropriate to also apply to drop cables. In terms of additional variation with fiber optic cables, Federal agencies may, as necessary, provide clarifying guidance to recipients and stakeholders to avoid any additional ambiguity or confusion. Because this guidance influences all Federal awards for infrastructure programs generally, OMB does not want to offer overly prescriptive, granular definitions that may constrain innovation or variability in industry practice. Such variations may be more appropriately recognized and addressed by the awarding Federal agency.

Section 184.3—Definition of Construction Materials—Inclusion of Lumber

Several commenters proposed removing lumber from the list of construction materials based on concerns about the limited supply of lumber. One commenter expressed

concerns about including lumber and drywall on the list of construction materials due to existing supply constraints for each of these materials. This commenter observed that lumber is a key component in residential housing construction and domestic lumber production has never been high enough to fully meet demand at the national level. Accordingly, lumber has been imported from other countries to make up the shortfall. The commenter noted that Canada is one of the largest exporters of softwood lumber products to the U.S. The commenter indicated that including lumber on the list of construction materials would compound the challenges with already existing supply constraints and add significant challenges for the residential construction industry.

Another commenter suggested that to avoid disrupting the North American softwood lumber market for federally funded infrastructure projects, OMB should ensure that the process of obtaining a waiver for Canadian lumber is clear, expeditious, consistent with international obligations, and supportive of the American public interest. The Government of British Columbia urged OMB in the final guidance to: (1) exclude lumber and non-ferrous metals entirely from its definition of “construction materials;” or (2) specifically exempt lumber and non-ferrous metals from Canada from the definition of “construction materials.”

Other commenters noted that lumber should include “dimensional lumber only” and not a combination of materials.

OMB Response: In reaching its final list of construction materials for the revised guidance, OMB used the list provided by Congress in its Findings in section 70911(5) of BABA for guidance. More detailed discussion on that approach is provided above. Lumber is included on that list and OMB includes it in the revised guidance. OMB understands a lumber product to be a product comprised primarily of lumber, but which may also include some minor additions of other materials (such as glue or other binding agents). Further discussion is provided on the newly listed material “engineered wood” below. If stakeholders believe that waivers are justified under section 70914(b) of BABA and § 184.8 of the revised guidance in relation to lumber, the waiver process would be the appropriate mechanism to address concerns related to this topic.

Section 184.3—Definition of Construction Materials—Inclusion of Engineered Wood

Several commenters supported including “engineered wood” as a separate construction material from lumber. Several commenters noted the unique manufacturing processes and complex supply chains for engineered wood products.

Some commenters suggested that the separate category should be titled “other wood products” to also include non-lumber manufactured wood products. They suggested the category be expanded to include plywood, oriented strand board, I-joists, glue laminated timber, cross-laminated timber, and structural composite lumber.

Other commenters agreed that engineered wood was a construction material but opposed the proposal to create a new stand-alone category for “engineered wood” items because they believed the “lumber” category already captured engineered wood. The commenters believed that a separate classification could create confusion, as some products could be considered both lumber and engineered wood. Another commenter noted that engineered wood is a laminar composite and already meets the requirements of lumber mixed with a binding agent, making a new category unnecessary.

Finally, other commenters thought that engineered wood should not be considered a construction material at all, and instead should be categorized as a “manufactured product.” Many commenters, as discussed prior, were generally opposed to including any new materials on the list of construction materials. Some commenters had specific concerns. For example, some commenters opposed classifying engineered wood products as a construction material because they consist of a mixture of multiple raw materials. Another commenter noted that engineered wood products are part of a system and that installation is not accomplished with simple binding agents. Several State departments of transportation noted that they already interpreted engineered wood to be a manufactured product and that labeling it as a construction material would be a significant change and require additional time to implement. Other commenters cautioned against including engineered wood products as a construction material based on domestic availability and supply chain concerns. One commenter noted engineered wood is highly price-sensitive to supply and demand. That commenter believed that applying the Buy America requirements

to extremely price-sensitive materials would generate excessive requests for waivers due to project cost escalation, creating administrative backlog and project delays.

Separately, other commenters, who were neither explicitly supportive or opposed to the inclusion of engineered wood as a standalone category, sought further clarification from OMB. One commenter indicated that fiberboard and plywood are typical examples of engineered wood products and was uncertain how OMB would treat them. One of these commenters expressed a concern that a number of products could inappropriately be included under engineered wood, including hardwood plywood, hardwood veneer, and engineered wood floors. This commenter emphasized that particular parts of the manufacturing process for these products, such as splicing, currently occur in Canada and cannot be easily transitioned to the U.S. Another commenter noted that it interpreted lumber to be a narrowly defined construction material that does not generally include engineered wood products. Similarly, a separate commenter wrote that, as written in the preliminary guidance, it would treat the wood component as lumber and the adhesive as a manufactured product. One commenter suggested that OMB clarify the definition based on the domestic industry’s ability to provide 100% of the required materials necessary for Federal projects.

OMB Response: After careful review of the comments, OMB has decided to categorize “engineered wood” as a separate, standalone construction material in § 184.3. Multiple commenters viewed engineered wood as an input into an infrastructure project. In addition, engineered wood can represent a logical extension of the categories of lumber, on the one hand, and plastic and polymer-based products, on the other, both of which are listed in the Findings in section 70911(5) of BABA and identified in Memorandum M–22–11. Both lumber and plastic and polymer-based products are constituent elements of engineered wood.

Engineered wood is also an input into an infrastructure project that is a substitute for traditional, non-engineered lumber. While manufacturers typically buy engineered wood in the specific forms that commenters identified, such as structural composite lumber and cross-laminated timber, they may then apply it to an infrastructure project in a similar manner as lumber. For example, a wood frame for roofing or flooring

could be made out of either lumber or engineered wood. Manufacturers may choose one type over the other for a variety of reasons, including better quality, weight resistance, or appropriateness for the specific nature of an infrastructure project. Both products can serve identical functions in an infrastructure project and have similar manufacturing processes. Other similarities between engineered wood and lumber include the generally cohesive nature of standalone products and the lack of discrete components. Also like lumber, it is feasible, in most cases, to define a single manufacturing standard applicable to the engineered wood products that OMB intends to include in this category.

OMB also observes, however, that the manufacturing processes applicable to lumber and engineered wood, while similar in some ways, are not identical. Engineered wood involves additional material inputs that strengthen or modify it. Given the complementary nature of engineered wood with traditional lumber, and the fact that engineered wood consists of lumber, OMB did not want to artificially incentivize economic activity toward engineered wood over lumber simply because the former was categorized differently under OMB’s guidance and thus subject to different domestic content preferences. Based on the structure of the final definition of “construction materials,” if engineered wood was not added to the list of construction materials, it would instead be treated as a manufactured product because it consists of inputs of more than one listed item. Because converting lumber into engineered wood only involves additions that would represent a small percentage of engineered wood’s overall cost, OMB believes it would be possible for manufacturers to buy “engineered wood” subject to a different and less-stringent domestic content preference to avoid the domestic content preference for lumber. See BABA 70912(6). In doing so, it would defeat the purpose of including “lumber” as a specific construction material because it would disproportionately advantage engineered wood as an input into an infrastructure project.

To ensure that the construction material standard would apply to engineered wood, OMB added it to the list of construction materials in instances where an input is lumber. OMB notes that there may be cases where an engineered product is made up of non-lumber manufactured wood products. Such products do not fall under this category. However, if they are

made up of plastic and polymer-based products, they may be a construction material under the “plastic and polymer-based products” category. Further information on OMB’s rationale for the products included under the category of construction materials is provided above, which was generally guided by the Findings in section 70911(5) of BABA.

OMB acknowledges the concerns raised by commenters on adding additional construction materials to its list. However, in the case of engineered wood, OMB found that this step was necessary to ensure treatment of this product as a construction material, and to allow stakeholders to distinguish between lumber, plastic and polymer-based products, and engineered wood when applying the standards at § 184.6.

While OMB believes that engineered wood could be seen as a subset of lumber, OMB recognized multiple commenters noted that engineered wood products have a unique production process that differs from lumber. Lumping both products in one general category could create confusion when applying the standard at § 184.6. OMB also notes that it has modified the standard in § 184.6 for engineered wood: “All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.” OMB believes that this will provide further clarity. Additional explanation on these changes can be found below.

Section 184.3—Definition of Construction Materials—Exclusion of Additional Materials

OMB received multiple comments about adding additional materials to the list of construction materials, such as paint, coatings, bricks, and geotextiles. Several commenters supported including paint and coatings as a construction material, and provided specific suggestions for defining the manufacturing processes for this item, which could range from mixing of the raw materials through packaging. Other commenters expressed opinions on whether coatings should, or should not, be considered construction materials, including both field-applied coatings and shop-applied coating. These commenters explained practical consequences that may result from this distinction.

For paint and coatings, some parties observed that requiring all manufacturing process to occur in the U.S.—from mixing of pigments, resin solvents and additives through final canning/packaging—could be difficult

to monitor. For example, one commenter believed that it would be impossible to track where all components of coatings come from. Some commenters raised concerns that requiring the mixing of pigments in the U.S. could eliminate certain coatings that do not contain pigments.

Other commenters questioned whether paint and coatings should be included on the list at all. These commenters suggested that paint and coatings would more appropriately be categorized as a “manufactured product” because they consist of a disparate mixture of materials and chemicals. Other commenters suggested that paint and coatings are not construction materials, but instead should be treated as “*de minimis*” additions to construction materials that do not change the categorization of listed items. Another commenter suggested incorporating the application of coatings into the standards in § 184.6 of the guidance for items already listed, such as non-ferrous metals, rather than identifying coatings as a separate construction material. Other commenters observed that classifying paint and coatings as a type of construction material would represent a significant change from OMB’s initial guidance in Memorandum M–22–11 that could impose an additional burden on stakeholders and take additional time to implement.

On bricks, some commenters noted that bricks should be considered a “manufactured product” because they are a mixture of multiple materials. Other commenters noted that bricks are a mixture of section 70917(c) materials. These commenters—beginning their analysis from the premise that combinations of section 70917(c) materials should not be treated as either construction materials or manufactured products—believed that OMB should not apply a Buy America to bricks under either category that reason. Some commenters did not express a strong preference, observing that bricks could reasonably be considered either a construction material or a manufactured product.

OMB Response: In reaching its final list of construction materials for the revised guidance, OMB used the list provided by Congress in its Findings in section 70911(5) of BABA for guidance. More detailed discussion on that approach is provided above. Paint, coatings, and bricks are not included on that list, nor does OMB consider these items to constitute a clear logical extension of items that are included on the list, at least as would warrant including them as separately listed

construction materials. OMB aimed to generally adhere to the Findings in developing its final list for the guidance in part 184. Thus, at this time, OMB does not include these items in its list of construction materials in the definition in § 184.3.

In reaching this conclusion, OMB acknowledges the concerns and questions raised by several commenters about adding items such as paint and coatings to the list. Some commenters expressed concerns about complexity, confusion, and administrative burden that could be added to process of applying the Buy America preference if these items were included as listed construction materials. Consistent with guidance and principles explained elsewhere in part 184, paint, coatings, and brick incorporated into an infrastructure project will generally continue to be classified as manufactured products. This is generally consistent with the initial guidance provided in Memorandum M–22–11. OMB may consider adding additional items to the list of construction materials in future iterations of its guidance through revisions to part 184. OMB will follow appropriate notice and comment procedures before adding additional items to the list.

Regarding comments maintaining that bricks are excluded as section 70917(c) materials, OMB explains its treatment of section 70917(c) materials below. Under the approach set forth in the revised guidance, bricks will generally be treated as manufactured products.

Section 184.3—Definition of Construction Materials—Topic of Minor Additions and Binding Agents

Many commenters recommended that OMB establish a reasonable standard for *de minimis* additions to construction materials, which would specify which minor additions of other materials would not change a construction material into a manufactured product.

Some commenters advocated for clear and specific metrics for determining what should be considered a *de minimis* addition. For example, one commenter requested OMB to provide a specific *de minimis* exception for construction materials to ensure that minor components or inputs—such as fillers, waxes, or similar materials—do not result in the exclusion of items such as structural engineered wood products from the construction material category.

Other commenters noted that trying to define and apply a single *de minimis* percentage or amount for all construction materials could be time-consuming, burdensome, and a

potentially a poor fit in some circumstances, such as for specific materials or agency programs.

OMB also received a mix of comments on binding agents, with some comments supporting OMB's proposal and others seeking further clarification. Many of the comments on binding agents came from the aggregate, paving, and cement industries. These comments are addressed separately below in the context of manufactured products.

There were also comments that expressed concerns over introducing "new rules" related to binding agents that have yet to be defined.

OMB Response: In the revised guidance, OMB adopts a simplified approach for the topic of both minor additions and binding agents. Instead of treating binding agents separately, the revised guidance provides that minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material. OMB elected to use the term "minor additions" instead of "*de minimis*" additions to reduce potential for confusion with *de minimis* waivers, which are described separately in Memorandum M-22-11 and have a different meaning and application.

OMB does not propose a specific definition of minor additions in this revised guidance, nor does OMB provide a specific percentage or amount that the term must correspond to in all cases for all Federal agencies. Instead, OMB emphasizes that Federal agencies should exercise reasonable discretion in applying this term within their respective Federal financial assistance programs for infrastructure. OMB has decided on this approach based on recognition of the wide diversity of infrastructure programs and projects funded by the Federal Government. For example, considering that the cost of construction materials may vary widely, a specific dollar amount threshold appropriate for the types of construction materials incorporated on smaller-scale projects funded by one agency may not be appropriate for much larger-scale projects funded by a different agency. Similarly, a single percentage threshold may not always be an equally good fit for all of the different types of construction materials used on federally funded infrastructure projects. OMB will continue to engage with stakeholders to monitor and assess the implementation of the minor additions provision and may revisit this topic as necessary. Although not identical, OMB believes that this approach is generally consistent with the approach already in use by Federal agencies under

Memorandum M-22-11 and BABA, and is also consistent with OMB's goals as outlined in the proposed guidance.

OMB also believes that this approach—which leaves some flexibility—may also reduce burden on stakeholders.

For an example of OMB's intended application of this provision, wax added to engineered wood generally should not disqualify the engineered wood from being categorized as a construction material. However, if before the engineered wood is brought to the work site, it is combined with glass or other items or materials to produce a new product, which is not listed in paragraph (1) of the definition, such as a sliding window, the new product would be classified as a manufactured product, not a construction material.

To reduce complexity and potential for confusion, OMB has blended the provision in the proposed guidance related to binding agents into the new provision related to minor additions. This approach avoids the need for a new definition of the term binding agent in this context, which could potentially be confused with the alternative use of that term in the context of section 70917(c) materials. Instead, as with other additions or inputs, the relevant consideration is whether the binding agent added to a construction material is a minor addition.

OMB also explains above in this preamble that other additions, such as coatings, do not change the categorization of a construction material if they are added through a manufacturing process specifically described in the standard for that construction material at § 184.6 of the guidance. An example in the case of non-ferrous metals is provided above.

Federal agencies may consider issuing their own guidance on the topic of minor additions for their respective Federal funding programs for infrastructure. For example, agency guidance may provide additional qualitative or quantitative factors to consider in making a determination on whether an addition should be considered a minor addition. A relevant factor could be whether the addition will, or will not, constitute a significant portion of the total cost of the construction material.

Section 184.3—Definition of Infrastructure Project

Several commenters advocated for a more precise definition of "infrastructure project" and suggested possible changes to the definition to reduce confusion. For example, some comments suggested removing the phrase "any activity related to," which

they believe was unnecessary and could be confusing. Some commenters suggested using "physical structures or facilities" to define infrastructure. Another commenter suggested removing "in the United States" because this commenter believed that BABA applies to federally funded infrastructure without any limitations on where the infrastructure is built. Another commenter suggested adding "using federal funds" to the definition for additional clarity. Other commenters provided a range of other suggestions to further clarify, expand, or narrow the definition of this term.

A State agency observed that several independent infrastructure projects are often funded under one Federal award. Alternatively, in some cases only a portion of an infrastructure project, which is part of a larger project, may receive Federal funding. This State agency explained that it had received many questions regarding whether the term "infrastructure project" refers just to the federally funded parts of the project, an entire Federal award that may include other non-infrastructure components, the minimum amount of recipient funds required to receive a Federal award, or all matching recipient funds associated with a Federal award. The commenter recommended providing a clear definition of what the "infrastructure project" to resolve these questions and facilitate compliance with BABA requirements.

OMB Response: The definition of "infrastructure project" in § 184.3 is based on guidance already provided in Memorandum M-22-11, which was based on the definitions of "infrastructure," "project," and "Federal financial assistance" in section 70912 of BABA in addition to other statutory provisions. OMB added a "see also" signal to the definition to direct stakeholders to additional guidance provided in § 184.4 at paragraphs (c) and (d).

Regarding concerns about the phrase "any activity related to," OMB notes that other effective guidance provides limiting principles related to the application of this term, such as the distinction between temporary use and permanent incorporation in Memorandum M-22-11, as discussed above, which remains effective. Although temporary items may fall under the broad scope of an infrastructure project, the Buy America preference does not apply to them if they are not permanently incorporated into the project. The initial guidance in Memorandum M-22-11, through the successor M-Memorandum, remains in effect except in cases of direct conflict

with part 184. OMB retains the phrase “any activity related to” for consistency with the guidance in § 184.4(d), which explains that Federal agencies should interpret the term “infrastructure” broadly. This broad interpretation, however, remains subject to other specific limiting principles in part 184, Memorandum M–22–11, or any successor M-Memorandum that OMB issues to replace Memorandum M–22–11. For similar reasons, OMB does not find it necessary to specifically limit the definition to “physical structures or facilities.”

On the comment suggesting removing “in the United States,” OMB notes that the definition of “infrastructure” at section 70912(5) of BABA is limited to “structures, facilities, and equipment . . . in the United States.” Regarding the suggestion to add “using federal funds,” this topic is addressed elsewhere in the guidance such as §§ 184.1(b) and 184.4(b).

On the comment requesting more specificity on the scope of an infrastructure project, OMB first reminds stakeholders of its existing guidance in Memorandum M–22–11, which defines “project” as the construction, alteration, maintenance, or repair of infrastructure in the U.S. OMB explains in its initial guidance that the Buy America preference “only applies to the iron and steel, manufactured products, and construction materials used for the infrastructure project under an award.” OMB explains that if “an agency has determined that no funds from a particular award under a covered program will be used for infrastructure, a Buy America preference does not apply to that award.” Similarly, OMB explains that, “for a covered program, a Buy America preference does not apply to non-infrastructure spending under an award that also includes a covered project.” This should clarify the commenter’s concern on application of BABA to other non-infrastructure components of an infrastructure project.

OMB also clarifies in Memorandum M–22–11 that a “Buy America preference applies to *an entire infrastructure project*, even if it is funded by both Federal and non-Federal funds under one or more awards” (emphasis in original). This guidance from Memorandum M–22–11 remains in effect. Federal agencies may consider providing further guidance on this topic to further address the risk of improper segmentation of infrastructure projects by funding source or in other ways in order to avoid BABA coverage. As Memorandum M–22–11 explains, the BABA preference should be applied to the entire infrastructure project. At this

time OMB leaves Federal agencies with discretion on how best to ensure proper application of the Buy America preference to the entire infrastructure project receiving a Federal award.

On the definition of this term in general, considering the guidance already available on this topic from BABA itself, in Memorandum M–22–11, and in other provisions of the revised guidance in part 184, OMB did not find it necessary to make additional changes to the definition in the part 184 text beyond inserting the “see also” signal directing readers to further guidance in § 184.4 at paragraphs (c) and (d). Further discussion on those paragraphs is provided below in this preamble.

Section 184.3—Definition of (1) Iron or Steel Products and (2) Predominantly of Iron or Steel or a Combination of Both

Because the definition of “iron or steel products” is closely intertwined with the definition of “predominantly of iron or steel or a combination of both,” OMB discusses comments related to both definitions here. Many commenters supported providing a clear definition in the revised guidance for “predominantly” iron or steel items. Commenters generally agreed that using the definition at FAR 25.003 would provide the needed clarity. Some commenters also expressed support for including in that definition language from the FAR that would provide an exception for commercial off the shelf (COTS) fasteners. Other commenters recommended clarifying that the calculation could be defined by weight, volume, cost, or other measures. Some commenters also suggested increasing the threshold for “predominantly iron or steel” products above the 50 percent threshold used in the FAR.

Other commenters suggested adopting the definition of iron and steel from the American Iron and Steel (AIS) standard used by EPA. Some commenters also suggested using the word “primarily” as it is used in the AIS standard in place of the word “predominantly.”

Some commenters observed that the word “predominantly” does not appear in the statute, and questioned whether it should be included in the revised guidance at all. Commenters also sought clarity on topics including what domestic content standard applies to components that are not made of iron or steel and when stakeholders should determine the cost of the iron or steel in the product.

OMB Response: In part 184, OMB adopts a definition for predominantly of iron or steel or a combination of both, which is generally consistent with the FAR definition. The definition adopted

by OMB, however, does not incorporate FAR-specific waivers or exemptions, such as the language related to COTS fasteners. OMB also notes that when determining whether the product meets the applicable threshold, labor costs are not included.

OMB believes that a clear method is needed to distinguish between iron or steel products and other product categories to ensure that stakeholders will understand what domestic content standards to apply to individual items. OMB finds that using a definition based largely on the existing FAR definition will provide consistency and predictability for stakeholders, ensuring that similar principles are applied in the context of both Federal procurement and Federal financial assistance.

OMB also observes the similarity of its adopted standard to the AIS standard used by EPA. OMB acknowledges that the standards are not identical, but their use of a common 50 percent threshold should lead to similar results on product classification in many cases. OMB also clarifies that it does not modify the AIS standard used by EPA through this guidance. EPA is the best source of information on what Federal awards made by EPA are subject to its AIS standard based on section 70917 of BABA and § 184.2(a) of this guidance. OMB also observes that the term “predominantly” as used in the revised guidance is not identical to the term “primarily” used by EPA. Again, the terms both use a 50 percent threshold, but have other variations and will lead to different results on product classification in certain cases.

OMB addresses questions on what domestic content standard applies to components that are not made of iron or steel in other sections of the guidance and preamble.

Section 184.3—Definition of Manufactured Products—General

OMB received many comments on its proposed definition of “manufactured products.” For example, OMB received many comments requesting additional guidance on how to identify what constitutes a “manufactured product” relative to a construction material, an iron or steel product, or a section 70917(c) material (referred to as an “excluded material” in the preamble to the proposed guidance). Some commenters noted that the proposed guidance did not provide sufficient clarity on how to treat products that are a combination of multiple construction materials. Other commenters, including many State departments of transportation, questioned OMB’s rationale for proposing to deviate from

the initial guidance in Memorandum M–22–11 on this topic, and potentially reclassifying many manufactured products as construction materials.

These commenters explained various practical consequences of a deviation from the initial guidance on this topic, which are discussed above under the general comment summary for the definition of “construction materials.”

Other commenters maintained that OMB’s proposed definition of manufactured products was overly broad and should be narrowed and more tailored. For example, one commenter stressed the importance of providing an affirmative definition of the term, which would define what set of items OMB intends to be included in the category, rather than just explaining what items are not included. This commenter favored the affirmative language proposed in the preamble to OMB’s proposed guidance, which would only classify an item as a manufactured product if it was either “processed into a specific form and shape” or consisted of a combination of raw materials “to create a material that has different properties than the properties of the individual raw materials.”

Some commenters who favored narrowing the definition of “manufactured products” believed that the intent of BABA was only to include products that are commonly or frequently used in federally funded infrastructure projects. Some also suggested that a product should only be included if its use on federally funded infrastructure projects is broad or substantial enough to encourage or drive investment in American manufacturing based specifically on application of the Buy America preference. Commenters also expressed concerns that supply chains were already stressed and projects were already delayed prior to the enactment of BABA. These commenters suggested that an overly broad application of the Buy America preference for manufactured products could lead to further project delays and cost increases or overruns.

Some commenters supported the use of the FAR for supplemental definitions of the terms “end product” and “component,” which could be applied to the category of manufactured products. These commenters suggested that the supplemental definitions could provide further clarity for stakeholders. Other commenters questioned the appropriateness of using the FAR definitions in this context. Additionally, some commenters raised concerns about the burden of tracking a wide range of material components in an “end product,” which could encompass a

range of different manufactured components brought to the site at different times.

Some commenters also requested that OMB clarify the treatment of “kits” or systems under the revised guidance. Specifically, one commenter requested confirmation that if a manufactured product is a kit or system consisting of multiple components that are required in order to implement the product solution at a site, the kit or system would be evaluated as a single manufactured product subject to the 55 percent cost component analysis, rather than viewing each of the items in the kit or system as a separate manufactured product each subject to its own separate analysis.

OMB also received one comment from a State department of transportation requesting clarification on classifications for topsoil, compost, and seed. Another commenter provided more detail on seeds, explaining that they are often used on infrastructure projects to prevent soil erosion, protect water quality, and comply with environmental requirements, such as those under the Clean Water Act.

OMB Response: OMB recognizes concerns expressed by commenters on the need to provide further clarity on the meaning and classification of manufactured products. To address these concerns, OMB has added an affirmative definition of the term “manufactured products,” which now comes before the limiting definition explaining what manufactured products are not. The affirmative definition is based largely on the elements for an affirmative definition proposed by OMB in the preamble to the proposed guidance. In the final guidance, the first paragraph of the definition of “manufactured products” defines the term to mean articles, materials, or supplies that have been: (i) processed into a specific form and shape; or (ii) combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

Paragraph (1)(i) of the definition remains unchanged relative to the language included in the preamble of OMB’s proposed guidance based on the definition of “manufactured good” at 2 CFR 176.140(a)(1). The second element of the affirmative definition of “manufactured products” in paragraph (1)(ii) was modified in the revised guidance relative to 2 CFR 176.140(a)(1). OMB dropped the reference to raw materials to clarify that a manufactured product may also be created by combining manufactured components, which are not raw materials. However,

OMB retained the language specifying that the combination of materials would create a product with “different properties” than the individual articles, materials, or supplies. By retaining the language on “different properties,” OMB acknowledges that not just any combination of materials produces a manufactured product. For example, a mixture of raw materials in an unprocessed or minimally processed state, such as minimally-processed fill dirt, should not be classified as a manufactured product.

One important purpose of both elements of the affirmative definition of “manufactured products” in paragraph (1) is to recognize that some items, like certain raw materials, are not meaningfully “manufactured” before they are brought to the work site. Raw materials may include unprocessed or minimally-processed materials such as natural resources, which serve as the basic materials used in manufacturing processes for other finished products and components of finished products. OMB does not believe that Congress intended to apply the Buy America preference for manufactured products to non-manufactured or raw materials if they are brought to the work site in an unprocessed or minimally-processed state (such as topsoil, compost, and seed). Thus, OMB agreed with commenters that it was important to provide affirmative content and meaning for the definition to provide further clarity. If non-manufactured or raw materials are brought to the work site in an unprocessed or minimally processed state, Federal agencies should not classify these items as manufactured products in their implementation of BABA preferences.

OMB further clarifies that non-manufactured or raw materials mixed off-site with other non-manufactured or raw materials of similar types, or with similar but not identical properties, would not necessarily result in classifying the mixed material brought to the work site as a manufactured product if it remains in an unprocessed or minimally processed state. OMB recognizes that an overly strict application of the revised definition of “manufactured products” could potentially result in classifying certain technically composite or compound raw materials, such as fill dirt, as manufactured products, which is not OMB’s intent. Even if there are some limited or marginal changes to the properties of the combined material, it may be reasonable to continue to classifying the combined material as a non-manufactured or raw material in at least the circumstances described above.

OMB also notes that certain waste or recycled materials, as discussed by some commenters, may also potentially be classified as non-manufactured raw materials if they remain in an unprocessed or minimally-processed state—or the equivalent of such a state for waste and recycled materials. OMB does not issue specific guidance to Federal agencies on the topic of waste or recycled materials through this document.

Paragraph (2) of OMB's revised definition of "manufactured products" again clarifies that if an item is classified as an iron or steel product, a construction material, or a section 70917(c) material, then it is not a manufactured product. OMB's responses to comments about treatment of combinations of different construction materials are addressed in the response to comments on the general construction material definition above. As explained under that section of the preamble, OMB has returned to an approach more consistent with Memorandum M–22–11 on that topic than was reflected in the proposed guidance. OMB returns to classifying items that consist of two or more of the construction materials listed in the definition at § 184.3, or that combine a listed construction material with non-minor additions of other non-listed items, as manufactured products, rather than as construction materials.

It was necessary to maintain what is now the first sentence of paragraph (2) of the definition of "manufactured products" to continue allow for distinguishing between product categories, which have different domestic content requirements applicable to each of them. Section 184.4(e) of the revised guidance explains that products only fall in a single category, but does not explain how to decide which category a product falls in. The definitions in § 184.3 provide that information. The first sentence of paragraph (2) of the "manufactured products" definition ensures that this definition does not conflict or overlap with other product category definitions in § 184.3. For example, many construction materials are also processed into a specific form and shape. Moreover, listed construction materials such as fiber optic cable and engineered wood are also produced by combining different materials through manufacturing processes. Paragraph (2) explains that the other definitions continue to take priority.

Paragraph (2) of OMB's revised definition also now clarifies that an item classified as a manufactured product

may include components that are construction materials, iron or steel products, or section 70917(c) materials. In addition to the listed items, the components of a manufactured product may also include components that are non-listed raw materials or other types of articles, materials, or supplies.

Although not addressed directly in the part 184 text, OMB recognizes that some items may be acquired from a manufacturer or supplier as a kit intended for final assembly or installation on the work site. In such cases, the items comprising the kit should be treated the same with regard to the cost of components test. Even in the case of a kit, for the purposes of applying the cost of components test at § 184.5, the manufacturer should be considered the entity that manufactured the elements of the kit, not the recipient or contractor that acquires the kit or the contractor that assembles or installs the kit on the work site. The kit concept is discussed in further detail under § 184.4(e) below.

OMB believes the definition provided in the revised guidance on the meaning of manufactured products will provide needed clarity to stakeholders for the vast majority of product classifications. OMB also believes its approach in the revised guidance will provide continuity with certain key elements of its initial guidance in Memorandum M–22–11 on how to distinguish between manufactured products and construction materials. Where fringe or marginal cases arise, further guidance may be needed in the future.

Section 184.3—Definition of Manufactured Product—Relationship to Section 70917(c) Materials

Numerous commenters maintained that the revised guidance should clarify that section 70917(c) materials are entirely excluded from coverage under BABA. In the preamble to the proposed guidance, at question 9 labeled "Aggregates," OMB indicated that section 70917(c) materials were only excluded by statute under the category of "construction materials" and sought comments on how they should be treated under the category of "manufactured products" in the revised guidance. The section 70917(c) materials include: (i) cement and cementitious materials; (ii) aggregates such as stone, sand, or gravel; and (iii) aggregate binding agents or additives. Section 70917(c)(1) of BABA states that "the term 'construction materials' shall not include" the section 70917(c) materials. Section 70917(c)(2) of BABA states the "standards developed under section 70915(b)(1) shall not include"

the section 70917(c) materials as "inputs of the construction material." These materials were referred to as "excluded materials" in the preamble to the proposed guidance based on their exclusion from the "construction materials" category.

Commenters offered many arguments and reasons why the section 70917(c) materials should be entirely excluded from all categories under BABA, including manufactured products. Some commenters noted that the adoption of the proposed guidance would have a negative impact on industry, such as narrowing the sources for aggregates that could be used in infrastructure projects. Some commenters also noted that local aggregates may not meet quality standards, which could limit the life of projects. Further, some commenters noted that alternative sources for aggregates are often more costly than current (foreign) sources. One commenter also noted that the domestic supply of aggregates is limited by environmental and land use regulations (many of them localized in scope), and subject to week-to-week fluctuations in availability. This commenter explained that supplies are not flexible in times of rising demand.

Some commenters believed that OMB failed to consider the provision at section 70917(c)(2), which prohibits the section 70917(c) materials from being considered inputs of a construction material under the standards called for under 70915(b)(1). These commenters argued that section 70917(c) materials, such as aggregates, should be fully excluded from BABA domestic content preferences, whether as standalone materials or as components in other materials such as precast concrete. These commenters also noted the close link between cement and concrete, observing that concrete cannot be produced without cement and that cement has no function other than to produce concrete. Some commenters maintained that Congress established the exclusion at section 70917(c) to acknowledge fluctuations in the availability of section 70917(c) materials, particularly cement. Some commenters also suggested that that if a Buy America preference were applied to section 70917(c) materials, the cost of the materials may significantly increase. Thus, these commenters argued that both cement and concrete products should be entirely exempt from BABA coverage.

Some commenters also stressed the importance of excluding asphaltic concrete from Buy America coverage for similar reasons to the comments stressing the importance of excluding

Portland cement concrete. These commenters explained that asphaltic concrete is made of aggregates and aggregate binding agents and additives (including asphalt), which are all section 70917(c) materials. Some comments also focused specifically on Portland cement concrete, which is made of aggregates, Portland cement (a form of cement and aggregate binding agent), and other additives.

Other commenters questioned why a combination of section 70917(c) materials with other section 70917(c) materials would create a new form of product that is not excluded. They observed that there is nothing in the statute to suggest that OMB should treat a product made of a combination of section 70917(c) materials differently than it treats the individual materials. One commenter noted that the listing of the section 70917(c) in a single list indicates that Congress intended to exclude not just single materials from BABA coverage, but also combinations of the listed materials when they are bound together. This commenter maintained that, under the statute, combinations of the section 70917(c) materials are excluded from BABA requirements in the same way as any individual material.

Many commenters questioned OMB's statement in the preamble to the proposed guidance that section 70917(c) materials could be treated as "manufactured products" subject to the Buy America preference at section 70914(a) of BABA. Some commenters indicated that only a combination of non-excluded construction materials can properly constitute a manufactured product under the statutory framework.

A few commenters also noted their agreement with OMB's observation that BABA did not specifically exclude section 70917(c) materials from the category of manufactured products. These commenters agreed that section 70917(c) should be subject to the relevant domestic content requirements for the category of manufactured products but not for the category of construction materials. For example, one commenter indicated that items made with inputs of section 70917(c) materials, such as precast concrete shapes and reinforced precast concrete structures, should be subject to the domestic content requirements for the manufactured product category established under BABA.

OMB Response: After careful consideration of the comments received on this topic and the statutory text of BABA, OMB clarifies that section 70917(c) materials, on their own, are not manufactured products. Further, section

70917(c) materials should not be considered manufactured products when they are used at or combined proximate to the work site—such as is the case with wet concrete or hot mix asphalt brought to the work site for incorporation. However, certain section 70917(c) materials (such as stone, sand, and gravel) may be used to produce a manufactured product, such as is precast concrete. Precast concrete is made of components, is processed into a specific shape or form, and is in such state when brought to the work site.

The revised guidance clarifies the circumstances under which the section 70917(c) materials should be treated as components of a manufactured product. That determination will be made based on consideration of: (i) the revised definition of the "manufactured products" at § 184.3; (ii) a new definition of "section 70917(c) materials" at § 184.3; (iii) new instructions at § 184.4(e) on how and when to categorize articles, materials, and supplies; (iv) new instructions at § 184.4(f) on how to apply the Buy America preference by category; and (v) additional discussion in this preamble clarifying that wet concrete should not be considered a manufactured product if not dried or set prior to reaching the work site.

Based on these provisions, the revised guidance clarifies that a manufactured product may include components that are section 70917(c) materials, construction materials, iron or steel products, manufactured products, raw materials, or any other articles, materials, or supplies.

As explained below, an item should be distinguished from its components for the purposes of BABA categorization based on the status of the product when brought to the work site. When brought to the work site, an article, material, or supply should only be classified into one of the following categories: (1) iron or steel products; (2) manufactured products; (3) construction materials; or (4) section 70917(c) materials. *See* 2 CFR 184.4(e) (as revised). Examples of how the revised provisions should be applied in practice to section 70917(c) materials are provided below.

Before discussing specific examples applying the revised provisions, OMB first explains its analysis of the statutory text on which the revised provisions are based. OMB agrees with commenters that the category of construction materials must not include section 70917(c) materials. The statute clearly excludes the section 70917(c) materials from categorization as construction materials and as components or inputs in the associated standards for these

materials. The revised guidance recognizes these limitations. It does not include section 70917(c) materials in the list of construction materials at § 184.3 or in the standards at § 184.6. However, as explained in the preamble to the proposed guidance, the statutory text does not explain how section 70917(c) materials should be treated relative to the manufactured product category.

The section of BABA addressing the section 70917(c) materials applies only to the category of construction materials, not manufactured products. Section 70917(c) provides that "the term *construction materials* shall not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives." BABA 70917(c)(1) (emphasis added). The same section also provides that "the standards developed under section 70915(b)(1)"—entitled "standards for *construction materials*"—shall not include "cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives as inputs of the construction material." BABA 70915(b)(1) (emphasis added) and 70917(c)(2). Notably, the standards developed under section 70915(b)(1) apply only to construction materials and not iron or steel or manufactured products.

The separate categories for "construction materials," "iron or steel" products, and "manufactured products" are required by the plain text of BABA sections 70912(2), 70912(6), and 70914(a)—and were also applied under OMB's initial guidance in Memorandum M–22–11. Under the definition at section 70912(2), the statute recognizes that Federal agencies should apply three separate "domestic content procurement preference[s]" for: (i) iron and steel products; (ii) manufactured products; and (iii) construction materials. Under the definition for "produced in the [U.S.]" at section 70912(6), the statute also recognizes these categories. The three top-level categories mandated by Congress are again reiterated at section 70914.

Relative to the "manufactured products" category, a more stringent standard applies to the "construction materials" category, for which "all manufacturing processes" are required to occur in the U.S. *See* section 70912(6)(C) of BABA, with standards to define "all manufacturing processes" to be developed by OMB under section 70915(b)(1). Based on these provisions, the section 70917(c) materials should be excluded under the more stringent standard for "construction materials."

No exclusion, however, is provided under the category for “manufactured products” on which BABA is silent relative to these materials.

OMB’s revised guidance in part 184 is consistent with the statutory framework of BABA, establishing three separate categories for Buy America preferences. Consistent with section 70917(c), OMB does not include the section 70917(c) materials under its proposed definition for “construction materials” at § 184.3, or as inputs for “construction materials” in the manufacturing standards at § 184.6.

OMB also properly recognized that the statute did not exclude the section 70917(c) materials from the “manufactured products” category, to which an alternative domestic content standard applies. BABA only excluded the section 70917(c) materials from the more stringent domestic content preference for “construction materials,” which requires “all manufacturing processes” for the material to occur in the U.S., but not from the alternative domestic content preference for manufactured products, which requires application of the 55 percent “cost of components” test.

The preamble to the proposed OMB guidance sought public comment on how the section 70917(c) materials should be treated in the context of the “manufactured products” Buy America preference category. OMB now provides guidance on that topic in part 184. In doing so, OMB aims for a harmonious interpretation of section 70917(c) of BABA, which bars classification of section 70917(c) materials as construction materials, and other sections of BABA, including sections 70912 and 70914, which require Federal agencies to apply a Buy America preference for manufactured products. Based on thorough review and consideration of all comments received, and careful consideration of congressional intent reflected in the statutory text, OMB’s guidance gives effect to all of these provisions and renders them compatible.

OMB agreed with commenters that it should not apply the “manufactured products” Buy America preference to standalone section 70917(c) materials if they have not been combined with different section 70917(c) materials, or other materials, to create a manufactured product. An item can be classified as only one of the following: an iron or steel product, a construction material, a manufactured product, a section 70917(c) material, or none of the above. Thus, no individual item on the list of section 70917(c) materials should be treated, in isolation, as a

manufactured product. OMB further clarifies in this preamble that wet concrete should not be considered a manufactured product if not dried or set prior to reaching the work site. The setting or drying of a combination of section 70917(c) materials into a finished product prior to reaching the work site is generally the circumstance in which a combination of only section 70917(c) materials would be considered a manufactured product.

OMB’s approach for distinguishing a single section 70917(c) material from a manufactured product is functionally similar—but not identical—to its approach for distinguishing a single construction material from a manufactured product. First, like the construction material definition, “articles, materials, or supplies that consist of *only one* of the items listed” in the definition of “section 70917(c) materials” should be classified as section 70917(c) materials. 2 CFR 184.3 (as revised) (emphasis added). Just like a plastic item by itself cannot be a manufactured product, stone by itself also cannot be a manufactured product. Second, to the extent one of the listed section 70917(c) materials contains, as inputs, other items listed in the definition—such as cement that requires aggregate binding agents as inputs—the listed item is still considered a section 70917(c) material. Third, when two or more section 70917(c) materials are combined together at or proximate to the work site to make an item that is not specifically listed—such as asphaltic or Portland cement concrete—agencies should rely on how such items were classified at the time they reached the work site.

In the case of section 70917(c) materials, OMB clarifies in this preamble that, to the extent the section 70917(c) materials were only combined as an unsettled mixture without final form when reaching the work site, such as in the case of wet concrete or hot mix asphalt, the unsettled mixture should not be considered a manufactured product to which a Buy America preference applies. Wet concrete is not yet “processed into a specific shape or form.” Although it may have “different properties” than individual section 70917(c) materials, OMB finds that it is more consistent with the intent of BABA to only treat section 70917(c) materials that have set or dried into a particular shape or form prior to reaching the work site, such as precast concrete, as manufactured products. OMB recognizes that certain section 70917(c) materials (such as stone, sand and gravel) may be used to produce a manufactured product such as is the

case with precast concrete. Precast concrete consists of components processed into a specific shape or form and is in such state when brought to the work site, making it a manufactured product.

A key difference between the categories of construction material and section 70917(c) materials is that, unlike construction materials, no Buy America preference is applied directly to individual section 70917(c) materials. The parallels or similarities above relate only to how materials are classified as falling within one of those categories.

To illustrate this approach, if an individual item included in the list of section 70917(c) materials is brought to the work site for incorporation into an infrastructure project, then that item is still a section 70917(c) material and not a manufactured product. Agencies should not apply the Buy America preference under BABA to an individual section 70917(c) material that is not a component of a manufactured product.

There may be circumstances, however, when section 70917(c) materials will be treated as components of manufactured products to which a Buy America preference will apply. If the individual section 70917(c) material is combined with other section 70917(c) materials and non-minor additions of other materials before it is brought to the work site, then the new product should be classified as a manufactured product and the section 70917(c) materials should be treated as components in the circumstances described in this preamble. For the reasons explained above, including the value of section 70917(c) materials in the 55 percent cost of components requirement is consistent with BABA, which requires a Buy America preference to be applied to all manufactured products. Examples of minor additions that would not change the categorization of a section 70917(c) material are provided under the discussion of aggregates below.

Based on the revised guidance, products like precast concrete should be treated as manufactured products—or when applicable, iron and steel products—with components including but not limited to aggregates, cement, and aggregate binding agents, as well as, where applicable, reinforcing iron or steel. OMB recognizes that in some circumstances a precast concrete product may instead be classified as an iron or steel product, such as when the product is predominantly of iron or steel or a combination of both. OMB also recognizes that BABA’s savings provision, which is discussed above in this preamble, may affect product

classification in some circumstances. Federal agencies are in the best position to provide specific guidance on the application of BABA's savings provision to their awards. Specific examples of how the provisions of the revised guidance should be applied to section 70917(c) materials are provided below.

Aggregates should be classified as a section 70917(c) materials. The fact that an aggregate is processed into a specific form or shape—for example, to meet certain construction specifications—would not affect its classification. The aggregate would still be classified as a section 70917(c) material. Similarly, aggregates combined with minor additions of other materials that do not impact the commonsense identification of the material as an aggregate—for example, gravel combined with additives to increase traction or resilience or for some other purpose—would also not impact the classification of the aggregate as a section 70917(c) material. In addition, aggregates mixed only with other aggregates—such as sand mixed with gravel—remain aggregates and section 70917(c) materials.

In classifying aggregates this way, OMB recognizes that many aggregates are not “manufactured” in the ordinary sense of the term. For example, rocks and stone are not manufactured. Even in cases in which an aggregate is processed or altered in some way—for example, to meet construction specifications—provided that the product brought to the work site remains best classified as an aggregate, its categorization as a section 70917(c) material would not change.

As commenters observed, OMB acknowledges that cement is an input of concrete. Thus, in some cases, as specified in this preamble, a Buy America preference will apply to cement and cementitious materials as components of precast concrete. A precast concrete product, which contains cement as an input, should be classified as a manufactured product, not a section 70917(c) material. Circumstances when a Buy America preference does not apply include when cement and cementitious materials are brought to the work site as standalone products (to be mixed on site) or in combination with other section 70917(c) materials, such as in the case of wet concrete mix, which has not yet settled into a specific form or shape before reaching the work site. As with cement, in some cases, aggregate binding agents and additives will ultimately be treated as components of a manufactured product. The circumstances are similar to those described for cement and are therefore not repeated here.

Section 184.3—Definition of Manufacturer

OMB added this definition in the revised guidance to address comments received on the cost of component test for manufactured products at § 184.5. OMB addresses those comments under § 184.5. In the revised guidance, manufacturer is defined to mean the entity that performs the final manufacturing process that produces a manufactured product.

Section 184.3—Definition of Produced in the U.S.

OMB received a range of comments on its definition of produced in the U.S. As this definition is closely related to the manufacturing standards for construction materials at § 184.6, and the cost of components test for manufactured products, many of the comments are addressed under those sections.

Regarding the definition of “produced in the [U.S.]” for iron and steel products, some commenters suggested adding language to clarify that the standard does not require that other non-iron or -steel components must be produced in the U.S. One commenter suggested relocating § 184.6 of the revised guidance to the definition of “produced in the [U.S.]” in § 184.3. One commenter suggested moving language about “binding agents” into the definition of “construction materials” to the definition of “produced in the [U.S.]” Another commenter suggested revising the definition of “produced in the U.S.” for manufactured products to clearly differentiate between products that have all components manufactured in the U.S. and those with components manufactured in other countries.

OMB Response: OMB has adhered closely to the statutory definition for this term at BABA section 70912(6). OMB made minor clarifying edits, such as adding “see also” signals to other sections of the guidance with relevant information, such as a reference to § 184.5 in the case of manufactured products and § 184.6 in the case of construction materials.

On the definition applicable to iron or steel products, § 184.4(e) clarifies that an article, material, or supply incorporated into an infrastructure project must meet the Buy America preference for only the single category in which it is classified. Thus, in the case of iron or steel products, the Buy America preference does not apply directly to non-iron or -steel components. In addition, consistent with existing practice, the requirement for iron or steel does not restrict the

origin of the raw materials used in production of the iron or steel, but requires that all manufacturing processes of the iron or steel product occurred in the U.S.

Comments on the definition as applied to manufactured products are addressed under § 184.5. Comments on the definition as applied to construction materials are addressed under § 184.6.

Section 184.3—Definition of Section 70917(c) Materials

OMB has summarized comments related to section 70917(c) materials under its discussion of the relationship of section 70917(c) materials to manufactured products.

OMB Response: OMB has defined section 70917(c) materials to mean only one of the following categories of items: (i) cement and cementitious materials; (ii) aggregates such as stone, sand, or gravel; or (iii) aggregate binding agents or additives. As discussed above on the relationship of section 70917(c) materials to manufactured products, OMB has incorporated a definition of “section 70917(c) materials” based on the materials listed in that section of BABA. OMB also added clarifying language to the definition, which is consistent with the policy explained above, which OMB uses to distinguish between section 70917(c) materials and manufactured products. OMB interprets section 70917(c) of BABA harmoniously with the Buy America preference for manufactured products, giving effect to both provisions.

OMB agrees with commenters that section 70917(c) materials are excluded from the category of construction materials and from being considered inputs to listed construction materials. OMB also agrees with commenters that the Buy America preference for manufactured products should not apply directly to section 70917(c) materials, such as aggregates, which are not meaningfully manufactured in the ordinary sense. In its discussion above, however, OMB also recognizes the statutory mandate to apply a Buy America preference to manufactured products, and explains the circumstances under which section 70917(c) materials should be considered components of manufactured products.

OMB notes that the statutory text of BABA is generally silent on the interaction between the two categories. OMB defines that relationship in this revised guidance in a way that is consistent with the statute reflected in both section 70917(c) of BABA, which excludes section 70917(c) materials from the category of construction materials, and sections 70912 and

70914(a) of BABA, which require application of a Buy America preference to manufactured products. The text of BABA does not indicate that Congress intended to exclude section 70917(c) materials from the latter category. OMB's revised approach interprets the statutory provisions on section 70917(c) materials and manufactured products in a way that renders the provisions compatible. Based on thorough review and consideration of all comments received, and careful consideration of congressional intent reflected in the statutory text, the policy of the Made in America Office in OMB on defining the interrelationship of the categories is set forth above in this preamble and in the part 184 text.

Section 184.4: Applying the Buy America Preference to a Federal Award

Section 184.4(a) and (b)—Applicability of Buy America Preference to Infrastructure Projects and Including the Buy America Preference in Federal Awards

Some commenters questioned the earlier guidance in Memorandum M–22–11, which only applied BABA to non-Federal entities as defined at 2 CFR 200.1. These commenters questioned the rationale for the non-applicability of BABA to for-profit entities and explained certain practical consequences of this policy. For example, non-Federal entities, such as nonprofit organizations, may compete against for-profit entities in applying for discretionary grants for infrastructure. Thus, they feared this policy in Memorandum M–22–11 could create an unlevel playing field for grant applicants. These commenters asked OMB to clarify that for-profit entities are also subject to BABA.

One commenter maintained that the guidance exempting for-profit entities from BABA has already created confusion and added ambiguity into the grant application process. This commenter explained that not-for-profit electric cooperatives are put on unequal footing with for-profit entities when applying for competitive Federal grant programs and faced with a barrier to entry in pursuing Federal funding opportunities. The commenter believed that it was not congressional intent to see America's nonprofit organizations be disadvantaged as the Federal Government makes generational investments in infrastructure such as broadband.

Alternatively, another commenter urged OMB to add language directly in part 184 expressly stating that the BABA

preference does not apply to for-profit entities.

OMB Response: Except for minor editorial changes, OMB did not change the text of these provisions in § 184.4. Paragraph (a) explains that BABA applies to Federal awards where funds are appropriated or otherwise made available for infrastructure projects in the U.S., regardless of whether infrastructure is the primary purpose of the Federal award. Paragraph (b) provides information on including the Buy America preference in Federal awards.

The guidance in Memorandum M–22–11 was based on the definition of Federal financial assistance at section 70912(4)(A) of BABA, providing that the term Federal financial assistance has the meaning given the term in “section 200.1 of title 2, Code of Federal Regulations (or successor regulations).” Memorandum M–22–11 explained that Federal financial assistance means “assistance that non-Federal entities receive or administer in the form of grants, cooperative agreements, non-cash contributions or donations of property, direct assistance, loans, loan guarantees, and other types of financial assistance.” Section 70912(4)(B) of BABA also explains that the term Federal financial assistance includes all expenditures “by a Federal agency to a non-Federal entity for an infrastructure project.”

In OMB Guidance for Grants and Agreements at 2 CFR 200.1, Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, cooperative agreements, and several other forms of assistance. Memorandum M–22–11 clarified how the term should be applied to BABA. OMB does not modify that guidance through this document. In the same section of part 200, non-Federal entity means “a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.” In § 184.4, OMB uses the term Federal awards, the meaning of which includes “Federal financial assistance that a recipient receives directly from a Federal awarding agency or indirectly from a pass-through entity.” 2 CFR 200.1.

Based on the direction in the statute and the definitions at 2 CFR 200.1, Memorandum M–22–11 explained that for-profit organizations are not considered non-Federal entities. However, Memorandum M–22–11 also explained that the initial guidance it contained did not alter independent statutory authorities that agencies may

have to include domestic content requirements in awards of Federal financial assistance issued to for-profit organizations.

In response to comments on applicability of BABA to for-profits, OMB further clarifies that 2 CFR 200.101(a)(2) allows Federal agencies to apply subparts A through E of the OMB Guidance for Grants and Agreements in 2 CFR part 200 to for-profit entities. Thus—although OMB does not require them to do so—Federal agencies are allowed, under the existing structure of part 200, to apply part 200, including the domestic preferences at § 200.322, to for-profit entities. Federal agencies may consider applying the revised guidance in this way, at their discretion, to create a level-playing field, with respect to application of BABA, for discretionary grant programs or other reasons. OMB also notes that, through a separate process, OMB will be proposing revisions later in 2023 to the OMB Guidance for Grants and Agreements in 2 CFR part 200, and other parts of 2 CFR. *See* 88 FR 8480 (Feb. 9, 2023).

Section 184.4(c) and (d)—Infrastructure in General and Interpretation of Infrastructure

OMB received several comments on the meaning and interpretation of infrastructure. Many of these comments are discussed above under the definition of “infrastructure project” in § 184.3. Other comments are addressed here.

Some commenters asked OMB to clarify that infrastructure built solely to support affordable housing should not be covered by BABA. One commenter asked OMB to clarify that “buildings and real property” do not include single family and multifamily residential properties. This commenter believed that paragraph (d) and language in Memorandum M–22–11 supported its request. The commenter was particularly interested in privately-owned multifamily housing assisted by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture (USDA). The commenter requested a broad exemption for Federal financial assistance used to construct or rehabilitate single-family and multifamily residential housing projects. Another commenter noted a major bottleneck in housing deliveries and that applying BABA to building and real property could be a major headwind into efforts to close the minority homeownership gap.

Another commenter observed that because the proposal references “public transportation” broadly, it is not entirely clear whether OMB intends to

include rolling stock such as buses, subway cars, and commuter rail cars, in the definition of “infrastructure project.” This commenter believed that because rolling stock was not specifically listed in § 184.4 of the proposed guidance, OMB did not consider rolling stock to be an infrastructure project, and FTA’s rolling stock regulation at 49 CFR 661.11 would continue to stand. The commenter asked OMB or U.S. DOT to clarify. The commenter believed that FTA’s current regulation pertaining to rolling stock (49 CFR 661.11, discussed above) should continue to survive. The commenter noted that certain FTA rolling stock provisions may conflict with part 184.

OMB Response: Except for minor editorial changes, OMB did not change the text of these provisions in the revised guidance. OMB reminds commenters that additional guidance on the interpretation of infrastructure is available in Memorandum M–22–11. Given the guidance already provided on this topic in Memorandum M–22–11, and in other provisions of the revised guidance in part 184, OMB did not find it necessary to make additional changes to these provisions.

On the comments regarding infrastructure built to support affordable housing, OMB notes that Memorandum M–22–11 instructed Federal agencies to consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public. Projects with the former qualities have greater indicia of infrastructure, while projects with the latter quality have fewer. Projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute an infrastructure project. Federal agencies will have more specific information on how BABA applies to their specific programs. OMB also notes that HUD and USDA have issued certain general applicability waivers, which may apply to some of the relevant housing projects. Recipients may consider requesting waivers from Federal agencies for evaluation by the relevant Federal agency under the waiver process in § 184.7 of the guidance.

On comments and questions related to FTA regulations and rolling stock, FTA and U.S. DOT are in the best position to provide specific responses on how FTA’s regulations apply today and interact with BABA and part 184. OMB notes that § 184.2(a) allows a Buy

America Preference meeting or exceeding the requirements of section 70914 of BABA to remain in effect if applied by the agency to Federal awards before November 15, 2021.

Section 184.4(e)—Categorization of Articles, Materials, and Supplies

OMB received many comments related to the categorization of articles, materials, and supplies. For example, some commenters observed that Memorandum M–22–11 provided that an “article, material, or supply should only be classified into one of the following categories: (1) iron or steel; (2) a manufactured product; or (3) a construction material.” Other commenters noted that the proposed guidance did not provide sufficient clarity on how to treat products that are a combination of multiple construction materials. Many of these commenters strongly felt that OMB should not deviate from the initial guidance found in Memorandum M–22–11. Specifically, Memorandum M–22–11 explained that for “ease of administration, an article, material, or supply should not be considered to fall into multiple categories.” These commenters questioned why this guidance was not carried over into part 184 and wondered about practical consequences of a product falling into multiple categories.

In the proposed guidance, OMB also asked if it should use the definition of the term “end product” at FAR 25.003, which prompted many comments on how to identify and differentiate the end products to which the Buy America preference applies, which would be separated by category. “End product” is defined in the FAR to mean “those articles, materials, and supplies to be acquired for public use.” FAR 25.003.

Some commenters supported using the FAR definition of “end product” to provide further clarity for stakeholders. Other commenters questioned the usefulness, suitability, or both, of using the FAR definition in the revised guidance. For example, some commenters raised concerns over the reasonableness and burden of tracking the material components in a vaguely defined “end product.” Many commenters sought clarity on how to specifically identify the end products to which the Buy America preference applies and how to distinguish the end product from its components. In other words, some comments sought clarity, or noted confusion, on how to distinguish between: (i) categorized end products to which the Buy America preference directly applies; and (ii) the components of categorized end products.

To the extent an item may be classified as a manufactured product, but also includes components made of iron, steel, or construction materials, where to draw the line around the end product relative to its components makes a significant difference on how to apply the Buy America preference. This is one reason why this topic was of special concern to commenters. A broad end product with many disparate components may be subject to only the 55 percent cost of components test for a manufactured product. Alternatively, if each component of that product were identified as a separate end product, they could each be subject to the more stringent domestic content preferences applicable to iron, steel, and construction materials. Many commenters sought further clarity on this topic.

OMB Response: In the revised guidance, OMB agreed with commenters that it should further clarify that items should only be classified as falling into a single category or bucket. The revised guidance explains that an article, material, or supply should only be classified into one of the following categories: (1) iron or steel products; (2) manufactured products; (3) construction materials; or (4) section 70917(c) materials. The fourth category was added in the revised guidance for consistency with OMB’s approach on distinguishing between manufactured products and section 70917(c) materials discussed above. The revised guidance further explains that an “article, material, or supply should not be considered to fall into multiple categories.” The guidance also notes that, in “some cases, an article, material, or supply may not fall under any of the categories listed in paragraph (e)(1).” For example, see the discussion above on temporary items brought to a work site, which are not permanently incorporated into an infrastructure project, and on non-manufactured raw materials that do not meet the newly added affirmative definition of “manufactured products.”

The revised guidance also explains that the “classification of an article, material, or supply as falling into one of the categories listed in paragraph (e)(1) must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project.” Although OMB did not choose to define the term “end product” in the revised guidance, through this sentence OMB has aimed to provide clarity for stakeholders on how to identify the articles, materials, and supplies to which the Buy America preference applies. The part 184 text now explains

that items are generally categorized when they are “brought to the work site.”

The sentence is based in part on language from part 25 of the FAR, which defines a construction material, in relevant part, as “an article, material, or supply brought to the construction site by a contractor or subcontractor for incorporation into the building or work.” FAR 25.003. Although the term construction material under the FAR has a different meaning, OMB found this language useful to identify the time at which articles, materials, and supplies are classified as falling into one category or another. OMB does not incorporate the language in the FAR definition on “emergency life safety systems” but separately addresses the concept of a “kit” below.

By using the term “work site,” OMB generally refers to the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated. Federal agencies should use reasonable discretion on how to apply this term. For example, for projects in environmentally sensitive areas, products may not initially be delivered directly to the location at which they will be incorporated. In other scenarios, components may be assembled at off-site locations and delivered to the work site after assembly. Not knowing all the potential variations on this topic, OMB leaves Federal agencies with a reasonable degree of flexibility on how the term should be applied. Federal agencies may consider providing guidance to their recipients on the meaning or scope of the work site. OMB may also consider providing further guidance on this topic in the future.

OMB cautions stakeholders that the “brought to the work site” language does not mean that Federal agencies will now require the Buy America preference to be applied directly at the time a product is brought to a work site. OMB has not changed its initial guidance in Memorandum M–22–11 that a Buy America preference “only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project.” Thus, this new language does not mean that Federal agencies will require compliance checks for all products brought to the work site, which may include temporary items that will never be incorporated into the project, excess supplies, or incorrect deliveries. The purpose of the language is to clarify when *categorization* occurs—not when Buy America compliance is required. If a product is

brought to the work site but never incorporated into the infrastructure project, the BABA preference would never apply to it. BABA applies only to products “incorporated into an infrastructure project.” See 2 CFR 184.1(b) and the definition of “Buy America Preference” at § 184.3 (as revised). The language also does not necessarily require actual classification to occur at the time that products are brought to the work site, but only that, in general, classification is based on the “status” of a product at the time it was brought to the work site.

If categorization occurred instead at the time of “incorporation” into the project, after products are further combined through various assembly and manufacturing processes on the work site, the resulting “end products” and their “components” would often look very different and lead to different outcomes on product classification and the applicable domestic content preference. The same would be true if categorization occurred based on assessment of the status of products in a finished infrastructure project. Categorization at the time of “incorporation” or project completion could result in wide-ranging systems assembled on the site, which include many different products from different manufacturers, being categorized as a one large manufactured product. The resulting system could include many separate iron or steel products or construction materials from different manufacturers and suppliers. Shifting the level of analysis in this way could result in only applying the domestic content preference for manufactured products to the system as a whole. In the absence of any guidance on this topic, it is conceivable that some recipients or contractors may even seek to classify an entire infrastructure project as one manufactured product. OMB’s revised guidance avoids these results by specifying that classification occurs based on the status of products brought to the work site.

Another consequence of classifying at the time of “incorporation” or project completion could be eliminating almost all circumstances in which the affirmative standard in paragraph (1) of the definition of “manufactured products” would not apply to an article, material, or supply. While certain unmanufactured or raw materials brought to a work site may not meet the definition, following “incorporation” or project completion, the permanently incorporated materials would generally have a specific form or shape, or have been combined with other materials through manufacturing processes.

Classifying materials based on their status at the time they are brought to the work site is more likely to result in at least some articles, materials, or supplies not falling under any of the listed categories, which OMB recognizes as a possibility.

OMB also clarifies here in the preamble that in certain cases a manufactured product purchased from a single manufacturer or supplier as a “kit” may be classified as a manufactured product even if its components are brought to the site separately or at different times. OMB does not define the term kit in the text of the revised guidance, but leaves Federal agencies with reasonable discretion on how this concept should be applied in practice when classifying products under § 184.4(e).

In general, by the term kit OMB means a product that is acquired for incorporation into an infrastructure project from a single manufacturer or supplier that is manufactured or assembled from constituent components on the work site by a contractor. A kit may be treated and evaluated as a single and distinct manufactured product regardless of when or how its individual components are brought to the work site. In contrast to a kit, other manufactured products are manufactured or preassembled before they are brought to a work site. When determining if products brought to a work site constitute a kit or separate end products, Federal agencies should generally interpret the term kit as limited to discrete products, machines, or devices performing a unified function. A more wide-ranging system of interconnected products, machines, or devices (such as a heating, ventilation, and air conditioning system for an entire building) should not be considered a kit. OMB also instructs agencies that a kit should not include an entire infrastructure project.

On kits, OMB also clarifies that for the purposes of applying the cost of components test at § 184.5, the manufacturer should be considered the entity that performs the final manufacturing process that produces the kit, not the contractor that manufactures or assembles it on the work site. Thus, transportation costs to the work site should not be considered. In this context, the place of incorporation does not mean the place of incorporation into the infrastructure project, but the place at which the manufacturer established the elements of the kit to be acquired for the infrastructure project.

Section 184.4(f)—Application of the Buy America Preference by Category

Some commenters urged OMB to apply the standard for iron and steel products to the components and subcomponents of other product categories. For example, one commenter suggested that the iron and steel standard should be applied directly to components and subcomponents of manufactured products and construction materials. The commenter noted that BABA explicitly states, under one of the prongs for the term “domestic content procurement preference,” that no Federal financial assistance may be obligated for a project unless “all iron and steel used in the project are produced in the United States.” Based on this language, the commenter believed that BABA requirements should apply directly to iron and steel components and subcomponents of other product categories.

Some commenters also had questions and comments regarding what domestic content preference should apply to coatings. Some of these commenters observed that if galvanized coatings were to require domestic sources of zinc ingots, there could be substantial problems with sourcing.

OMB Response: In § 184.4(f), OMB explains that an article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified. This provision was added to address concerns from commenters that it was unclear which standard, if any, should be applied to components of items that do not match the product category that the item is classified in.

For example, in the case of iron and steel products, there is no restriction on the place of production or manufacture of components or subcomponents that do not consist of iron or steel. In the case of construction materials, there is no restriction on the place of production or manufacture of minor additions, or the materials used for additions specifically described in the standards at § 184.6, such as coatings for non-ferrous metals.

An additional example could be a steel guardrail consisting predominantly of steel, but coated with aluminum. In this case, the steel must be produced in the U.S., consistent with the requirements of BABA, but there would be no restrictions on the other components of the guardrail.

Section 184.5: Determining the Cost of Components for Manufactured Products

Many commenters provided opinions on the definition of “cost of

components” in § 184.5. Some commenters suggested continuing to use the definition as provided under the FAR. Some of those commenters indicated that the definition should include a statement that the costs are based on a good faith estimate of the cost, as provided in the FAR in the context of “predominantly iron and steel” products.

Many commenters recommended adjusting the FAR definition, but removing the term “contractor” and replacing it with the term “manufacturer.” They noted that, in the case of Federal financial assistance, it is generally the manufacturer that would be in the best position to certify whether a product is manufactured in the U.S. One commenter explained that contractors are the entities that build the infrastructure facilities in the field with materials and products that have been manufactured or produced elsewhere. Even with job-produced materials such as Portland cement concrete, this commenter indicated that there are most often separate material producers. This commenter recommended using the term manufacturer with a definition that includes material producers.

Some commenters also expressed support for retaining use of the term “contractor.” For example, one commenter explained that many products are altered from their manufactured state before installation on an infrastructure project. Using an alternate subject like “manufacturer” could require additional definitions on what separates field alterations like cutting to size or drilling holes from more extensive modifications that would fall into the category of being manufactured.

At least one commenter recommended that OMB use both “contractor or manufacturer” as the appropriate subject. This commenter explained that circumstances exist in which equipment arrives to the work site as one piece and does not involve any work by the contractor other than installation. Other times, equipment may arrive in pieces that require assembly by the contractor. This commenter also recommended that the labor and overhead required for a contractor to assemble the equipment or system on the site be considered a part of the calculation of “cost of components.”

Other commenters suggested replacing the term “contractor” with the term “assistance recipient” or “vendor.” In addition, some commenters suggested simply removing the term “by the contractor” from the definition.

Other commenters advocated for various other revisions to the “cost of

components” test to include other costs, such as those associated with the manufacture or assembly (including machining and tooling) of the end product, research and development, intellectual property, freight and overhead, acquisition costs, and labor. Other commenters suggested that OMB should more clearly define the term “overhead” to avoid ambiguity.

Some commenters also suggested further adjustments to the definition in the proposed guidance. For example, some advocated removing the term “construction materials” from the definition. Other commenters objected to removing this term.

Some commenters also recommended that OMB incorporate the definitions for “end product,” “component,” and “system” from the FTA’s Buy America regulations at 49 CFR 661.3. Alternatively, some commenters suggested that incorporating those definitions, and particularly the definition for “end product,” could cause further confusion for stakeholders.

Some commenters also question whether OMB should use the FAR definition at all. These commenters suggested considering other standards for the cost of components test, such as the standard used for ARRA implementation. Finally, some commenters requested that OMB clarify the treatment of “kits” or similar concepts under the revised guidance.

OMB Response: OMB agrees with commenters who recommended using the term “manufacturer” in this context. OMB separately defines that term in § 184.3 of the guidance to mean the entity that completes the final manufacturing process that produces a manufactured product. As products are classified based on their status when brought to the work site, this refers to the final manufacturing process that occurred before that point in time. How this term should be applied in the case of “kits” is described above under § 184.4(e).

With the exception of replacing the term “contractor” with “manufacturer” and the term “end product” with “manufactured product,” OMB adheres closely to the FAR definition. OMB believes this choice will promote uniformity and predictability for stakeholders and ensure that similar provisions are applied for both Federal procurement contracts under the FAR and Federal financial assistance under part 184.

OMB also notes that labor costs associated with the manufacturing of the manufactured product are not included in the costs of components

test, which is consistent with the approach under the FAR. For components manufactured by the contractor, the FAR standard specifically excludes “any costs associated with the manufacture of the end product.” OMB follows this approach in the case of components manufactured by the “manufacturer.”

Section 184.6: Construction Material Standards

Section 184.6(a)(1)—Standard for Non-Ferrous Metals

Several commenters emphasized that OMB should not modify the definition of “produced in the United States” that OMB provided in § 184.6 of the preliminary guidance for non-ferrous metals. One commenter emphasized that “all manufacturing processes” for non-ferrous metals, in the context of aluminum, should capture the smelting and casting process. Several other commenters emphasized that OMB should consider “final assembly” to be a part of the manufacturing process as manufacturers add “real-world value” at that stage of production.

However, several other commenters suggested revisions to the proposed standard. Some commenters sought more clarity without providing specific feedback or suggestions. Other commenters focused on specific parts of the production process. One commenter noted that the phrase “initial smelting or melting” could cause confusion if not explained further. In particular, that commenter sought feedback on whether this provision covered the rolling process. Another commenter suggested that OMB replace the “initial smelting” requirement with a “last melting” requirement.

One commenter suggested that OMB adopt a completely different framework for determining the “manufacturing process.” That commenter suggested that OMB determine the manufacturing process based on the existing United States-Mexico-Canada Agreement (USMCA) Rules of Origin criteria of “substantial transformation” for assessing qualification for domestic preference procurement. According to this commenter, OMB should consider a non-ferrous metal to be “produced in the United States” if the process that causes a corresponding shift in a material’s 4-digit Harmonized Tariff Schedule (HTS) code classification occurs in the U.S.

Several commenters suggested that the definition of “produced in the United States” for non-ferrous metals should be expanded to include any manufacturing processes that occur “in

the United States and/or Canada.” To justify this decision, one commenter cited the statutory language in the 1950 U.S. Defense Production Act, which considers both the U.S. and Canada to be a “domestic source.” This commenter noted that Canada and the U.S. share a highly integrated aluminum market. Domestic aluminum producers rely on a mix of domestic, Canadian, and globally sourced primary aluminum, of which 75 percent represents U.S. imports. Another commenter cited logistical concerns, noting that many companies that supply non-ferrous metals to the U.S. operate on both sides of the border between the U.S. and Canada. This commenter warned that manufacturers may have a hard time accounting for where the production has occurred and flagged that manufacturers often commingle inventory, making it difficult to trace the origin of specific products.

Some commenters noted that “non-ferrous metals” is a broad category. Consequently, as written, it may capture non-ferrous metals whose components are not produced domestically, such as zinc. OMB did not receive specific significant comments on other types of non-ferrous metals, such as nickel, tin, or titanium.

OMB Response: OMB notes that it has not made any revisions to § 184.6 for “non-ferrous metals” compared to the preliminary guidance. The definition of “produced in the United States” for non-ferrous metals is: “All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.”

OMB believes that this standard accurately reflects the discrete manufacturing processes used in the production of non-ferrous metals. In general, commenters agreed that “melting,” where the ore of a non-ferrous metal is converted into a liquid, and “smelting,” where the ore is converted into its purest form, are the beginning of the manufacturing process. Similarly, commenters who addressed it agreed that “assembly” represented the end point of the manufacturing process. However, OMB has chosen to not offer additional granularity. As one commenter noted, non-ferrous metals is a broad category. Non-ferrous metals can be produced in many forms across residential, commercial, and industrial applications, ranging from wires to piping to roofing.

As written, § 184.6(a)(1) already covers any manufacturing processes involved in the manufacturing of non-ferrous metals that occur between the initial smelting or melting and final

assembly. OMB believes that this would logically cover rolling—the process in which a non-ferrous metal is passed through one or more pairs of rolls to reduce the thickness or to achieve uniform thickness. OMB is concerned that expressing more specific processes would imply that those not provided are by default excluded from the manufacturing process, and thus the requirement to be “produced in the United States.”

In terms of where the manufacturing process begins and ends, OMB notes that the statutory text of section 70912(6)(C) states that “in the case of construction materials, that *all* manufacturing processes for the construction material occurred in the United States” (emphasis added). While OMB recognizes that several commenters had noted separate stages of the process where the “manufacturing process” could begin or end, OMB believes it does not have flexibility to distinguish between “initial” and “final” stages of the same process, as with melting/smelting. Given the explicit statutory requirement that all manufacturing processes occur in the U.S., OMB believes that it must include all processes that industry has recognized.

One commenter expressed a concern that a lack of existing domestic capacity would make it difficult to produce certain types of non-ferrous metals, such as zinc, in the United States. In reaching its final list of construction materials for the revised guidance, OMB used the list provided by Congress in its Findings in section 70911(5) of BABA for guidance. More detailed discussion on that approach is provided above. Non-ferrous metals are included on that list and OMB includes that term in the revised guidance without modification. However, OMB also notes that Congress also provided an established waiver process to address concerns, including those related to supply chain availability.

Section 184.6(a)(2)—Standard for Plastic and Polymer-Based Products

One commenter suggested modifications to the definition of “plastic and polymer-based products.” Specifically, the commenter suggested adjusting the definition to include all manufacturing processes, including a reference to “plastic or polymer-based fibers or filaments.” Another commenter argued that the definition of “plastic and resin” is sufficient, noting that as long as the composite material is made up of all plastic or resin, then creating a separate category for “composite building materials” was not needed.

This commenter added that the term “composite material” is vague and could be interpreted differently by stakeholders. Further comments on the standard for the proposed category of composite building materials, which is eliminated in the final guidance, are addressed below.

OMB Response: OMB notes that it has made minor revisions to the standard in § 184.6(a)(2) for “plastic and polymer-based products.” The definition of “produced in the United States” for plastic and polymer-based products is: “All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.” OMB believes that this standard accurately reflects the discrete manufacturing processes used in the production of plastic.

The statute requires “all manufacturing processes” to occur in the U.S. and directs OMB to define all manufacturing processes. OMB requested comment on the definition in its proposed guidance, which aimed to ensure all manufacturing processes were captured in a manner consistent with the statute and that would be administrable and well understood by manufacturers and industry participants. Based on review of comments, OMB believes the standard laid out in the final guidance follows this statutory requirement.

OMB recognizes that many commenters were confused by the reference to “composite building materials.” As discussed below, that category of construction material has now been reintegrated into the broader category of plastic and polymer-based products. Although the broader plastic and polymer category incorporates an element of the standard for composite building materials—referring to “constituent composite materials”—into the standard for plastic and polymer-based products, OMB notes that the category itself remains limited to plastic and polymer-based products. As discussed in § 184.3 above, the standard should only be applied to a product comprised primarily of inputs of plastics and polymers, although such a product may also include minor additions of other materials.

Section 184.6(a)—Standard for Composite Building Materials (Eliminated as Standalone Material)

Many commenters indicated that additional guidance was needed on “composite building materials” and how OMB intended to distinguish them

from “plastic and polymer-based products” in general. Some commenters suggested that providing examples of composite building materials would also be useful. One commenter noted that these terms do not have standard industry meanings and vary between manufacturers and States. Several commenters recommended that OMB treat composite building materials as a subset of plastic and polymer-based products rather than defining it separately and providing a separate manufacturing standard. If treated as its own stand-alone category, commenters feared that the term could inadvertently incorporate a wider range of products than what was intended by law.

Other commenters supported the definition of composite building materials, as provided in the proposed guidance. These commenters believed that the production process for such products includes the combination of raw material inputs and the molding of the composite product, which is analogous to the “all manufacturing processes” origin standard applied to iron and steel under certain existing Buy America laws.

OMB Response: OMB has deleted the standard for composite building materials from the revised guidance. As recommended by numerous commenters, plastic or polymer-based composite building materials are instead treated as a subset of plastic or polymer-based products. OMB recognizes that without further guidance it may have been difficult to distinguish between these items. Thus, the standard in § 184.6 for plastic or polymer-based products applies to plastic or polymer-based composite building materials under the revised guidance.

Section 184.6(a)(3)—Standard for Glass

In general, most commenters did not suggest any revisions to OMB’s proposed definition of “produced in the United States” for glass. However, one commenter warned that it believed that domestic industry for glass beads could not currently meet the proposed definition of “produced in the United States” for glass. In particular, that commenter focused on the fact that the process, as proposed, would include “the batching and melting of raw materials.” This commenter noted that existing firms cannot quickly move their entire manufacturing process to the U.S. Because the production process involves proprietary and unique manufacturing processes—which no domestic firm currently conducts in the U.S.—this commenter warned that the proposed standards would hamper the production process for certain glass

products. Another commenter noted that all glass ceramics, which it considered to be a superior material compared to tempered glass for certain types of products like fire exits, doors, and windows, are processed and produced internationally.

OMB Response: OMB notes that it has not made any revisions to § 184.6 for “glass.” The definition of “produced in the United States” for glass is: “All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.” OMB believes that these standards accurately reflect the discrete manufacturing processes used in the production of glass.

One commenter expressed a concern that a lack of existing domestic capacity would make it difficult to produce certain types of glass products, such as glass beads, in the U.S. In reaching its final list of construction materials for the revised guidance, OMB used the list provided by Congress in its Findings in section 70911(5) of BABA for guidance. More detailed discussion on that approach is provided above. Glass is included on that list and OMB includes that term in the revised guidance without modification. However, OMB also notes that Congress also provided an established waiver process to address any concerns, including those related to supply chain availability. Specifically, in the event that a Federal agency believes that (i) applying the domestic content procurement preference would be inconsistent with the public interest, (ii) construction materials are not produced in the U.S. in sufficient and reasonably available quantities or of a satisfactory quality, or (iii) the inclusion of construction materials produced in the U.S. will increase the cost of the overall project by more than 25 percent, OMB notes that the head of that agency, under section 70914, can waive the BABA preference requirements.

Section 184.6(a)(4) and (5)—Construction Material Standards—Fiber Optic Cable and Optical Fiber

Commenters requested OMB to clarify the proposed standards for determining whether optical fiber and fiber optic cable are “produced in the United States.” In particular, commenters suggested that the standards should more accurately reflect industry standards and terminology. Other commenters noted that the OMB’s ultimate standards must meet the statutory directives pertaining to the “all manufacturing processes” requirement, including that OMB provide “clear and consistent market

requirements.” Commenters thought it was important for OMB to eliminate ambiguity, where possible, so OMB could communicate clear signals to the market and to grantees in a way that supports investment in U.S. jobs and effective implementation of broadband infrastructure programs.

To better facilitate that process, several commenters detailed their understanding of the various steps of the production process for optical fiber and fiber optic cable that reflect industry standards and terminology. For the optical fiber, these steps include: (1) the making of the “core” or core rods, (2) the preform to provide various optical properties, and (3) the draw where the preform is heated, cooled, and then pulled through a draw tower to create a single strand of optical fiber. For fiber optic cable, these steps include: (1) the application of the buffer tube, (2) the stranding to reinforce and protect the cable, and (3) the jacketing to encase the stranded buffer tubes with a protective sheath or jacketing material.

Some commenters requested that OMB provide specific definitions of each step in the process to the extent that OMB updated its definitions in § 184.6 to reflect them.

Several commenters discussed in detail which steps of the manufactured process they thought should be included in § 184.6. In general, all commenters who proposed amendments to § 184.6 agreed that the manufacturing process for optical fiber should be through the “completion of the draw,” rather than “stranding,” which is a process that occurs later in the creation of the fiber optic cable. One commenter additionally suggested that OMB clarify that the drawing process involved soaking the fiber “in deuterium gas.” Separately, another commenter suggested defining the preform fabrication stage as fiber preform to reduce confusion and assist with the category determination of the construction material. While commenters were thus in general agreement about the manufacturing steps for optical fiber, commenters expressed different views on the appropriate manufacturing process for fiber optic cable.

At least two commenters generally agreed with OMB’s proposed standards for fiber optic cable but recommended also including the making of the “core.” Other commenters noted that all the manufacturing processes for both optical fiber and fiber optic cable are currently performed in the U.S. Consequently, they argued that OMB must define “all manufacturing processes” to include each step because

any narrower definition would deviate from the clear statutory requirement of BABA. Another commenter expressed a similar perspective, stating that the use of the word “all” to establish a 100 percent domestic content requirement at the outset of statutory implementation removes any discretion except through the waiver process.

In contrast, another commenter suggested that OMB revise the definition to include “from and between the buffer tube extrusion to outer jacketing.” This commenter noted that the manufacturing of optical preform, optical fiber (e.g., draw), and optical cable are distinct, separate, and generally unrelated manufacturing processes. Each process generally occurs at different facilities and at different times. As such, optical preform and optical fiber manufacturing are each an input to the optical cable manufacturing process.

In addition, this commenter noted that—it believes—the industry as a whole would be unable to meet the Buy America preference and provide fiber optic cable to federally funded infrastructure projects based on the standards proposed in the preliminary guidance.

Two commenters suggested that OMB revise the definition for fiber optic cable to be based on the drawing of the optical fiber from the preform through jacketing. With this adjustment, the 2 CFR definition would specify that the manufacturing process, in which the polymer-based jacket is combined with binder yarns and other materials to form the cabled core, occur in the U.S., but the production of the polymers or yarns would not. In addition, the manufacturing process for the outer jacketing would occur in the U.S., but the production of other inputs, such as the aramid yarns, polymer-based tapes, and ripcords, would not.

Another commenter emphasized that no domestic manufacturer will be able to manufacture all the inputs at the more granular levels domestically based on OMB’s proposed guidance. In addition, this commenter thought that competent and experienced broadband providers would be less likely to participate in Federal funding programs under the preliminary guidance, which will lead to more expensive builds with infrastructure that may be less capable and reliable. Another commenter also expressed concern that no manufacturer would likely invest the significant amount of capital over the course of several years to build complete preform making facilities because they would not produce fiber in time to supply fiber

optic cable meeting the proposed guidance.

Another commenter that manufactures fused silica cylinders (or tubes) for fiber optic cables noted that it provides glass core rods to fabricate fiber optic “preforms” in the U.S. This commenter noted that the manufacture of fused silica cylinders, which is an input into optical fiber, should not be considered part of the “manufacturing process” under § 184.6.

Related to the above suggestions about existing domestic capacity, several commenters raised potential antitrust issues—which they argued would undermine Congress’ goals of expansive broadband connectivity and job growth. One commenter stated that only a few companies can produce optical fibers and preforms in the U.S. and only a single manufacturer currently vertically integrates the cable production with complete preform fabrication in the U.S. that produces the type of optical fiber used in broadband and other infrastructure projects. According to this commenter, this would lead to increased prices due to this firm’s market power and create a single point of failure—where disruptions could impede broadband installations.

Several commenters also asked for clarification on how the various manufacturing processes for construction materials interacted with each other.

A State department of transportation suggested that the manufacturing processes for optical fiber should reflect the reference to “optic glass” in section 70911(5). This commenter noted that only one set of manufacturing standards should apply to a particular product. For instance, standards applied to fiber optic cable and optical fiber should be separate from the standards applied to plastic and polymer-based products.

Another commenter stated that there is a fundamental disconnect between the rigid qualifying product definitions applying to “glass,” “fiber optic cable,” and “optical fiber” and the current realities of the marketplace for these critical broadband infrastructure inputs.

Another State department of transportation suggested that § 184.3 be revised to remove optical fiber as a separate construction material because the standards that OMB proposed for fiber optic cables in § 184.6 contained all the standards that OMB proposed for optical fiber in § 184.6.

Another commenter requested that OMB revise § 184.6 to clarify that the reference to “all manufacturing processes” in each construction material standard is intended to encompass only the manufacturing and assembly

processes to produce the relevant construction material and not any processes related to the production of, for example, constituent inputs or raw materials that may be used in the manufacturing and assembly of that construction material.

Another commenter expressed concern that BABA compliance could be prohibitively difficult and expensive to implement because some construction materials, such as fiber optic cable, may be comprised of multiple sub-components, each with its own distinct manufacturing and production processes, which could entail multiple supply chain layers.

A municipality suggested that the “manufacturing processes” standards should be consistent across polymer-based and glass components to avoid increased compliance costs and potential confusion. This commenter suggested that compliance will be easier if all “fiber optic cabling” is covered by a single rule.

Several commenters noted that the standards in § 184.6 for “all manufacturing processes” should not include simple assembly operations performed after the jacketing stage, including the process of cutting U.S.-made fiber optic cable to length and attaching *de minimis* parts such as connectors, which do not add significant value. One commenter pointed out that not including such operations would be consistent with customs rulings regarding fiber optic cable, which recognize that U.S.-made optical fibers are the “essence” of a fiber optic cable, and that “simple assembly” operations such as cutting fibers to length and adding connectors does not result in the substantial transformation of U.S.-made fiber optic cables.

OMB Response: After reviewing the record, OMB has refined the standards by which optical fiber and fiber optic cable will be considered “produced in the United States” under § 184.6. OMB has updated the definitions for both items. The definition of “produced in the United States” for fiber optic cable (including drop cable) is: “All manufacturing processes, from the ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the U.S. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.” The definition of “produced in the United States” for optical fiber is: “All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the U.S.”

Based on careful consideration of comments, OMB believes that the revised standards more accurately reflect the discrete manufacturing processes used in the production of (a) optical fiber and (b) fiber optic cable, which uses finished optical fiber as an input. OMB has also defined fiber optic cable in a manner that avoids repeating the same steps involved in optical fiber, changing the beginning of the process from “the initial preform fabrication stage” to “ribboning (if applicable).” By modifying the standards to be consistent with current industry practice, OMB seeks to reduce confusion for stakeholders moving forward. For “fiber optic cable” in § 184.6(a)(4), OMB has not substantively modified the standard from the preliminary guidance. The text of the standard, however, now incorporates “the standards for glass and optical fiber” instead of trying to fit each individual standard into “fiber optic cable.” Based on industry feedback, OMB believes that the range of processes listed in the preliminary guidance is consistent with industry practice. However, for “optical fiber” in § 184.6(a)(5), OMB has replaced “fiber stranding” with “the completion of the draw” in the revised guidance to conform with industry understanding of the relevant manufacturing processes.

In terms of offering specific definitions for each specific step within § 184.6(a)(4) and (5), OMB defers to the awarding Federal agency if it believes that additional clarification is more appropriate. However, based on public comments that OMB received, OMB believes that there is a consistent, straightforward understanding among the industry of the definitions of the relevant terms that does not require further clarification by OMB.

OMB notes that the statutory text of section 70912(6)(C) states that “in the case of construction materials, that *all* manufacturing processes for the construction material occurred in the United States” (emphasis added). While OMB recognizes that several commenters had noted separate stages of the process where the “manufacturing process” could begin or end, OMB believes it does not have flexibility to set these terms. Given the explicit statutory requirement that *all* manufacturing processes occur in the U.S. and rough industry consensus from several of the largest domestic manufacturers on what those processes are, OMB believes that it must include all processes that industry has recognized, from the manufacturing process for “glass” and “initial preform” through “stranding and jacketing.”

Where relevant, OMB notes that a Federal agency also has the waiver process to address concerns, including with respect to product availability.

To provide further guidance on which standards in § 184.6 apply to a particular material, OMB has added the following language as paragraph (b), which is discussed further below: “Except as specifically provided, only a single standard under paragraph (a) of this section should be applied to a single construction material.” OMB notes that, in its articulation of “all manufacturing processes” for fiber optic cable that it has also included “the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.” OMB believes that the additional language provides the level of clarity requested by the relevant commenters.

In terms of minor additions, OMB notes that it has amended the definition of “construction material” in § 184.3 to read: “Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.” OMB discusses this provision in the preamble above. Federal agencies may also provide further guidance on this topic. This may afford Federal agencies the opportunity to address at least some of the specific concerns raised above, such as regarding simple assembly operations that may be seen as being outside of the “manufacturing process” because they are considered minor additions.

Section 184.6(a)(6)—Standard for Lumber

One commenter noted that the lumber referenced in part 184 should include dimensional lumber only and not a combination of materials. The commenter requested additional clarification on this topic and to better define the originally-proposed construction material groupings. Similarly, another commenter suggested that instead of creating a separate category for engineered wood products, OMB may consider defining within the lumber definition or standard what materials are intended to be included.

Other commenters requested additional clarity on what is meant by “lumber.” For example, one commenter noted that lumber is a narrowly defined construction material and does not generally include engineered wood products, such as plywood, glulam, trusses, composite beams, and other engineered products, which some could interpret to be “manufactured products,” and not construction materials. Other commenters noted that

lumber should include “dimensional lumber only” and not a combination of materials.

OMB Response: OMB notes that it has not made revisions to the standard in § 184.6 for “lumber.” The definition of “produced in the United States” for lumber is: “All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.” Based on review of comments received, OMB continues to believe that this standard accurately reflects the discrete manufacturing processes used in the production of lumber. OMB notes that lumber is narrowly interpreted and does not generally include engineered wood products, such as plywood, glulam, trusses, or composite beams.

The statute requires “all manufacturing processes” to occur in the U.S. and directs OMB to define all manufacturing processes. OMB requested comment on the definition in its proposed guidance, which aimed to ensure all manufacturing processes were captured in a manner consistent with the statute and that would be administrable and well understood by manufacturers and industry participants. Based on review of comments, OMB believes the standard laid out in the final guidance follows this statutory requirement.

The approach taken is similar to the standard applied to the “melted and poured” manufacturing standard applied to iron or steel products. The standard recognizes the distinction between the original raw material input—such as ore or logs, which may be mined, grown or extracted elsewhere—and the beginning of a manufacturing process, which initiates the beginning of the process where constituent components are combined to produce the lumber brought to the work site and used on the infrastructure product.

Section 184.6(a)(7)—Standard for Drywall

One commenter expressed concerns about including lumber and drywall on the list of construction materials due to existing supply constraints for each of these materials. This commenter observed that drywall is a key component in residential construction. The commenter indicated that including drywall on the list could have deleterious effects on builders, contractors, housing providers, and others. The commenter suggested that the unintended consequences of adding products like drywall to the list were not well thought out. The commenter suggested that the implications could be

far-reaching and negatively affect the housing industry. The commenter suggested that OMB should strongly encourage Federal agencies to propose BABA waivers for drywall.

Another commenter noted that drywall combines multiple materials into a final product, and thus could be considered a manufactured product.

OMB Response: OMB notes that it has not made revisions to the standard in § 184.6 for “drywall.” The definition of “produced in the United States” for drywall is: “All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.”

BABA requires “all manufacturing processes” to occur in the U.S. and directs OMB to define all manufacturing processes. OMB requested comment on the definition in its proposed guidance, which aimed to ensure all manufacturing processes were captured in a manner consistent with the statute and that would be administrable and well understood by manufacturers and industry participants. Based on review of comments, OMB believes the standard laid out in the final guidance follows this statutory requirement.

Section 184.6(a)(8)—Standard for Engineered Wood

Several commenters, including several State and municipal entities agreed with OMB’s proposed guidance that the standard for “engineered wood products” should be defined as: “All manufacturing processes, from initial debarking through pressing, trimming, and sanding of glued sheets or boards, occurred in the United States.” These commenters thought that no additional changes were needed.

However, two manufacturers in the industry sought more specific definitions for the manufacturing process of this category. To clarify this point, one of these commenters provided a summary description of the manufacturing of various engineered wood products including: (1) plywood, which is manufactured from sheets of cross-laminated veneer and bonded under heat and pressure with durable, moisture-resistant adhesives; (2) Oriented Strand Board, or OSB, which is manufactured from rectangular-shaped strands of wood that are oriented lengthwise and then arranged in layers at right angles to one another, laid up into mats, and bonded together with moisture-resistant, heat-cured adhesives; (3) I-joists, which is manufactured using sawn (wood that has been produced either by sawing

lengthways or by a profile chipping process) or structural composite lumber flanges (laminated veneer lumber) and OSB webs, bonded together with exterior-type adhesives; (4) glued laminated timber, or glulam, which is composed of individual wood laminations, specifically selected and positioned in the timber based on performance characteristics and bonded together with durable, moisture-resistant adhesives; (5) cross-laminated timber, which is a panel consisting of several layers of lumber or structural composite lumber stacked in alternating directions, bonded with structural adhesives, and pressed to form a solid, straight, rectangular panel and may be sanded or prefinished before shipping; and (6) structural composite lumber, which is created by bonding layers of dried and graded wood veneers or strands with moisture-resistant adhesive into blocks of material known as billets that are cured in a heated press and comes in many varieties.

Based on these descriptions, they argued that the proposed standard does not adequately address the manufacturing processes specific to structural engineered wood. These two commenters suggested that standard could instead be: “All manufacturing processes that take place in facilities designated as SIC 2436 (Softwood Veneer and Plywood), SIC 2439 (Structural Wood Members, Not Elsewhere Classified), and/or SIC 2493 (Reconstituted Wood Products), from the initial combination of constituent materials until the wood product is in a form in which it is delivered to the work site and incorporated into the project, occurred in the United States.”

These commenters thought that the established Standard Industrial Classification (SIC) codes for these distinct subcategories of construction materials would ensure uniformity and consistency in the implementation of the Buy America preference. Additionally, one of the commenters thought that this definition would allow relevant combinatory processes for engineered wood including structural engineered wood to occur domestically, while also acknowledging that constituent materials such as fillers, adhesives, foil, laminates, web, and glues could be sourced, as needed, from outside the U.S.

OMB Response: OMB notes that it has added a new standard in § 184.6 for “engineered wood.” It has modified the standard based on provided feedback to address some of concerns raised by commenters. In the preamble of the proposed guidance, OMB proposed to define “produced in the United States”

for engineered wood products as: “All manufacturing processes, from initial debarking through pressing, trimming, and sanding of glued sheets or boards, occurred in the United States.” In the revised guidance in § 184.6, OMB offers a new, and now modified, definition of “produced in the United States” for engineered wood to be: “All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.”

OMB believes that this revised standard accurately reflects the discrete manufacturing processes used in the production of engineered wood. This definition was adjusted based on industry feedback, provided in public comments, and is derived from industry definitions (from SIC codes), which will help eliminate confusion and create consistency for stakeholders. However, OMB emphasizes that, because OMB added engineered wood as a logical extension of lumber, it only applies the construction material classification—and the requirement for the associated manufacturing processes to occur in the U.S.—on products that have lumber as an input. OMB also did not want to tie the definition to external metrics, such as SIC codes, which may change over time and require updated guidance from OMB.

Further, the revised standard is consistent with the statute, which requires “all manufacturing processes be conducted in the United States” and directs OMB to define all manufacturing processes. The final definition will ensure all manufacturing processes are captured in a manner consistent with the statute as well as in a manner that would be administrable and well understood by manufacturers and industry participants. The approach taken is similar to the “melted and poured” manufacturing standard applied to iron or steel products. The standard recognizes the distinction between the original raw material input—such as ore or logs, which may be mined, grown or extracted elsewhere—and the beginning of a manufacturing process, which initiates the beginning of the process where constituent components are combined to produce the end product brought to the work site and used on the infrastructure product.

Section 184.6(b)—Application of Standards by Listed Material

Some commenters raised concerns that BABA compliance could be prohibitively difficult and expensive to implement as some construction materials may comprise multiple sub-

components, each with its own distinct manufacturing and production processes, which could entail multiple supply chain layers. These commenters suggested revising § 184.6 to clarify that the reference to “all manufacturing processes” in each construction material standard is intended to encompass only the manufacturing and/or assembly processes to produce the relevant construction material and not any processes related to the production of, for example, constituent inputs or raw materials that may be used in the manufacturing and/or assembly of that construction material.

OMB Response: In the revised guidance, § 184.6(b) explains that, except “as specifically provided, only a single standard under paragraph (a) of this section should be applied to a single construction material.” Without this language it could be unclear in some cases what standard, or how many standards, could apply to a single item.

To provide clarity and reduce burden for stakeholders, OMB believed it was important to explain through this paragraph specifically which of the eight standards listed in paragraph (a), or how many standards, may apply to a single construction material. The answer provided by this paragraph is that only one standard should apply, which best fits the item under consideration.

By adding this paragraph, OMB sought to avoid a situation in which it would be unclear which standards, or how many standards, apply to a single item with multiple construction materials as inputs. Composite items on the list—with inputs of other items—include at least fiber optic cable, optical fiber, engineered wood, and drywall. A logical way was needed to identify what standard applies to a single item. For cases in which more than one standard may apply to a single construction material, only the standard from the list in paragraph (a) that best fits the relevant article, material, or supply should be applied.

For example, in the case of fiber optic cable, the standards for non-ferrous metals, plastic and polymer-based products, glass, fiber optic cable, and optical fiber could all apply to a single item. Instead, under this approach, OMB now clarifies that, in the case of fiber optic cable, the standards for glass and optical fiber also apply, but not the standards for non-ferrous metals, plastic and polymer-based products, or any others. Fiber optic cable is the only standard that incorporates other standards.

Engineered wood is another example. Without this paragraph, the standards

for plastic and polymer-based products, lumber, and engineered wood could all simultaneously apply to a single item. Paragraph (b) clarifies that only the single standard for engineered wood applies to a product falling in that category.

Section 184.7: Federal Awarding Agency’s Issuance of a Buy America Preference Waiver—Waiver Process in General

Many commenters advocated for changes that would reduce the burden on industry to comply with BABA requirements, particularly for small and medium sized businesses. For example, some commenters noted that OMB should avoid creating new or different definitions that might create confusion, project delays, and increase project costs. Some commenters urged OMB to provide clarity in the guidance to ensure consistency among agencies in applying rules and implementing the guidance, particularly with regard to certifying the origin of certain products as well as the waiver process—including, for example streamlining and expediting the waiver process. Other commenters had more specific suggestions in this area, such as creating a website or database of BABA approved materials or manufacturers, as well as the granting of broad waivers for certain types of projects (for example, water projects), programs (for example, the BEAD program), or products (for example, COTS items).

Alternatively, several responses stated that the best way to reduce the burden on the industry is to preserve the existing body of regulations, interpretations, and determinations as much as possible, such as by using definitions already in use under the FAR or existing standards under Buy America.

OMB Response: OMB made some editorial changes, but has not otherwise made material changes to § 184.7. In § 184.7(d)(3), OMB notes that it revised the legal authorities it references to only include E.O. 14005 and section 70923(b) of BABA, which OMB considered sufficient for the purposes of this provision. OMB provides additional guidance on the waiver process in Memorandum M–22–11. OMB may consider offering additional guidance on this topic in the future. OMB also notes that Federal agencies have direct statutory authority to propose and issue waivers under section 70914(b) of BABA. Federal agencies may also offer further guidance on this topic in the future for their specific programs. Section 184.7(b) continues to instruct Federal agencies to provide waiver request submission instructions and

guidance on the format, contents, and supporting materials required for waiver requests from recipients.

Section 184.7(e)—Waivers of General Applicability

With regard to general applicability public interest waivers, one commenter supported the language in the guidance that provides the flexibility for agencies, such as NTIA, to waive BABA restrictions for projects of less than \$250,000.

Other commenters raised concerns about the breadth and frequency of public interest waivers issued by various agencies since BABA took effect, noting that these waivers are unnecessary and inconsistent with the objectives of Congress and the Administration for BABA implementation. These commenters noted that these types of waivers should only be issued sparingly.

OMB Response: OMB agrees that, under certain circumstances, general applicability waivers may be found by Federal agencies to be in the public interest. For example, they may create efficiencies or ease burdens for recipients. The purpose of this paragraph of part 184 is to recognize the longer comment period set forth at section 70914(d) for review of waivers of general applicability. OMB has not made any changes to this section of the guidance, which continues to remind Federal agencies of the need to provide a comment period of not less than 30 days on a proposal to modify or renew a waiver of general applicability.

Section 184.8: Exemptions to the Buy America Preference

Some commenters suggested including an exemption in § 184.8 for commercially available off-the-shelf (COTS) products. One commenter suggested that the exemption could cover COTS items costing in the aggregate up to 5 percent of total project costs used under the Federal award.

Another commenter suggested that § 184.5 or § 184.8 should include an exemption for materials, tools, or other items that are not permanently incorporated into the infrastructure project.

Other commenters suggested adding a new paragraph to § 184.8 stating that section 70917(c) materials, and any combination of these materials, such as concrete or asphalt mix, are excluded from BABA coverage.

Another commenter urged OMB to include a new paragraph in § 184.8 stating that the Buy America Preference does not apply to for-profit

organizations as defined in 2 CFR 25.425.

OMB Response: OMB has retained the proposed language in § 184.8.

Regarding the comment requesting a COTS exemption, OMB notes that the waiver process, not part 184, would be the appropriate mechanism to address concerns on this topic. OMB observes that Federal agencies have not previously found such a waiver to be in the public interest, but COTS items may potentially fall under other public interest waivers that agencies have issued, such as *de minimis* or minor component waivers as described in Memorandum M–22–11.

Regarding the distinction between temporary use and permanent incorporation, OMB has addressed that topic in other sections of the preamble. OMB's existing guidance on that topic is available in Memorandum M–22–11. OMB also addresses the topic of the application of BABA to for-profit entities above in this preamble.

Section 200.322: Domestic Preferences for Procurements

One commenter indicated that 2 CFR 200.322 should be updated to reflect uniform language across the government referring to all efforts as Buy America or Buy American. The commenter suggested that even the terms Buy American or Buy America should be uniform. The commenter preferred the term Buy America because of its use in BABA. Therefore, the commenter stated that 2 CFR 200.322 should be retitled as “Buy America Preference.”

Another commenter stated that the **Federal Register** document dated March 9, 2023 (88 FR 14514), correcting the **ACTION** line or caption of the proposed guidance to clarify its nature as “guidance,” calls into question the validity of the proposed addition of 2 CFR 200.322(c). The commenter observed that use of the term “must” as part of a 2 CFR part 200 indicates this is a rule, particularly in light of the fact that 2 CFR part 200 has been adopted as a rule by the individual Federal agencies. The commenter noted that U.S. DOT has adopted 2 CFR part 200 in 2 CFR part 1201. On the theory that this is a rule, the commenter stated that the revision of 2 CFR 200.322(c) failed to meet procedural requirements for notice and comment before adoption.

OMB Response: OMB has explained the distinction between the BAA and BABA in this document above. OMB does not believe that additional revisions to 2 CFR 200.322 are needed on this topic.

Regardless of the label provided in the **ACTION** line by the Office of the Federal

Register, the OMB guidance “published in subtitle A [of 2 CFR],” which OMB modifies here, “is guidance and not regulation.” 2 CFR 1.105(b). “Publication of the OMB guidance in the CFR does not change its nature—it is guidance and not regulation.” *Id.* This is consistent in this instance with the text of BABA, which instructs OMB to issue guidance and standards, which may include amending “subtitle A of title 2, Code of Federal Regulations (or successor regulations).” BABA 70915(a)(2). In addition, OMB notes that the rulemaking requirements at 5 U.S.C. 553 do not apply to guidance on grants. *See* 5 U.S.C. 553(a)(2). In all events, OMB has followed notice and comment procedures with respect to this guidance that are consistent with the procedures that would be required were this a rule subject to 5 U.S.C. 553.

OMB notes that the revised text in 2 CFR 200.322 includes a revision from the proposed version. Instead of stating that “Federal agencies providing Federal financial assistance for infrastructure projects must comply with the Buy America preferences set forth in 2 CFR part 184,” the revised text now states that Federal agencies must “implement” such provisions.

Other Comments—Waivers or Exemptions for International Trade Obligations

Several commenters asked how the implementation of BABA would interact with the various trade obligations of the U.S. through the Trade Agreements Act (TAA), such as the World Trade Organization Agreement on Government Procurement (WTO–GPA). One commenter noted that BABA implementation should consider the international obligations of the U.S. and trade agreements and not undermine U.S. competitiveness in global markets. Several commenters noted the benefits of these international and trade obligations, including the governments of Korea and British Columbia. Several commenters raised concerns that the proposed guidance, as written, could lead to confusion and barriers to trade that would lead to delays and product shortages for American importers, including the United Kingdom of Great Britain and Northern Ireland (UK). These commenters also feared that any failure to comply with free trade agreements could initiate dispute settlement proceedings or other corresponding action to limit U.S. access to foreign government procurement. Several commenters inquired whether the proposed guidance differs from specific parts of the FAR, such as FAR 52.225–11, in

terms of requiring a cost component test, because the proposed guidance does not have comprehensive exemptions and flexibility. One commenter noted that agricultural products are subject to unique trade requirements.

Several commenters noted that certain components critical to infrastructure projects are still not produced in the U.S., but are available from suppliers in TAA countries. In particular, commenters noted that insufficient domestic labor supply may make it difficult to fill manufacturing jobs without relying on TAA countries.

Several commenters, including from the European Union (EU), UK, and the Government of Quebec, requested that the guidance explicitly state that BABA preferences will be “applied in a manner consistent with United States obligations under international agreements,” repeating the language found in section 70925 of BABA and Memorandum M–22–11. The Governments of the UK and Quebec, for example, suggested that lack of clarity may discourage foreign suppliers from bidding for opportunities in the U.S. without explicit reassurances.

These commenters noted several other areas where the U.S. has previously iterated its intentions to comply with international agreements. One commenter stated that, because Memorandum M–22–11 had reiterated this statutory directive, the proposed rules should do the same. The EU and UK Governments noted that the ARRA provision included similar language, citing 2 CFR 176.70 and 176.90 (“[ARRA] shall not be applied where the iron, steel, or manufactured goods used in the project are from a Party to an international agreement”).

Another commenter stated that the Office of the U.S. Trade Representative had, with respect to government procurement, waived Buy America requirements for eligible products from numerous designated countries where it would serve the interests of the U.S., including those from parties to the WTO–GPA, parties to most U.S. free trade agreements, certain least-developed countries, and certain Caribbean Basin countries. A separate commenter noted that the U.S. Department of Commerce’s and the U.S. Department of Homeland Security’s “Assessment of the Critical Supply Chains Supporting the U.S. Information and Communications Technology Industry” recommended that all Buy America programs be “consistent with U.S. international trade obligations” and include “tolerances for assembly in allied or partner nations.” Commenters

from the broadband industry specifically cited that the Rural Utilities Service (RUS) ReConnect Program and other existing programs have included exceptions for U.S. global partners and allies. One commenter noted that its experience with prior Buy America clauses and preferences had also not been straightforward.

While some commenters wanted OMB to just add the “applied in a manner consistent with U.S. obligations under international agreements” language explicitly in BABA and M–22–11, other commenters thought that would be insufficient and wanted OMB to add additional language to address these concerns. Several commenters asked OMB to clarify that “designated countries” under the TAA are deemed to satisfy the BABA requirements and products manufactured in those countries would be treated as if they are manufactured in the U.S. The National Electrical Manufacturers Association (NEMA) suggested that this list include USMCA countries, EU member states, the UK, and Indo-Pacific Economic Framework partners. Alternative proposals included that OMB either (1) apply the existing USMCA Rules of Origin criteria for assessing qualification for domestic preference procurement or (2) treat Canada as a domestic source, similar to the Defense Production Act.

Other commenters alternatively advocated for granting waivers for components produced in such TAA countries. For instance, the Conseil de l’industrie forestière du Québec (CIFQ) and the Ontario Forest Industries Association (OFIA)—trade associations representing Canadian lumber mills in the provinces of Quebec and Ontario, respectively—argued that Canadian lumber should be subject to a “public interest” waiver because of several trade agreements between the U.S. and Canada, history, economic necessity for the availability of construction materials, and the broad public interest. The EU suggested that the final guidance clarify that BABA requirements do not apply to government procurement covered by the obligations of the U.S. under international agreements.

Several commenters noted that many states are members of the WTO–GPA and, as a result, have independent trade obligations, which may prohibit those states from discriminating against manufactured products and components from designated countries in conducting their own procurements. Some of these commenters suggested that OMB should require provision of a waiver for products from countries that have signed an international trade agreement

with the U.S. Others noted that the waiver process is too onerous and requested that OMB should instead clarify in its final guidance that a recipient of Federal financial assistance can comply with domestic content requirements if they incorporate such products in an infrastructure project in accordance with the BABA without the need for a waiver.

Separately, some commenters noted that OMB has generated confusion because of the varying terms, acronyms, and common names that have been implemented across the Federal agencies and within funding agencies. For example, it listed that there is the “Build America, Buy America Act” (BABA), “Buy America Act” (BAA), “Buy America Act with Trade Agreements Act (BAA/TAA), “American Iron and Steel” (AIS), and “Buy America Requirements” (BAR).

OMB Response: Several commenters expressed concern that OMB did not explicitly include in its part 184 guidance that the Buy America preference “shall be applied in a manner consistent with United States obligations under international agreements.” OMB notes that BABA provisions will be applied in a manner consistent with U.S. obligations under international agreements, as provided in section 70914(e) of BABA. OMB has not modified its existing guidance on this topic.

As explained above—and to avoid confusion and remove ambiguity on this topic—OMB reiterates that it is not rescinding its initial guidance to Federal agencies under Memorandum M–22–11. The provisions in OMB’s initial guidance on this topic remain in effect. OMB explains in Memorandum M–22–11 that, pursuant “to section 70914(e) of [BABA], [OMB’s] guidance [on BABA] must be applied in a manner consistent with the obligations of the United States under international agreements.” Memorandum M–22–11 also explains that if “a recipient is a State that has assumed procurement obligations pursuant to the Government Procurement Agreement or any other trade agreement, a waiver of a Made in America condition to ensure compliance with such obligations may be in the public interest.” Memorandum M–22–11 also explains that all proposed waivers citing the public interest as the statutory basis must include a detailed written statement, which shall address all appropriate factors, “such as potential obligations under international agreements.”

By not including those provisions in part 184, OMB did not rescind its initial guidance to Federal agencies on this

topic. The language in Memorandum M–22–11 remains effective guidance from OMB to Federal agencies. The language does not conflict with the text of part 184, but supplements it, providing further context on waivers that Federal agencies may propose.

OMB intends to include similar language on this topic in the next iteration of Memorandum M–22–11, which will be issued to update other areas that directly conflict with part 184. Part 184 does not conflict with language in Memorandum M–22–11 on international agreements. As OMB also explains above, its guidance to Federal agencies in part 184 is not intended as comprehensive guidance on all topics, but high-level coordinating guidance to be used by Federal agencies in their own direct implementation of BABA. At this time, OMB has not included that language directly in part 184, but has not modified its initial policy.

The Made in America Office also issued a separate fact sheet within the last year that discusses how the TAA applies to both direct Federal procurement under the FAR and domestic content preferences for Federal financial assistance. See “Fact Sheet on Buy American (BAA) or Buy America,” Made in America Office (2022) (Fact Sheet).¹ The Fact Sheet recognizes that the “BABA provisions apply in a manner consistent with United States obligations under international agreements.” It further explains, however, that “*Federal financial assistance* awards are generally not subject to international trade agreements because these international obligations only apply to direct federal *procurement* activities by signatories to such agreements” (emphasis added). The FAR addresses how international trade agreements implemented by the TAA apply to direct Federal procurement activities of the U.S. at FAR subpart 25.4. See also FAR 25.1101, 25.1103, and 52.225–5. The Fact Sheet also provides general information on how the TAA applies to direct Federal procurement activities.

In the case of Federal financial assistance, the Fact Sheet also recognizes that “a number of [U.S.] States have opted to obligate their procurement activities to the terms of one or more international trade agreements, and as such, are included in schedules to the international trade agreements.” The Made in America Office explains in the Fact Sheet that Federal “agencies may propose waivers

in the public interest to allow State entities to comply with their international trade obligations.” For additional information, the Fact Sheet also suggests consulting with “the State in question or the [Federal] agency providing the funds.”

For States with international trade obligations, which are the recipients of Federal funds, OMB notes that the head of a Federal agency that applies a BABA preference to Federal awards may propose to waive BABA requirements by following the procedures in § 184.7 of the revised guidance in part 184. See also BABA 70914(b) (authorizing “the head of a Federal agency that applies a domestic content procurement preference” to issues waivers). The initial guidance in Memorandum M–22–11 provides additional information on this topic. Waivers may also be proposed in other circumstances, such as if items critical to infrastructure projects are not produced in the U.S. in sufficient and reasonably available quantities or of a satisfactory quality.

The IJA recognizes that public interest waivers are an appropriate mechanism to allow Federal financial assistance recipients to meet obligations under international agreements. Section 70937(c)(2)(C) of IJA recognizes that public interest waivers may be justified to allow recipients to satisfy “potential obligations under international agreements.” That section applies to “a request to waive a Buy American law,” which is defined broadly at section 70932(1) of IJA to include “any law . . . relating to Federal contracts, grants, or financial assistance that requires or provides a preference for the purchase or use of goods, products, or materials mined, produced, or manufactured in the United States,” which includes the BABA preference.

OMB also observes that, in the case of Federal financial assistance under BABA, only Federal agencies that directly apply the BABA preference to Federal awards are authorized to issue waivers—not OMB directly on behalf of those agencies. BABA 70914(b). This waiver authority differs from the waiver authority under the TAA, which authorizes the “President [to] waive, in whole or in part, . . . the application of any law, regulation, procedure, or practice regarding Government procurement.” 19 U.S.C. 2511(a). The FAR explains that the President has delegated this waiver authority for direct Federal procurement activities to the U.S. Trade Representative, which has waived the BAA statute for eligible products. See FAR 25.402. By contrast, in the context of Federal financial assistance under BABA, it is the

responsibility of the head of a Federal agency that directly applies the BABA preference to Federal awards to provide waivers. BABA 70914(b).

OMB may consider issuing further guidance on this topic in the future, but for now believes that the waiver process remains an appropriate mechanism—which is consistent with congressional intent in BABA and related sections of the IJA—to allow recipients to satisfy international trade obligations, where applicable.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14094 (Modernizing Regulatory Review)

Executive Orders (E.O.s) 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The OMB Guidance for Grants and Agreements published in subtitle A of 2 CFR is guidance to Federal agencies and not regulation. 2 CFR 1.100(b). OMB has thus determined that the revision of 2 CFR is not a significant regulatory action under E.O. 12866, as amended.

Regulatory Flexibility Act

This revised guidance has been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) (RFA). The RFA only applies to a final rule promulgated under 5 U.S.C. 553, after being required by that section or any other law to publish a general notice of proposed rulemaking. The rulemaking requirements at 5 U.S.C. 553 do not apply to guidance on grants.

Even if this guidance were subject to the RFA, courts have explained that the requirement under the RFA to analyze effects on small entities only applies to direct effects. Small entities that may be impacted indirectly, but not directly, are not subject to analysis under the RFA. See *Nat’l Women, Infants, & Child. Grocers Ass’n v. Food & Nutrition Serv.*, 416 F. Supp. 2d 92, 109–10 (D.D.C. 2006). The revised guidance does not, in and of itself, directly impact small entities. Rather, as explained throughout this document, the new part 184 is directed toward Federal agencies, providing them with coordinating guidance on implementing BABA when obligating Federal awards for

¹ <https://www.madeinamerica.gov/media/documents/buy-american-vs-buy-america-fact-sheet.pdf>.

infrastructure. Under BABA, individual Federal agencies are directly responsible for implementing the statutory Buy America preference. *See* BABA 70914(a). Individual Federal agencies are also authorized to issue waivers of the Buy America preference. *See* BABA 70914(b). OMB does not have direct authority to do either under BABA. In this case, small entities that could be impacted by OMB's revised guidance will only be impacted indirectly by agency-specific implementation of the requirement under BABA 70914(a). Federal agencies retain considerable flexibility regarding the manner of implementing BABA section 70914(a), including the authority to issue public interest waivers under section 70914(b). Therefore, although this guidance is exempt from the requirements of the RFA, OMB certifies that it will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This revised guidance would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This revised guidance would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$168 million or more in any one year (2 U.S.C. 1532). In addition, the definition of “Federal Mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. Federal financial assistance programs for infrastructure generally permit this type of flexibility.

Executive Order 13132 (Federalism Assessment)

This revised guidance has been analyzed in accordance with the principles and criteria contained in E.O. 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999). OMB has determined that this revised guidance would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The Buy America preference established in BABA is inherently national in scope and significance. Regardless, in accordance with section 4(d) of E.O. 13132, OMB, through the Made in America Office, has, to the extent practicable, consulted with appropriate State and local officials that may be affected by Federal agencies' implementation of OMB's revised guidance. OMB weighed those

interests carefully in finalizing its revisions to the guidance, which balance the State interests with the need to provide Federal agencies with consistent, uniform, efficient, and transparent guidance on the Buy America preference in BABA.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This guidance does not contain a requirement for information collection and thus the Paperwork Reduction Act does not apply.

Executive Order 13175 (Tribal Consultation)

OMB has analyzed this revised guidance in accordance with the principles and criteria contained in E.O. 13175, “Consultation and Coordination with Indian Tribal Governments,” 65 FR 67249 (Nov. 9, 2000). The new part 184 provides revised guidance to Federal agencies on applying the Buy America preference required under section 70914 of BABA to Federal awards for infrastructure. Through Memorandum M–22–11, OMB explained that, before applying a Buy America preference to a covered program that will affect Tribal communities, Federal agencies should follow the consultation policies established through E.O. 13175, and consistent with policies set forth in the Presidential Memorandum of January 26, 2021, on Tribal Consultation and Strengthening Nation-Nation Relationships. Several agencies have also proposed and issued Tribal adjustment period waivers to ease transition for Tribal communities to the new rules and processes under BABA when receiving Federal awards. To the extent that the Buy America preference established under section 70914 of BABA is determined to preempt Tribal law, the statutory preemption issue should have been a subject of the consultations required under Memorandum M–22–11. To the extent that any such consultations have not yet occurred, Federal agencies should commence consultations without delay. Federal agencies may again consider proposing brief, time limited waivers to allow Tribal communities to transition to the revised guidance reflected in the new part 184 provisions.

Congressional Notification

OMB has concluded that the final guidance is not a “rule” within the meaning of 5 U.S.C. 804(3).

Nevertheless, out of an abundance of caution, OMB is submitting it to each House of the Congress and to the Comptroller General consistent with the procedures set forth in 5 U.S.C. 801(a).

List of Subjects in 2 CFR Parts 184 and 200

Administration of Federal financial assistance, Administrative practice and procedure, Federal financial assistance programs.

For the reasons stated in the preamble, the Office of Management and Budget amends 2 CFR subtitle A as follows:

- 1. Add part 184, consisting of §§ 184.1 through 184.8, to read as follows:

PART 184—BUY AMERICA PREFERENCES FOR INFRASTRUCTURE PROJECTS

Sec.

- 184.1 Purpose and policy.
- 184.2 Applicability, effective date, and severability.
- 184.3 Definitions.
- 184.4 Applying the Buy America Preference to a Federal award.
- 184.5 Determining the cost of components for manufactured products.
- 184.6 Construction material standards.
- 184.7 Federal awarding agency's issuance of a Buy America Preference waiver.
- 184.8 Exemptions to the Buy America Preference.

Authority: Pub. L. 117–58, 135 Stat. 429.

§ 184.1 Purpose and policy.

(a) *Purpose.* This part provides guidance to Federal awarding agencies on the implementation of the Buy America Preference applicable to Federal financial assistance set forth in part I of subtitle A, Buy America Sourcing Preferences, of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act (Pub. L. 117–58) at division G, title IX, subtitle A, part I, sections 70911 through 70917.

(b) *Policy.* The head of each Federal agency must ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States. *See* section 70914(a) of the Build America Buy America Act.

§ 184.2 Applicability, effective date, and severability.

(a) *Non-applicability of this part to existing Buy America Preferences.* This part does not apply to a Buy America Preference meeting or exceeding the requirements of section 70914 of the

Build America, Buy America Act applied by a Federal Awarding Agency to Federal awards for infrastructure projects before November 15, 2021.

(b) *Effective date of this part.* The effective date of this part is October 23, 2023. Except as provided in paragraph (c) of this section, this part applies to Federal awards obligated on or after its effective date. Awards obligated on or after May 14, 2022, the effective date of the Build America, Buy America Act, and before the effective date of this part, are instead subject to OMB Memorandum M–22–11.

(c) *Modified effective date of this part for certain infrastructure projects.* If an infrastructure project that has previously received a Federal award obligated on or after May 14, 2022, but before the effective date of this part receives an additional Federal award obligated within one year of the effective date of this part, the additional Federal award is subject to OMB Memorandum M–22–11. However, if significant design or planning changes are made to the infrastructure project, the Federal awarding agency may apply this part to the additional Federal award. Federal awards for an infrastructure project obligated after one year from the effective date of this part are subject to this part, regardless of whether this part applied to previous awards for the project.

(d) *Severability.* The provisions of this part are separate and severable from one another. OMB intends that if a provision of this part is held to be invalid or unenforceable as applied to a particular person or circumstance, the provision should be construed so as to continue to give the maximum effect permitted by law as applied to other persons not similarly situated or to dissimilar circumstances. If any provision is determined to be wholly invalid and unenforceable, it should be severed from the remaining provisions of this part, which should remain in effect.

§ 184.3 Definitions.

Acronyms used in this part have the same meaning as provided in 2 CFR 200.0. Terms not defined in this part have the same meaning as provided in 2 CFR 200.1. As used in this part:

Build America, Buy America Act means division G, title IX, subtitle A, parts I–II, sections 70901 through 70927 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58).

Buy America Preference means the “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds

made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

Component means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: a manufactured product; or, where applicable, an iron or steel product.

Construction materials means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

(1) The listed items are:

(i) Non-ferrous metals;

(ii) Plastic and polymer-based

products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);

(iii) Glass (including optic glass);

(iv) Fiber optic cable (including drop cable);

(v) Optical fiber;

(vi) Lumber;

(vii) Engineered wood; and

(viii) Drywall.

(2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

Infrastructure project means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. *See also* paragraphs (c) and (d) of § 184.4.

Iron or steel products means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

Manufactured products means:

(1) Articles, materials, or supplies that have been:

(i) Processed into a specific form and shape; or

(ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

(2) If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under § 184.4(e) and the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under

§ 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.

Manufacturer means the entity that performs the final manufacturing process that produces a manufactured product.

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.

Produced in the United States means:

(1) In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) In the case of manufactured products:

(i) The product was manufactured in the United States; and

(ii) The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. *See* § 184.2(a). The costs of components of a manufactured product are determined according to § 184.5.

(3) In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. *See* § 184.6 for more information on the meaning of “all manufacturing processes” for specific construction materials.

Section 70917(c) materials means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. *See* section 70917(c) of the Build America, Buy America Act.

§ 184.4 Applying the Buy America Preference to a Federal award.

(a) *Applicability of Buy America Preference to infrastructure projects.* The Buy America Preference applies to Federal awards where funds are appropriated or otherwise made available for infrastructure projects in the United States, regardless of whether infrastructure is the primary purpose of the Federal award.

(b) *Including the Buy America Preference in Federal awards.* All Federal awards with infrastructure projects must include the Buy America Preference in the terms and conditions. The Buy America Preference must be included in all subawards, contracts, and purchase orders for the work performed, or products supplied under the Federal award. The terms and conditions of a Federal award flow down to subawards to subrecipients unless a particular section of the terms and conditions of the Federal award specifically indicate otherwise.

(c) *Infrastructure in general.* Infrastructure encompasses public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

(d) *Interpretation of infrastructure.* The Federal awarding agency should interpret the term “infrastructure” broadly and consider the description provided in paragraph (c) of this section as illustrative and not exhaustive. When determining if a particular project of a type not listed in the description in paragraph (c) constitutes “infrastructure,” the Federal awarding agency should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public.

(e) *Categorization of articles, materials, and supplies.* (1) An article, material, or supply should only be classified into one of the following categories:

- (i) Iron or steel products;
- (ii) Manufactured products;
- (iii) Construction materials; or
- (iv) Section 70917(c) materials.

(2) An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in paragraph (e)(1) of this section. The classification of an article, material, or supply as falling into one of the

categories listed in paragraph (e)(1) must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

(f) *Application of the Buy America Preference by category.* An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

§ 184.5 Determining the cost of components for manufactured products.

In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

(a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (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

(b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a) of this section, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

§ 184.6 Construction material standards.

(a) The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.”

(1) *Non-ferrous metals.* All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

(2) *Plastic and polymer-based products.* All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

(3) *Glass.* All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

(4) *Fiber optic cable (including drop cable).* All manufacturing processes,

from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

(5) *Optical fiber.* All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

(6) *Lumber.* All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

(7) *Drywall.* All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

(8) *Engineered wood.* All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

(b) Except as specifically provided, only a single standard under paragraph (a) of this section should be applied to a single construction material.

§ 184.7 Federal awarding agency's issuance of a Buy America Preference waiver.

(a) *Justification of waivers.* A Federal awarding agency may waive the application of the Buy America Preference in any case in which it finds that:

(1) Applying the Buy America Preference would be inconsistent with the public interest (a “public interest waiver”);

(2) Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or

(3) The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall infrastructure project by more than 25 percent (an “unreasonable cost waiver”).

(b) *Requesting a waiver.* Recipients may request waivers from a Federal awarding agency if the recipient reasonably believes a waiver is justified under paragraph (a) of this section. A request from a recipient to waive the application of the Buy America Preference must be provided to the Federal awarding agency in writing. Federal awarding agencies must provide waiver request submission instructions

and guidance on the format, contents, and supporting materials required for waiver requests from recipients.

(c) *Before issuing a proposed waiver.* Before issuing a proposed waiver, the Federal awarding agency must prepare a detailed written explanation for the proposed determination to issue the waiver based on a justification listed under paragraph (a) of this section, including for waivers requested by a recipient.

(d) *Before issuing a final waiver.* Before issuing a final waiver, the Federal awarding agency must:

(1) Make the proposed waiver and the detailed written explanation publicly available in an easily accessible location on a website designated by the Federal awarding agency and the Office of Management and Budget;

(2) Except as provided in paragraph (e) of this section, provide a period of not less than 15 calendar days for public comment on the proposed waiver; and

(3) Unless the Director of OMB provides otherwise, submit the waiver determination to the Made in America Office in OMB for final review pursuant to Executive Order 14005 and section 70923(b) of the Build America, Buy America Act.

(e) *Waivers of general applicability.* Waivers of general applicability mean waivers that apply generally across multiple Federal awards. A Federal agency must provide a period of not less than 30 days for public comment on a proposal to modify or renew a waiver of general applicability.

§184.8 Exemptions to the Buy America Preference.

(a) The Buy America Preference does not apply to expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 16 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.

(b) “Pre and post disaster or emergency response expenditures” consist of expenditures for financial assistance that are:

(1) Authorized by statutes other than the Stafford Act, 42 U.S.C. 5121 *et seq.*; and

(2) Made in anticipation of or response to an event or events that

qualify as an “emergency” or “major disaster” within the meaning of the Stafford Act, 42 U.S.C. 5122(1), (2).

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 2. The authority citation for part 200 continues to read as follows:

Authority: 31 U.S.C. 503.

■ 3. Amend § 200.322 by adding paragraph (c) to read as follows:

§ 200.322 Domestic preferences for procurements.

* * * * *

(c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

Deidre A. Harrison,

Deputy Controller, performing the delegated duties of the Controller Office of Federal Financial Management.

[FR Doc. 2023–17724 Filed 8–22–23; 8:45 am]

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

October 25, 2023

M-24-02

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Shalanda D. Young 
SUBJECT: Implementation Guidance on Application of Buy America Preference in
Federal Financial Assistance Programs for Infrastructure

This memorandum provides supplemental implementation guidance to Federal agencies on: (1) the application of a Buy America preference¹ to Federal financial assistance programs for infrastructure; and (2) the process for waiving such a Buy America preference — including the circumstances under which waivers may be justified as consistent with applicable law and policy.² This memorandum rescinds and replaces Office of Management and Budget (OMB) Memorandum M-22-11. In addition, this memorandum removes direct conflicts between the earlier Memorandum M-22-11 and subsequent guidance issued by OMB in part 184 of Title 2 of the Code of Federal Regulations (“CFR”).³ This memorandum also provides updated guidance on a limited number of topics — including the waiver process — which modifies earlier guidance provided by OMB in Memorandum M-22-11. To the extent that any guidance provided in this memorandum conflicts with guidance in 2 CFR part 184, the guidance in part 184 prevails.

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“BABA”). Pub. L. No. 117-58, §§ 70901-27. BABA strengthens Buy America preferences associated with Federal financial assistance for infrastructure and will bolster America’s industrial base, protect national security, and support high-paying jobs. BABA requires that the head of each covered Federal agency⁴ must ensure that none of the funds made available for a Federal financial assistance program for infrastructure are obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.⁵

BABA affirms, consistent with Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America’s Workers* (“the Executive Order”), this Administration’s priority to

¹ 2 CFR 184.3.

² 2 CFR 184.7; Executive Order 14005, “Ensuring the Future Is Made in All of America by All of America’s Workers,” 86 FR 7475 (Jan. 28, 2021).

³ 88 FR 57750 (Aug. 23, 2023).

⁴ For the purposes of this guidance, the terms “Federal agency” and “agency” mean any authority of the United States that is an “agency” (as defined in section 3502 of title 44, United States Code), other than an independent regulatory agency (as defined in that section). IIJA, § 70912(3).

⁵ IIJA, § 70914(a).

“use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States.”⁶

On April 18, 2022, OMB issued Memorandum M-22-11, “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.” Memorandum M-22-11 provided initial implementation guidance to Federal agencies on the application of the Buy America preference to Federal financial assistance programs for infrastructure, the Buy America waiver process, and other topics.

On August 23, 2023, OMB issued a Notification of Final Guidance revising title 2 of the Code of Regulations (“CFR”) to add a new part 184 and revise section 200.322.⁷ Part 184 provides guidance to Federal agencies on how to apply the “Buy America” preference set forth in BABA to Federal awards for infrastructure projects.⁸ The revised section 200.322 clarifies existing provisions within part 200 on domestic preferences for procurements made under Federal financial assistance awards, and specifies that Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.⁹ OMB issues this memorandum to provide Federal agencies with supplemental guidance on implementing BABA and 2 CFR part 184.

I. Rescission of OMB Memorandum M-22-11

This memorandum rescinds and replaces OMB Memorandum M-22-11. OMB’s primary guidance related to implementation of BABA is contained in 2 CFR part 184. This memorandum summarizes certain aspects of 2 CFR part 184, and provides supplemental guidance for infrastructure projects subject to BABA. Federal agencies should refer to 2 CFR 184.2 for the effective date and applicability of part 184.¹⁰

II. Scope

In 2 CFR part 184, OMB identifies a limited set of infrastructure projects that will remain subject to certain requirements established in Memorandum M-22-11. See 2 CFR 184.2(b)-(c). For such projects, refer to Appendix II for applicable requirements originally contained in Memorandum M-22-11.

This memorandum modifies the guidance in Section VII of OMB Memorandum M-22-11 on “Issuing Buy America Waivers” for all infrastructure projects, including both projects subject to part 184 of 2 CFR and projects subject to the requirements of the rescinded OMB Memorandum M-22-11. Thus, Section VI of this Memorandum, entitled “Issuing Buy America Waivers,” is the effective OMB guidance on waivers for all infrastructure projects subject to BABA.

III. Summary of 2 CFR part 184

⁶ Exec. Order No. 14005 (see footnote 1).

⁷ See 88 FR 57750 (Aug. 23, 2023).

⁸ IIA § 70912(a)(5)(7).

⁹ See 88 FR 57750 (Aug. 23, 2023).

¹⁰ 2 CFR 184.2(b).

2 CFR part 184 includes definitions for key terms, including iron or steel products, manufactured products, construction materials, and materials identified in section 70917(c) of BABA (section 70917(c) materials). These definitions at 2 CFR 184.3 provide a common system for Federal agencies to distinguish between the product categories established under the statutory text in BABA.

2 CFR 184.4(c)-(d) provides guidance on the meaning of infrastructure under BABA. Section 184.4(c) explains that “infrastructure” encompasses public infrastructure projects in the United States. The term includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

OMB also provides a definition of “infrastructure project” at 2 CFR 184.3. Section 184.4(d) explains that Federal agencies should interpret the term “infrastructure” broadly and consider the description provided in section 184.4(c) as illustrative and not exhaustive. Section 184.4(d) also explains that, when determining if a particular construction project of a type not listed in section 184.4(c) constitutes “infrastructure,” agencies should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public. Through this memorandum, OMB notes that projects with the former “public” qualities have greater indicia (or distinguishing features) of “infrastructure,” while projects with the latter “private” quality have fewer. As a result, projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute a public infrastructure project for purposes of BABA. Federal agencies are strongly encouraged to consult with OMB when making such determinations or if they are uncertain about the applicability of this guidance to any particular infrastructure program.

2 CFR part 184 also includes —

- Information on the applicability and effective date of part 184 (2 CFR 184.2);
- Information on the non-applicability of part 184 to certain existing Buy America preferences implemented by Federal agencies (2 CFR 184.2(a));
- Guidance on the applicability of the Buy America preference to infrastructure projects and including the preference in Federal awards (2 CFR 184.4(a)-(b));
- Guidance on categorizing articles, materials, and supplies into the appropriate category (2 CFR 184.4(e));
- Guidance on applying the Buy America preference by category (2 CFR 184.4(f));
- Guidance for determining the cost of components of manufactured products (2 CFR 184.5);
- Standards that define “all manufacturing processes” in the case of construction materials (2 CFR 184.6);

- Guidance on proposing and issuing Buy America waivers (2 CFR 184.7);
- Guidance on how Federal agencies should allow recipients to request waivers (2 CFR 184.7); and
- Guidance on exemptions to the Buy America preference (2 CFR 184.8).

IV. Guidance on Applicability to Federal Financial Assistance Programs

The Buy America preference under BABA and 2 CFR part 184 applies to all Federal financial assistance as defined in 2 CFR 200.1 or successor regulations¹¹ — whether or not funded through IIJA — where funds are appropriated or otherwise made available and used for a project for infrastructure. See 2 CFR 184.2(a), 200.1, and 200.322(c). For the purposes of this memorandum, Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, cooperative agreements, non-cash contributions or donations of property, direct assistance, loans, loan guarantees, and other types of financial assistance. The term “non-Federal entity” includes States, local governments, territories, Indian tribes, Institutions of Higher Education (IHE), and nonprofit organizations.¹²

For purposes of this guidance, for-profit organizations are not considered non-Federal entities. However, this guidance does not alter legal authorities that agencies may have to include the Buy America preference, or other domestic content requirements, in awards of Federal financial assistance issued to for-profit organizations. Federal agencies may consider applying this guidance to for-profit entities consistent with their legal authorities. For example, 2 CFR 200.101(a)(2) allows Federal agencies to apply certain subparts of part 200 to for-profit entities. See also the discussion of for-profit entities in the preamble for 2 CFR part 184; and discussion below in this memorandum on requirements that “flow down” to “subrecipients.”

A Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

A Buy America preference only applies to the iron and steel, manufactured products, and construction materials incorporated into an infrastructure project receiving a Federal award. If an agency has determined that no funds from a particular project receiving a Federal award will be used for infrastructure, a Buy America preference does not apply to that project. A Buy America preference does not apply to non-infrastructure components or expenditures under an infrastructure project receiving a Federal award.

A Buy America preference applies to *an entire infrastructure project*, even if it is funded by both Federal and non-Federal funds under one or more awards. In other words, if an

¹¹ IIJA § 70912(4)(A)

¹² See 2 C.F.R. § 200.1.

infrastructure project receives a Federal award, the Buy America preferences applies to both the Federal funds and non-Federal funds used for the infrastructure project.

Part 184 clarifies that it does not apply to a Buy America preference meeting or exceeding the requirements of section 70914 of BABA applied by a Federal agency to Federal awards for infrastructure projects before November 15, 2021 (when IIJA was signed into law). Federal agencies must make necessary changes to come into compliance with BABA's requirements, unless such agencies have policies and provisions that already meet or exceed the standards required by BABA. For example, a program in which the standards for iron and steel already meet the standards in BABA may nevertheless be required to adopt new standards for manufactured products and construction materials. Maintaining current policies where appropriate avoids unnecessary disruption to programs, or elements of programs, that already meet or exceed BABA requirements. For additional information, see 2 CFR 184.2(a) and associated discussion of that section in the preamble to the final guidance.¹³

Unless the Federal award specifically indicates otherwise, subawards should conform to the terms and conditions of the Federal award from which they flow.¹⁴ For example, if a Federal agency obligates an award to a State government as a direct recipient, and the State issues a subaward to a for-profit entity to carry out the project as a subrecipient, then the Buy America preference requirements included in the Federal award would flow down to the for-profit entity.

Through Memorandum M-22-11, OMB explained that, before applying a Buy America preference to a covered program that will affect Tribal communities, Federal agencies should follow the consultation policies established through Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and consistent with policies set forth in the Presidential Memorandum of January 26, 2021, on Tribal Consultation and Strengthening Nation-to-Nation Relationships. Federal agencies should continue to strengthen Nation-to-Nation relationships through regular and meaningful consultation and collaboration with Tribal communities in accordance with the Presidential Memorandum of January 26, 2021 and the Presidential Memorandum of November 30, 2022, on Uniform Standards for Tribal Consultation.

Agencies with questions regarding the application of a Buy America preference to agency programs, including questions about the possible use of waivers, are advised to reach out to OMB's Made in America Office ("MIAO") for technical assistance and advice.

V. Consistency with International Agreements

Pursuant to Section 70914(e) of BABA, this guidance must be applied in a manner consistent with the obligations of the United States under international agreements. Federal financial assistance awards are generally not subject to international trade agreements because these international obligations only apply to direct Federal procurement activities by signatories to such agreements. The Federal Acquisition Regulation ("FAR") addresses how international trade agreements implemented by the Trade Agreements Act apply to direct Federal procurement activities of the U.S. at FAR subpart 25.4.¹⁵ In the case of Federal financial assistance, a number of

¹³ 88 FR 57750 (Aug. 23, 2023).

¹⁴ 2 CFR 200.101(b)(2).

¹⁵ See also FAR 25.1101, 25.1103, and 52.225-5.

U.S. States have opted to obligate their procurement activities to the terms of one or more international trade agreements and, as such, are included in schedules to the international trade agreements. If a recipient is a State that has assumed procurement obligations pursuant to the Government Procurement Agreement or any other trade agreement, a Federal agency that applies a BABA preference to Federal awards may propose to waive BABA requirements in the public interest to allow a State to comply with its obligations. Federal agencies should follow the procedures in Section 184.7 of the OMB guidance in 2 CFR part 184 and relevant supplemental guidance in this memorandum. For additional information, interested entities may also consult with the State in question or the Federal agency providing the funds.

VI. Issuing Buy America Waivers

Pursuant to Section 70914(b) of BABA and 2 CFR 184.7, the head of a Federal agency may waive the application of a Buy America preference under an infrastructure program in any case in which the head of the Federal agency finds that —

- Applying the Buy America preference would be inconsistent with the public interest (a “public interest waiver”);
- Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or
- The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”).

Federal agencies are responsible for processing and approving all waivers, including waivers requested by recipients and on behalf of subrecipients consistent with the procedures in 2 CFR 184.7. Every waiver must be reviewed by the MIAO. To the greatest extent practicable, waivers should be targeted to specific products and projects.¹⁶

Before issuing a final waiver, the Federal awarding agency must make the proposed waiver and the detailed written explanation publicly available in an easily accessible location on a website designated by the Federal awarding agency and OMB. The Federal agency must also provide a period of not less than 15 calendar days for public comment on the proposed waiver.¹⁷ General applicability waivers are subject to a minimum 30-day public comment period when reviewed for modification or renewal.¹⁸ The MIAO may request that Federal agencies use a 30-day comment period for other waivers on a case-by-case basis when circumstances warrant — for example when a waiver covers items of special importance to American supply chains (such as those identified in section 3(b) of the Executive Order 13953) or involves a substantial amount of Federal funding.

Agencies are required to provide the website address where they will be posting proposed waivers for public comment to OMB at MBX.OMB.MadeInAmerica@omb.eop.gov. Pursuant to sections 70914(c) and 70937 of IIJA, the waiver must also be cross-posted to a

¹⁶ See Section VI of this guidance for information on waiver principles and criteria.

¹⁷ 2 CFR part 184.7(d).

¹⁸ IIJA § 70914(d)(2)(A)(ii). See Section VII of this guidance for information on general applicability waivers.

centralized waiver transparency website managed by the General Services Administration (GSA), [BuyAmerican.gov](https://www.buyamerican.gov),¹⁹ in addition to the agency website. To minimize duplication and promote efficiency, MIAO and GSA will continue to coordinate with agencies on the expansion of the existing website's functionality to display waivers for Federal financial assistance and provide further instructions to agencies as necessary.

Federal agencies are responsible for performing due diligence, including market research, and approving or rejecting waivers consistent with BABA, 2 CFR part 184, this guidance, and any other applicable Buy America laws.

Federal agencies should notify the MIAO, and are encouraged to consult with the MIAO when possible, in advance of posting an award- or project-level proposed waiver for public comment. However, Federal agencies must consult with the MIAO for proposed waivers with broader applicability (such as a general applicability waiver) before posting them for public comment. The purpose of the consultation is to identify any opportunities to structure the waiver in order to maximize the use of goods, products, and materials produced in the United States to the greatest extent possible consistent with law. Federal agencies should send proposed waivers for review to MBX.OMB.MIAwaivers@omb.eop.gov.

Federal agencies must submit to the MIAO a draft of the waiver for review after the public comment period has concluded. MIAO will review the draft waiver to determine if it is consistent with applicable law and policy,²⁰ and will notify the Federal agency of its determination.

All waiver requests must include a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States²¹ and a certification that there was a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, or nonproprietary communications with potential suppliers.²² In addition, at a minimum and to the greatest extent practicable, each proposed or draft final waiver submitted to the MIAO should include the following information, as applicable:

- Waiver type (nonavailability, unreasonable cost, or public interest).
- Recipient name and Unique Entity Identifier (UEI).
- Federal awarding agency organizational information (e.g., Common Government-wide Accounting Classification (CGAC) Agency Code).
- Financial assistance listing name and number.
- Federal financial assistance program name.
- Federal Award Identification Number (FAIN) (if available or applicable).
- Federal financial assistance funding amount.
- Total estimated infrastructure expenditures, including all Federal and non-Federal funds (if applicable).
- Infrastructure project description and location (to the extent known).

¹⁹ [BuyAmerican.gov](https://www.buyamerican.gov) redirects to [MadeInAmerica.gov](https://www.madeinamerica.gov).

²⁰ Executive Order 14005, § 4(c).

²¹ IIJA, § 70937(c)(2)(A).

²² IIJA, § 70937(c)(2)(D).

- In the case of general applicability waivers, a description of the relevant Federal program(s)—including information on the size and scale of the program(s), an estimate of the dollar amount of Federal financial assistance that would be subject to the waiver, and an estimate of how many infrastructure projects would be subject to the waiver.
- List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from Buy America requirements, including name, cost, country(ies) of origin (if known), and relevant Product and Service Code (PSC) and North American Industry Classification System (NAICS) code for each.
- A description of efforts made (e.g., market research, industry outreach, etc.) by the Federal awarding agency and, in the case of a project or award specific waiver, by the recipient, in an attempt to avoid the need for a waiver. Such a description may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
- Market research, where applicable, should include relevant details, including who conducted the market research, when it was conducted, sources that were used, and the methods used to conduct the research.
- Anticipated impact if no waiver is issued.
- For final waivers, any relevant comments received through the public comment period, and the agency's response to those comments.

The purpose of the information is to demonstrate the agency's due diligence, and provide the MIAO with sufficient information to determine whether the proposed waiver is consistent with law and policy. For proposed waivers, agencies should also ensure that sufficient information is available for public review. Information provided for public review should help interested manufacturers gauge the demand for products for which agencies are considering waiving a Buy America preference.

To avoid a need for duplicative waiver requests from entities that receive funding for one infrastructure project through multiple Federal agencies, the Federal agency contributing the greatest amount of Federal funds for the project may be considered the Cognizant Agency for Made in America ("Cognizant Agency") and may take responsibility for coordinating with the other Federal awarding agencies. Such coordination has the benefit of providing uniform waiver criteria and adjudication processes, minimizing duplicative efforts among Federal agencies, and reducing burdens on recipients. Based on the statutory waiver authority at section 70914(b) of BABA, each Federal agency waiving a BABA preference must make their own waiver determination. In other words, a Cognizant Agency cannot independently issue a waiver that applies to other agencies, but other agencies may rely on the work performed by the Cognizant Agency when proposing and issuing waivers for a single infrastructure project. When appropriate, agencies may consider proposing a joint waiver including two or more agencies relying on the work performed by the Cognizant Agency. Any Federal agency that did not jointly issue the proposed and final waivers will need an individual waiver, but it may also potentially rely on work performed by the Cognizant Agency when appropriate under the circumstances. The Cognizant Agency is responsible for consulting with the other Federal agencies, publicizing the proposed joint waiver, and submitting the proposed joint waiver for review to the MIAO.

a. Waiver Principles and Criteria

To ensure they are scrupulously monitoring, enforcing, and complying with applicable Buy America Laws and minimizing the use of waivers,²³ agencies must apply consistent criteria to determine whether to grant a waiver in a given circumstance. Agencies should establish policies and practices to ensure consistency with this guidance.

Agencies may reject or grant waivers in whole or in part. To the greatest extent practicable, waivers should be issued at the project level and be product-specific. As appropriate, a project-level waiver may be further narrowed to apply only to a single product or product type on that project. Overly broad waivers undermine market signals designed to boost domestic supply chains, particularly for key articles, materials and supplies in critical supply chains (i.e., critical supply chains identified in Executive Order 14017, *America's Supply Chains*). When necessary, agencies may consider issuing a waiver that has applicability beyond a single project; however, agencies should always issue, construe, and apply waivers to ensure the maximum utilization of goods, products, and materials produced in the United States, consistent with applicable law.

Federal agencies may consult with the MIAO when establishing or modifying criteria for granting waivers. They may also work within the Made in America Council,²⁴ a practice that will help to foster consistency across agencies to the greatest extent practical and appropriate. Federal agencies should use the following principles before issuing a waiver of any type —

- **Time-limited:** In certain limited circumstances, a Federal agency may determine that a waiver should be constrained principally by a length of time, or phased-out over time, rather than by the specific projects to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” from domestic sources is widely used in projects funded by a particular program’s awards. When issuing such a waiver, the agency should identify an appropriate, definite time frame (e.g., no more than one to two years) designed to ensure that, as domestic supply becomes available, domestic producers will have prompt access to the market created by the program.
- **Targeted:** Waivers that are not limited to particular projects should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) necessary. Waivers that are overly broad will tend to undermine domestic preference policies. Broader waivers will receive greater scrutiny from the MIAO.
- **Conditional:** Federal agencies are encouraged to issue waivers with specific conditions that support the policies of BABA and the Executive Order.

These principles and criteria should be viewed as minimum requirements for the use of

²³ IIJA § 70933(2).

²⁴ “Launching a New Made in America Council,” OMB, Briefing Room, Blogs (Jan. 19, 2022).

waivers by Federal agencies.²⁵ The MIAO expects all general applicability waivers to be appropriately targeted and time-limited. For example, agencies may consider phasing-out a waiver over time to provide a phased application of the Buy America preference requirements for a specific Federal program. Agencies also may consider limiting the scope of the waiver to only specific Buy America preference requirements (such as proposing to waive requirements for a limited set of construction materials). Project-level and award-level waivers should also be narrowly targeted, as appropriate.

Federal agencies should propose waivers to apply prospectively to future expenditures incurred after the effective date of the final waiver. While the BABA requirements apply when Federal funds are obligated²⁶ (when a Federal award is made), the MIAO recognizes that certain circumstances may justify a waiver of those domestic content requirements even after an award has been made. While waivers can be granted after a Federal agency makes an award, the waiver cannot apply to expenditures already incurred under the Federal award for items subject to a Buy America preference before the effective date of the waiver.

Non-availability Waivers

Before granting a non-availability waiver, agencies should consider whether the recipient has performed thorough market research, which may be accomplished with assistance from the agency, and adequately considered, where appropriate, qualifying alternate items, products, or materials. Waivers should describe the market research activities and methods to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources. Agencies are encouraged to engage with the Made in America Council to develop resource lists for common items, goods, or materials.

Unreasonable Cost Waivers

An unreasonable cost waiver is available if the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. Before granting an unreasonable cost waiver, to the extent permitted by law, agencies should ensure the recipient has provided adequate documentation that no domestic alternatives are available within this cost parameter. Agencies may assist recipients in gathering documentation.

For requests citing unreasonable cost as the statutory basis of the waiver, the waiver justification must include a comparison of the overall cost of the project with domestic products to the overall cost of the project with foreign-origin products, pursuant to the requirements of the applicable Made in America law.²⁷ Publicly available cost comparison data may be provided in lieu of proprietary pricing information.²⁸ Unreasonable cost waivers should be no broader than necessary.

²⁵ See Section IV. of this guidance for agencies that have existing regulations or guidance.

²⁶ IIJA § 70914(a).

²⁷ IIJA, § 70937(c)(2)(B).

²⁸ IIJA, § 70937(c)(2)(B).

Before granting an unreasonable cost waiver, to the extent permitted by law, agencies should also assess whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products. More information on this topic is provided below in the discussion of public interest waivers.

Public Interest Waivers

A waiver in the public interest may be appropriate where an agency determines that other important policy goals cannot be achieved consistent with the Buy America requirements established by BABA and the proposed waiver would not meet the requirements for a non-availability or unreasonable cost waiver. Such waivers must be used judiciously and construed to ensure the maximum utilization of goods, products, and materials produced in the United States.²⁹ To the extent permitted by law, determination of public interest waivers must be made by the head of the agency with the authority over the Federal financial assistance award.³⁰

Public interest waivers may have a variety of bases. As with other waivers, they should be project-specific whenever possible, as what is in the public interest may vary depending upon the circumstances of the project, recipient, and specific items, products, or materials in question.

Federal agencies may wish to consider issuing a limited number of general applicability public interest waivers in the interest of efficiency and to ease burdens for recipients. The agency remains responsible for determining whether such a waiver is appropriate to apply to any given project; the MIAO will not review each application of such a waiver. The following are examples of types of public interest waivers an agency may consider proposing and issuing³¹ —

- ***De Minimis***: Ease of administration is important to reduce burden for recipients and agencies. Federal agencies may consider whether a general applicability public interest waiver should apply to infrastructure project purchases below a *de minimis* threshold. An agency may consider whether a public interest waiver should apply when necessary to ensure that recipients and Federal agencies make efficient use of limited resources, especially if the cost of processing the individualized waiver(s) would risk exceeding the value of the items waived. Agencies may consider adopting an agency-wide public interest waiver that sets a *de minimis* threshold, for example, of five (5) percent of applicable project costs up to a maximum of \$1,000,000, where applicable project costs are defined as material costs subject to the Buy America preference.
- **Small Grants**: Agencies may wish to consider whether it is in the public interest to waive application of a Buy America preference to awards at or below the Simplified Acquisition Threshold (SAT) that meet the following criteria: (1) the total Federal award does not exceed the SAT, currently set at \$250,000; and (2) the Federal award amount, inclusive of other funding sources for the infrastructure

²⁹ IIJA, § 70935(a).

³⁰ IIJA, § 70935(b).

³¹ The list is not exhaustive and no agency is required to issue the types of waivers noted as examples. As with other general applicability waivers, generally applicable public interest waivers must be reviewed at least every five years and more often as appropriate.

project, is not anticipated to exceed the SAT for the life of the Federal award. Federal agencies and the MIAO have found this type of waiver to be consistent with policy in some cases in the initial years after enactment of IIJA, but it may potentially be phased out over time as agencies develop more efficient award-level or project-level waiver review capabilities.

- **Minor Components:** Agencies may wish to consider whether it is in the public interest to allow minor deviations for miscellaneous minor components within iron and steel products. A general applicability, public interest, minor components waiver may allow non-domestically produced miscellaneous minor components comprising no more than five (5) percent of the total material cost of an otherwise domestically produced iron and steel product. This waiver type may not exempt an entire iron and steel product from the Buy America preference; the primary iron and steel components of the product must still be produced domestically. It would not be in the public interest to use a minor components waiver to exempt a whole product from the iron and steel requirements, or to allow the primary iron or steel components of the product to be produced other than domestically.
- **International Trade Obligations:** If a recipient is a State that has assumed procurement obligations pursuant to the Government Procurement Agreement or any other trade agreement, a waiver of a Made in America condition to ensure compliance with such obligations may be in the public interest.
- **Other Considerations:** A waiver may be in the public interest in one circumstance, but not in another, and considerations will depend upon the nature and amount of resources available to the recipient, the value of the items, goods, or materials in question, the potential domestic economic impacts, and other policy considerations, including sustainability, equity, accessibility, performance standards, and the domestic content (if any) of and conditions under which the non-qualifying good was produced.

All proposed waivers citing the public interest as the statutory basis must include a detailed written statement, which must address all appropriate factors, such as potential obligations under international agreements, justifying why the requested waiver is in the public interest.³²

Before granting a waiver in the public interest, to the extent permitted by law, agencies must assess whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products. As explained above, Federal agencies should also conduct a similar analysis for unreasonable cost waivers, but it is not needed for non-availability waivers. Agencies may consult with the International Trade Administration (ITA) in making this assessment if the granting agency deems such consultation to be helpful. The agency must integrate any findings from the assessment into its waiver determination as appropriate.³³ MIAO will work with ITA and agencies to develop standard processes to expedite this required assessment, such as by ensuring agencies know how to easily access lists of dumped or injuriously subsidized products. Agencies can contact the MIAO for more information on possible resources.

³² IIJA, § 70937(c)(2)(C).

³³ Executive Order, § 5.

b. General Applicability Waivers

The term “general applicability waiver” refers to a waiver that applies generally across multiple agency projects or awards. A general applicability waiver can be “product-specific” (e.g., applies only to a product or category of products) or “non-product specific” (e.g., applies to all “manufactured products”).

General applicability waivers should be issued only when necessary to advance an agency’s missions and goals, consistent with IIJA, the Executive Order, and this guidance. For example, an agency might issue a general applicability waiver for a product for which there are well-established domestic sourcing challenges. General applicability waivers will require appropriate justification from the Federal agency.

Except as provided below, Federal agencies must review general applicability waivers within five years of the date on which the waiver was issued. Agencies are encouraged to review general applicability waivers more frequently, when appropriate. In reviewing of any general applicability waiver, the head of a Federal agency, or their delegated authority, must —

(A) Publish in the *Federal Register* a notice that—

- (i) describes the justification for the general applicability waiver; and
- (ii) requests public comments for a period of not less than 30 days on the continued need for the general applicability waiver; and

(B) Publish in the *Federal Register* a determination on whether to continue or discontinue the general applicability waiver, considering the comments received in response to the notice published under paragraph (A).³⁴

Through November 15, 2026, the requirement to review general applicability waivers under paragraphs (A) and (B) above does not apply to any product-specific general applicability waiver that was issued before May 19, 2021.³⁵

OMB has instructed Federal agencies with existing, non-product specific general applicability waivers that were issued more than five years before November 15, 2021 to promptly commence review of each such waiver by publishing a *Federal Register* notice as required in section 70914(d)(2)(A) of the IIJA. Should the review justify retaining the waiver, agencies should consider narrowing the waiver in a manner that would support supply chain resilience and boost incentives to manufacture key products domestically, as appropriate.

The MIAO will work with agencies to expedite consideration of general applicability waivers for products or categories of products for which domestic sourcing challenges have been well documented. Agencies should align such waivers with complementary policies, such as work to boost supply chain resiliency and domestic employment. General applicability waivers should include appropriate expiration dates designed to ensure that, once available, Buy America

³⁴ IIJA, § 70914(d)(1) & (2).

³⁵ IIJA, § 70914(d)(3).

qualifying products receive appropriate consideration.

Appendix I: Example of Award Term (Sample Language) —Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Where applicable, the Federal agency must include appropriate terms and conditions in all awards, in accordance with applicable legal requirements and its established procedures, in order to effectuate the requirements of BABA and this guidance. The following is sample language.

To achieve the greatest possible consistency across agencies and programs, agencies should send their proposed terms and conditions to the MIAO for review prior to incorporating them into applicable awards. Agencies should include appropriate language in the Notice of Funding Opportunity to provide applicants fair notice of the Buy America conditions that will apply to funds obligated on or after that date.

** ** **

Buy America Preference. Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for an infrastructure project unless:

- (1) All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
- (3) All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The construction material standards are listed below.

Incorporation into an infrastructure project. The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Categorization of articles, materials, and supplies. An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii)

Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

Application of the Buy America Preference by category. An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

Determining the cost of components for manufactured products. In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

(a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (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

(b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

Construction material standards. The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material.

(1) Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

(2) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

(3) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

(4) Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

(5) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

(6) Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

(7) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

(8) Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Waivers

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the Buy America Preference in any case in which the agency determines that:

- (1) applying the Buy America Preference would be inconsistent with the public interest;
- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the Buy America Preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [\[link to awarding agency web site with information on currently applicable general applicability waivers\]](#).

*Definitions*³⁶

“Buy America Preference” means the “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

“Construction materials” means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

(1) The listed items are:

- (i) Non-ferrous metals;
- (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- (iii) Glass (including optic glass);
- (iv) Fiber optic cable (including drop cable);
- (v) Optical fiber;
- (vi) Lumber;
- (vii) Engineered wood; and
- (viii) Drywall.

(2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

“Infrastructure” means public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

“Infrastructure project” means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also paragraphs (c) and (d) of 2 CFR 184.4.

“Iron or steel products” means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

³⁶ Federal agencies may choose to provide definitions on a public-facing website and reference that website in the terms and conditions, rather than including all definitions in the terms and conditions itself. If an agency chooses to provide definitions on a public-facing website, it is not considered a deviation from the terms and conditions provided and does not need to be reviewed by OMB.

“Manufactured products” means:

(1) Articles, materials, or supplies that have been:

- (i) Processed into a specific form and shape; or
- (ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

(2) If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or Section 70917(c) materials.

“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.

“Section 70917(c) materials” means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See Section 70917(c) of the Build America, Buy America Act.

Appendix II: Guidance for Projects Identified at 2 CFR 184.2(b)-(c) as Remaining Subject to OMB Memorandum M-22-11

In 2 CFR part 184, OMB identifies a limited set of infrastructure projects that will remain subject to certain requirements established in Memorandum M-22-11. For projects identified at 2 CFR 184.2(b)-(c) as remaining subject to the requirements of Memorandum M-22-11, recipients and subrecipients may continue to rely on —

- a. The requirements established in Section VIII of the rescinded Memorandum M-22-11 on “Preliminary Guidance for Construction Materials,” which is included, in relevant part, in this appendix. This includes reliance on the shorter list of construction materials identified in Memorandum M-22-11 and the preliminary standard for “all manufacturing processes” applicable to construction materials on that list; and
- b. Their good faith efforts to categorize articles, materials, and supplies as (1) iron or steel products, (2) manufactured products, or (3) construction materials based on the guidance provided in Sections I, VI, and VIII of the rescinded OMB Memorandum M-22-11. In other words, recipients and subrecipients of Federal awards for these projects are not required to recategorize items based on the more specific guidance provided in 2 CFR part 184 and the associated preamble, but may rely on clarifying guidance in part 184 or the associated preamble if useful.

Below is relevant guidance for these projects restated from OMB Memorandum M-22-11 —

The IJJA finds that “construction materials” includes an article, material, or supply — other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives — that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

To provide clarity to item, product, and material manufacturers and processors, items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

Absent any existing applicable standard in law or regulation that meets or exceeds these preliminary standards, agencies should consider “all manufacturing processes” for construction materials to include at least the final manufacturing process and the immediately preceding manufacturing stage for the

construction material.

SECTION 01 11 00

SUMMARY OF WORK

PART 1 – GENERAL

1.01 SECTION INCLUDES

- A. Project Description
- B. Description of the Work
- C. Work Sequence and Coordination
- D. Special Requirements

1.02 PROJECT DESCRIPTION

- A. The Project is generally described as Stormwater Improvements.

1.03 DESCRIPTION OF THE WORK

- A. The Work includes labor, material and equipment, services required for construction, testing, and commissioning of the Project in accordance with the Contract Documents and as more specifically described in the Specifications and Drawings and includes, but is not limited to, the following principal features.
 - 1. Site preparation
 - a. Clear and grub
 - b. Sawcut
 - c. Remove and dispose pavement
 - d. Remove and dispose trees and shrubs
 - e. Remove and relocate trees
 - f. Remove and relocate mailboxes
 - g. Remove and relocate existing signs
 - 2. Install FDOT ditch bottom inlets
 - 3. Install drain manholes
 - 4. Install reinforced concrete storm drain

5. Install stormwater Best Management Practices (BMPs)
 6. Full depth pavement reconstruction
 7. Install curbs
 8. Restore existing bituminous and cement concrete driveways
 9. Pavement markings
 10. Install cement concrete sidewalk
 11. Soil amendments and sodding
 12. Provide all material and equipment, construction, and services inherent to the Work
- B. Work Site Locations: as generally shown on the Drawings.
- C. Existing Conditions and Site Data: Section 00 31 00.

1.04 WORK SEQUENCE AND COORDINATION

- A. Sequence
1. Sequence Work to avoid complete roadway shutdowns and reflect sequencing in the construction schedule.
- B. Coordination
1. Ensure that roadways and all above and/ underground utilities are maintained and remain in service at all times unless otherwise approved.
 - a. Obtain written approval of the Engineer for shutdowns. Notify Engineer a minimum of two weeks prior to any required shutdowns.
 2. Maintain access to residences and facilities throughout the Project.
 3. Complete shutdown of roadway is not permitted.
- C. Work shall be performed during the regular working hours of 7:00 a.m. to 6:00 p.m, Monday through Friday. Work on weekends and holidays is not permitted.

1.05 SPECIAL REQUIREMENTS

- A. Comply with Florida Department of Transportation (FDOT) Standard Specifications, Standard Plans, and Design Standards for Road and Bridge Construction (latest editions) and State of Florida Erosion and Sediment Control Designer and Review Manual (latest update July 2013), as may be modified or superseded by the Owner's requirements through the direction of the Engineer.
- B. **Obtain copies of FDOT and State documents applicable to this Project and make available to Owner and Engineer as requested.**

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION (NOT USED)

END OF SECTION

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SECTION 01 15 30

PAYMENT AND ADMINISTRATIVE PROCEDURES AND QUALITY REQUIREMENTS

PART 1 – GENERAL

1.01 SUMMARY

- A. This Section specifies administrative and procedural requirements relating to payment, the process of contract administration, and the methods of communicating, controlling, and assuring quality. This Section applies to all Specifications and Drawings.
- B. Certain provisions required by Laws and Regulations may be referenced. Contractor is responsible to determine and obtain applicable Laws and Regulations and to review and interpret the full text of such Laws and Regulations.
- C. Section Includes

1.02 PAYMENT PROCEDURES

- Schedule of Values
- Payment Procedures
- Change Procedures
- Measurement and Payment Procedures
- Correlation of Submittals

1.03 ADMINISTRATIVE REQUIREMENTS

- Project Management and Coordination; Meetings
- Documentation of Progress
- Submittal Procedures

1.04 QUALITY REQUIREMENTS

- Reference Standards and Regulatory Requirements

1.05 ATTACHMENTS

1.02 PAYMENT PROCEDURES

- A. Schedule of Values: in accordance with Article 2 of the Standard General and Supplementary Conditions, if any.
 - 1. Number of hardcopies: 1
 - 2. Submit electronically by email in PDF format.
 - 3. Provide sufficient detail to allow for determination of the value of the Work at any degree of completion.
 - 4. For each line item, identify number and title of Specification section in accordance with the Table of Contents.
 - 5. The unit price breakdown included in the Unit Prices Form will constitute the preliminary Schedule of Values for this Project.
- B. Payment Procedures: in accordance with Article 14 of Standard General and Supplementary Conditions, if any.
 - 1. Submit Application for Payment using the form included in the Project Forms section. Utilize latest approved Schedule of Values for listing items in Application for Payment. Provide supporting documentation for items included in the Application for Payment.
 - a. Number of hardcopies: 1
 - b. Submit electronically by email in PDF format.
 - 2. Payment Period: at intervals stipulated in the Agreement.
 - 3. Submit an updated Progress Schedule with each Application for Payment.
- C. Change Procedures: in accordance with Articles 10 and 12 of Standard General and Supplementary Conditions, if any, utilizing forms included in Section 00 60 00 Project Forms.
 - Number of hardcopies: 1
 - Submit electronically by email in PDF format.
 - 1. Field Order: as authorized by Paragraph 9.04 of the Standard General and Supplementary Conditions, if any.

2. Change Request: issued by Engineer, Owner or Contractor to request or authorize minor variations and deviations, amendments or supplements to the Contract Documents. Initiate requests for substitute items per Paragraph 6.05 of the Standard General and Supplementary Conditions, if any, using a Change Request.
 - a. Include a detailed description of a proposed change with supplementary or revised Drawings and Specifications, including a change in Contract Times related to the change (with a stipulation for any overtime work required) and the period of time during which the requested price (if any) will be considered valid. Prepare and submit an estimate within 15 days.
 - b. Describe the proposed change and its full effect on the Work. Describe the reason for the change and the effect on the Contract Price and Contract Time with full documentation (and a statement describing the effect on Work by separate or other contractors).
3. Work Change Directive: as defined in subparagraph 1.01.A.51 of the Standard General and Supplementary Conditions, if any.
4. Change Order: in accordance with Articles 10 and 12 of the Standard General and Supplementary Conditions, if any.
 - a. *Stipulated Price Change Order*: based on Contractor's maximum price quotation or Contractor's request for a Change Order as approved by Engineer or Owner.
 - b. *Unit Price Change Order*: for pre-determined unit prices and quantities and executed on a fixed unit price basis. Execute Work under a Work Change Directive for unit costs or quantities of Work not pre-determined. Changes in Contract Price and Contract Time to be computed as specified for Time and Material Change Order.
 - c. *Time and Material Change Order*: based on itemized account and supporting data after completion of change within time limits indicated in the Standard General and Supplementary Conditions, if any. Engineer or Owner and Contractor to determine the change allowable in Contract Price and Contract Time as provided in the Standard General and Supplementary Conditions, if any. Maintain detailed records of Work completed on this basis, provide full information for evaluation of proposed changes, and substantiate costs for changes in the Work.

5. “Or Equals” and Substitutes: Request “Or-Equal” and substitute items as a Change Request per subparagraph 1.02.C.2 above, with complete data substantiating compliance with Contract Documents.
 - a. “Or-Equal” and substitute items will be processed in accordance with Paragraph 6.05 of the Standard General and Supplementary Conditions, if any, and subparagraph 1.03.C.6 below.
- D. Measurement and Payment Procedures
 1. See Section 01 20 25 Measurement and Payment.
- E. Correlation of Submittals
 1. Promptly revise Schedule of Values and Applications for Payment to record each authorized Change Order as a separate line item and adjust the Contract Price.
 2. Promptly revise Progress Schedule to reflect any change in Contract Times and revise sub-schedules to adjust time for other items of the Work affected by the change.
 3. Promptly enter changes in Project record documents.

1.03 ADMINISTRATIVE REQUIREMENTS

- A. Project Management and Coordination; Meetings
 1. Contact information for Owner and other entities related to the Project and special coordination requirements and contacts during prosecution of the Work will be provided at the Preconstruction Conference and Site Mobilization Meeting.
 2. Inform Owner and Engineer of the address for sending official correspondence and the address and telephone number of Contractor's representative who will be project manager and Site superintendent for the Contract.
 3. During periods of construction and testing keep Owner and Engineer informed in writing with name, address, and telephone number of Contractor's representative who will be responsible and available outside of normal working hours for emergency repairs and the maintenance of safety devices.
 4. Identify the 24 hour, 7 days per week emergency response telephone or cell phone number that is staffed by a person (not a passive answering machine) or provide that a phone call will be returned within one hour.
 5. Identify correspondence, submittals, drawings, data and materials, packing slips or other items associated with this Contract as follows.

Stormwater Improvements – Phase 2 Porter Avenue, Montverde, FL

6. Coordinate scheduling, submittals, and Work of the various Specifications to effectuate an efficient and orderly sequence for installing interdependent construction elements, with provisions for accommodating items installed later.
7. Preconstruction Conference and Site Mobilization Meeting
 - a. Owner to schedule an initial preconstruction conference in accordance with Paragraph 2.06 of the Standard General and Supplementary Conditions, if any.
 - b. Attendance required by Owner, Contractor, Engineer, Contractor's Superintendent, Project Manager, and Subcontractors as a minimum.
 - c. Sample Agenda
 - Distribute Contract Documents
 - Discuss design concepts
 - Discuss preliminary Progress Schedule, Schedule of Submittals, Schedule of Values and preliminary cash flow projections.
 - Designate personnel representing each party; communication procedures
 - Procedures and processing of submittals, substitutions, applications for payments, Change Orders and Contract closeout procedures
 - Scheduling
 - Use of premises by Owner and Contractor
 - Owner's requirements and partial occupancy
 - Construction facilities and controls provided by Owner
 - Temporary utilities provided by Owner and Contractor
 - Survey and Site Layout
 - Security and housekeeping procedures
 - Schedules
 - Procedures for testing
 - Procedures for maintaining record documents
 - Requirements for startup
 - Inspection and acceptance of equipment put into service during construction period
 - Access, laydown and coordination with others
 - d. Engineer will record minutes and distribute draft copies promptly after meeting to Owner and Contractor for review, then revise as required and distribute thereafter to meeting participants, with copies to Owner and Contractor, and those affected by decisions made.

8. Progress Meetings
 - a. Owner to schedule progress meetings beginning no later than 60 days after the Initial Conference and continue thereafter on a biweekly basis throughout progress of the Work.
 - b. Attendance required by Contractor, Contractor's Superintendent, major Subcontractors and Suppliers, Owner and Engineer as appropriate to agenda topics for each meeting.
 - c. Sample Agenda
 - Review minutes of previous meetings – unresolved issues
 - Overall project status
 - Work Completed
 - Anticipated Work
 - Schedule
 - Pay Applications
 - Change Orders
 - Submittals
 - Observations, problems, and decisions
 - General Discussion/Comments
 - Action Items
 - Date and time for next meeting
 - d. Engineer will record minutes and distribute draft copies promptly after meeting to Owner and Contractor for review, then revise as required and distribute thereafter to meeting participants, with copies to Owner and Contractor, and those affected by decisions made.
9. Pre-installation Conference and Coordination Meetings
 - a. When required, convene a pre-installation conference at Site before commencing certain Work that requires coordination or has special requirements or approval.
 - b. Convene coordination meetings as may be generally required.
 - c. Attendance required by parties directly affecting, or affected by, Work of the specific Specification section.
 - 1) For pre-installation conference, notify Owner and Engineer 5 days in advance.
 - 2) For coordination meetings, party requesting coordination meeting to notify other party(s).
 - d. Review conditions, preparation and procedures, and coordination with related Work.

B. Documentation of Progress

1. Submit preliminary and final Progress Schedules as specified in Paragraphs 2.05 and 2.07 of the Standard General and Supplementary Conditions, if any, or as established in Notice to Proceed.

Number of hardcopies: 1

Submit electronically by email in PDF format.

- a. Show complete sequence of construction by activity, identifying Work of separate stages and other logically grouped activities. Indicate the early and late start, early and late finish, float dates, and duration.
 - b. Indicate estimated percentage of completion for each item of Work at each submission.
 - c. Indicate dates for fabrication, factory testing, delivery, shipping and field testing, and material and equipment delivery dates, including those furnished by Owner. Coordinate with Schedule of Submittals.
2. Submit revised Progress Schedule on monthly basis and with each Application for Payment, identifying changes since previous version. Coordinate content with Schedule of Values, if any.
 3. Documentation of Pre-Construction Conditions, Construction Progress, and Final Conditions

a. Documentation of Pre-Construction Conditions

- 1) Submit photographs prior to starting construction to record Site conditions. Ensure existing conditions that might be affected by the Work are clearly recorded. Identify photographs with date, time, orientation and Project identification. Re-take any photograph furnished which, in the opinion of the Engineer, is of poor quality or incomplete at no additional cost to Owner.
- 2) Format: PDF or JPG format, minimum 300 dpi quality and a minimum resolution of 6.0 megapixels. Identify photographs with date, time, orientation and Project identification.

a) Number of hardcopies: 1

b) Submit electronically by email in PDF format.

b. Documentation of Construction Progress

- 1) Submit photographs of with Payment Application monthly during progress of Work. Identify photographs with date, time, orientation and Project identification. Re-take any photograph furnished which, in the opinion of the Engineer, is of poor quality or incomplete at no additional cost to Owner.
- 2) Format: PDF or JPG format, minimum 300 dpi quality and a minimum resolution of 6.0 megapixels.
- 3) Number of hardcopies: 1
- 4) Submit electronically by email in PDF format.

c. Documentation of Final Conditions

- 1) Submit photographs with Application for Final Payment to record final conditions. Identify photographs with date, time, orientation and Project identification. Re-take any photograph furnished which, in the opinion of the Engineer, is of poor quality or incomplete at no additional cost to Owner.
- 2) Format: PDF or JPG format, minimum 300 dpi quality and a minimum resolution of 6.0 megapixels. Identify photographs with date, time, orientation and Project identification.
- 3) Number of hardcopies: 1
- 4) Submit electronically by email in PDF format.

4. Reports

- a. Submit weekly Safety Reports signed by the Safety Representative.
- b. Updates to the Construction Operations Plan approved pursuant to SC 2.07 of Section 00 73 10 when it is modified
Submit electronically by email in PDF format.

C. Submittal Procedures

1. Schedule submittals to expedite the Project and coordinate with schedules required by Paragraph 1.03.B above. Deliver each submittal in the quantity and electronic form indicated to Engineer or Owner where required at the **addresses specified at the Preconstruction Conference and Site Mobilization Meeting**. Coordinate submission of related items.
2. Present submittals in a clear and thorough manner, in English and using English units. Provide space for Contractor, Engineer, and Owner's review stamps. Use sheet size of not less than 8 1/2 by 11 inches and not more than 24 by 36 inches.
3. Revise and resubmit documents as required. Identify all changes made since previous submittal. Distribute copies of reviewed submittals to concerned parties. Instruct parties to promptly report any inability to comply with provisions. Submittals not requested on the submittal schedule may not be recognized or processed.
4. Submit preliminary and final Schedule of Submittals as specified in Article 2 of the Standard General and Supplementary Conditions, if any, or as established in Notice to Proceed. Include all submittals specified in the Standard General and Supplementary Conditions, if any, General Requirements, and other Specification sections.

Number of hardcopies: 1

Submit electronically by email in PDF format.

- a. Include description of each submittal, date by which each submittal will be delivered to Engineer and Owner date by which each submittal must be approved to maintain project schedule, and relevant section reference.
 - b. Allow 10-15 days from receipt of submittal/resubmittal for Engineer review of submittals and possible resubmittal.
5. Build America, Buy America Act (BABA) Submittals and Record Keeping
- a. **Steel, iron, manufactured products, non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall** are subject to the **BABA requirements**. See Section 00 73 74 for requirements including the guidance documents attached.
 - b. Identify all BABA products and provide BABA certification documents.
 - 1) Submit the BABA Recordkeeping Spreadsheet available electronically in Excel format from the Engineer. A sample is included as an attachment to this section.

- 2) Gather BABA certificates for the products from vendors and/or manufacturers and submit to Engineer for review prior to material delivery/installation. If a manufacturer cannot provide a completed certificate until the product is made, a letter of intent to supply an BABA compliant product and certificate upon delivery should be provided.
 - a) Provide certification letters in accordance with attachments to Section 00 73 74.
 - b) Provide BABA Letter of Intent when manufacturer's product is made up of raw materials sourced from multiple facilities. It should express awareness that all materials specified above used in manufacture will be sourced domestically and the intent to follow up with the foundry/other manufacturing facility location information when known. This letter should be on company letterhead and signed by a company representative.
 - 3) Maintain a record of BABA Certification submittals a throughout the Project and submit to the Engineer and Owner with submittals. Provide final BABA Recordkeeping a Spreadsheet and associated records with payment requests.
 6. Shop Drawings and Samples: Submit in accordance with Paragraph 6.17 of the Standard General and Supplementary Conditions, if any, and as follows, and coordinate with the Schedule of Submittals required in subparagraph 4 above.

Number of hardcopies: 1

Submit electronically by email in PDF format.

- a. Complete a Submittal Transmittal (Form 00 62 11) as is indicated, numbering each submittal consecutively. Assign resubmittals the same Transmittal number as the original with a suffix of a sequential letter to indicate the resubmittal (e.g., the first resubmittal of submittal 25 would be number 25A.) Include only those documents previously issued under original Submittal Transmittal number in resubmittals. Do not combine new submittals with resubmittals.
 - b. Attach a Submittal Transmittal to each group of Shop Drawings, manufacturer's literature, equipment data and Samples submitted. Use a sufficient number of Submittal Transmittal forms so that: items on a single Submittal Transmittal form pertain to the same equipment item, Specification section or element of Work; items on a single Submittal Transmittal form are either original submittals or the same number resubmittal; and each Sample is listed on a separate Submittal Transmittal form.

- c. Submittals which do not have a fully completed Submittal Transmittal form will be returned along with unreviewed attachments. Returned submittals, even though incomplete, will be counted as a submittal.
 - d. Submission of any Shop Drawing or Sample bearing Contractor's and Engineer's approval shall constitute a representation to Owner that the requirements of Paragraph 6.17 of the Standard General and Supplementary Conditions, if any, have been fulfilled.
 - e. Engineer to complete review in accordance with Paragraph 6.17.D. of the Standard General and Supplementary Conditions, if any.
7. Variations: Identify variations from Contract Documents and material and equipment or system limitations which may be detrimental to successful performance of the completed Work and identify reasons therefor in accordance with subparagraph 6.17.C.3 of the Standard General and Supplementary Conditions, if any.
- a. Clearly identify requests for “Or-Equal” and substitute items and submit per Paragraph 6.05 of Standard General and Supplementary Conditions, if any, and subparagraph 1.02.C.5 above. Substitute items will not be considered when indicated or implied on Shop Drawing or material and equipment data submittals without separate written request, or when acceptance will require revision to the Contract Documents.
8. Manufacturers' Installation Instructions and Certificates: Submit printed instructions for delivery, storage, assembly, installation, startup, adjusting, and finishing.

Number of hardcopies: 1

Submit electronically by email in PDF format.

- a. Indicate special procedures, perimeter conditions requiring special attention and special environmental criteria required for application or installation.
- b. Submit manufacturers' certificates for recent or previous test results on material or equipment, but they must be acceptable to Engineer and Owner. Indicate material or equipment conforms to or exceeds specified requirements and provide supporting reference date, affidavits, and certifications as appropriate.
- c. Submit test results, data, and reports and certifications to Engineer based on tests performed. Submit test reports and certifications for independent testing services specified.

9. Record Documents and Closeout Submittals: submit in accordance with Paragraph 6.12 of the Standard General and Supplementary Conditions, if any.
 - a. Legibly mark each item to record description of actual equipment and material installed and actual construction on the Drawings and approved submittals, including the following.
 - 1) Manufacturer's name and equipment and material model and number
 - 2) Material and equipment substitutions or alternates utilized
 - 3) Approved changes
 - 4) Measured depths of foundations
 - 5) Measured horizontal and vertical locations of Underground Facilities and appurtenances, referenced to permanent surface improvements
 - 6) Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of the Work
 - 7) Field changes of dimension and detail
 - 8) Details not on original Contract Documents or Shop Drawings
 - b. *As-Builts for Material and Equipment*
Number of prints: 1
Electronic format: PDF and DWG
Submit electronically by email.
Indicate "As-Supplied" in revision block and sign. Show all changes and revisions to Final Completion. Include with Operation and Maintenance Data Part 2 below (if applicable).
 - c. *Drawings Conformed by Contractor to Construction Records*:
Submit the following.
Number of prints: 1
Electronic format: PDF and DWG
Submit electronically by email.
Indicate "Conformed by Contractor to Construction Records" in revision block and sign. Show all changes and revisions to Final Completion.

- d. *Warranties and Guarantees*: Submit duplicate notarized copies of warranty documents which are executed and transferable from Subcontractors, Suppliers, and manufacturers. For items of Work delayed beyond date of Substantial Completion, provide updated submittal within 10 days after acceptance, listing date of acceptance as start of Warranty Period.
 - 1) Submit in searchable PDF format by email.
- e. *Operation and Maintenance Data*
 - 1) Not Required.

1.04 QUALITY REQUIREMENTS

A. Reference Standards and Regulatory Requirements

- 1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or Laws or Regulations of any governmental authority are used in accordance with Paragraph 3.02 of the Standard General and Supplementary Conditions, if any.
- 2. Acronyms and abbreviations used are defined in the applicable versions of the Encyclopedia of Associations published by Gale (part of Cengage Learning) generally available in large libraries and on the internet.
- 3. Specific requirements applicable to the Project include the following.
 - a. Comply with Florida Department of Transportation (FDOT) Standard Specifications, Standard Plans, and Design Standards for Road and Bridge Construction (latest editions) and State of Florida Erosion and Sediment Control Designer and Review Manual (latest update July 2013), as may be modified or superseded by the Owner's requirements through the direction of the Engineer. References to "Department" in the FDOT documents shall mean Owner or Resident Project Representative for this Project.
 - b. See the following websites for latest documents.

<https://www.fdot.gov/programmanagement/implemented/specbooks/default.shtm>
<https://www.fdot.gov/design/standardplans/default.shtm>
<https://www.fdot.gov/programmanagement/implemented/urlinspecs/flerosionsedimentmanual.shtm>

1.05 ATTACHMENTS

- A. AIS/BABA Recordkeeping and De Minimis Waiver Spreadsheet

END OF SECTION

Refer to October 25, 2023 Implementation Memo for specific items attached to Section 00 73 74

Estimated Total Material Cost:	
5 percent of ETMC:	\$0
1 percent of ETMC:	\$0

SECTION 01 20 25

MEASUREMENT AND PAYMENT

PART 1 - GENERAL

1.01 DESCRIPTION

- A. This Section describes the measurement and payment for the Work to be completed under each item in Section 00 43 22 Unit Prices Form, which may also be referred to as “Pay Item”.
- B. Payment procedures are in accordance with the Agreement, Article 14 of the General Conditions, the Supplementary Conditions (if any), and the General Requirements.
 - 1. Percentages shown under Schedule of Payment for each Pay Item are intended to reflect the percentage of value of Pay Item and do not supersede the payment provisions in the Agreement.
- C. Measurement: as determined, verified, or approved by Engineer or Owner in accordance with Paragraph 11.03 of the General Conditions, the Supplementary Conditions (if any), and the General Requirements, except as otherwise specified.
- D. The Work described in each Pay Item shall be as described in the Specifications and shown on the Drawings and not included in other Pay Items.
 - 1. Pay Item descriptions are general and may not specifically describe all associated Work or elements thereof, do not constitute Specifications, and do not supersede the content of the Specifications and Drawings.
 - 2. Review the Specifications and Drawings for Work associated with each Pay Item. Claims for being unfamiliar with the content of the Specifications and Drawings will not be considered.
- E. The following Work is not specifically described or designated as a Pay Item, is considered incidental to all Pay Items, and shall not be measured separately for payment.
 - 1. Division 01 General Requirements EXCEPT those items included as separate Pay Items and in Mobilization/Demobilization
 - 2. Temporary stormwater drainage bypass
 - 3. Temporary construction controls

4. Temporary traffic controls including proper signage in accordance with the FDOT Standards to maintain safe vehicular and pedestrian access throughout construction
 5. Dewatering excavations to complete the Work
 6. Clearing and grubbing
 7. Removal and relocation of residential mailbox including removal, excavation, installation, fill, compaction, grading, and surface restoration
 8. Removal and relocation of traffic signage including removal, excavation, installation, fill, compaction, grading and surface restoration
 9. Materials, equipment, and services necessary to verify existing field conditions and the location, size, type, material, and orientation of existing pipes and utilities shown on the Drawings including test pits
 10. Restoration of all areas disturbed by the Contractor within the limits of Work, including planting
 11. Field and laboratory testing and reporting by independent laboratory, including but not limited to compaction of backfill materials; aggregate gradation; and concrete testing
- F. Payment will not be made for restoration of areas disturbed by the Contractor outside the limits of Work.
- G. Design, installation and removal of excavation support systems, temporary and permanent utility/structure support systems associated with a Pay Item shall be considered incidental to that Pay Item.
- H. Additional dewatering and erosion control (including installation, operation, maintenance, removal and off-Site disposal of erosion control devices) associated with a Pay Item shall be considered incidental to that Pay Item.

1.02 MEASUREMENT AND PAYMENT BASIS

ITEM 1: Mobilization/Demobilization	
Measurement	Portion of Work completed and accepted
Payment	Portion of the Total Contract Price (not to exceed 5%)
Schedule of Payment	50% of value of Pay Item at Project commencement - 25% of value of Pay Item at Substantial Completion - 25% of value of Pay Item at Final Completion
Includes delivery to and removal of equipment from the Project Site, temporary utilities, facilities and controls, obtaining necessary permits including associated fees, insurance and bond costs, signage, development of pre-construction schedules and plans required by the General Conditions, Supplementary Conditions and General Requirements; necessary pre-construction investigations, verifying existing field conditions, coordination, and Site clean-up, restoration and closeout.	

ITEM 2: Erosion and Sedimentation Controls	
Measurement	Portion of Work completed and accepted
Payment	Percent of lump sum price based on Schedule of Values
Schedule of Payment	25% of value of Pay Item at Project commencement - 25% of value of Pay Item at Substantial Completion; 50% of value of Pay Item at Final Completion
All labor, materials, tools and equipment, services, installation, construction and testing inherent to the Work for providing erosion controls including but not limited to temporary construction fence, routine maintenance and removal of sediment accumulation, siltation barriers, stabilized construction Work areas and entrances, regular replacement of devices as required or directed, protection of trees and other vegetation, erosion control blankets as shown and all other incidentals necessary to furnish and install erosion and sedimentation control devices along all downstream limits of the Project area and in accordance with the Contract Documents.	

ITEM 3 – Clear & Grub	
Measurement	Actual area of land cleared and grubbed in accordance with Drawings or Engineer's approval
Payment	Percent of lump sum price based on Schedule of Values
Schedule of Payment	Monthly based on progress
Includes all labor, services, tools, equipment, and materials inherent to the Work to clear and grub areas as shown on the drawings. Does not include restoration.	

ITEM 4: Remove and Dispose Bituminous and Cement Concrete Pavement	
Measurement	Portion of Work completed and accepted
Payment	Unit price per square yard
Schedule of Payment	Monthly based on Work completed and accepted
Material and equipment, services, installation, construction and testing inherent to the Work for complete removal and disposal of bituminous and cement concrete pavement, driveway aprons, top course, base, and subbase including saw cutting and excavating as shown and described within the Contract Documents.	

ITEM 5: Remove and Dispose Tree	
Measurement	Portion of Work completed and accepted
Payment	Unit price per each
Schedule of Payment	Monthly based on Work completed and accepted
Includes all labor, services, materials, handling, transportation, tools and equipment necessary to cut, remove and dispose existing trees and stumps within the limit of work as depicted on the Plans and as directed by the Engineer; expose by excavation, remove and/or cut, as required, including the tree stumps and root systems for trees removed; unclassified excavation; disposal of stumps, roots, organic matter and the other unsuitable materials resulting from the operation; protection of adjacent surface features; filling and grading, loam and seed, and all other Work incidental to the satisfactory completion of the Work.	

ITEM 6: Remove and Relocate Mailbox	
Measurement	Portion of Work completed and accepted
Payment	Unit price per each
Schedule of Payment	Monthly based on Work completed and accepted
Material and equipment, services, installation, construction and testing inherent to the Work for removal and relocation of residential or business mailboxes as shown on the Plans and as directed by the Engineer including, but not limited to removal, stockpile, excavation, installation, compaction, grading, and surface restoration. Should the mailbox, post, or appurtenances be damaged during construction activities, Contractor shall provide new to match existing.	

ITEM 7: Remove and Relocate Water Valves	
Measurement	Portion of Work completed and accepted
Payment	Unit price per each
Schedule of Payment	Monthly based on Work completed and accepted
Includes all labor, services, materials, handling, transportation, tools and equipment necessary to remove and relocate existing water valves within the limit of work as depicted on the Plans and as directed by the Engineer; including protection of existing water main, adjacent surface features, filling and grading, raising covers to grade, and all other Work incidental to the satisfactory completion of the Work.	

ITEM 8: Type B Stabilization, Imported Materials or Blend of On-Site and Imported Material, 12 inches Thick	
Measurement	Portion of Work completed and accepted
Payment	Unit price per square yard
Schedule of Payment	Monthly based on Work completed and accepted
Includes all labor, services, materials, handling, transportation, tools and equipment necessary to stabilize designated portions of the roadbed to provide a firm and unyielding subgrade having the required bearing value specified in the Plans. Stabilizing material can be obtained from existing base material, or from commercial and local materials. Item includes materials, layout, placement, grading, butt joints, tack coat, and all other Work incidental to the satisfactory completion of the Work	

ITEM 9: Base Group 04, Lime rock or Recycled Crushed Concrete, 6 inches Thick	
Measurement	Portion of Work completed and accepted
Payment	Unit price per square yard
Schedule of Payment	Monthly based on Work completed and accepted
Includes all labor, services, materials, handling, transportation, tools and equipment necessary to stabilize designated portions of the roadbed to provide a firm and unyielding base having the required bearing value specified in the Plans. Stabilizing material as shown and described within the Contract Documents. Item includes materials, layout, placement, grading, butt joints, tack coat, and all other Work incidental to the satisfactory completion of the Work.	

ITEM 10: Superpave Asphaltic Concrete, Traffic C, 2 inches Thick	
Measurement	Portion of Work completed and accepted
Payment	Unit price per ton
Schedule of Payment	Monthly based on Work completed and accepted
Material and equipment, services, installation, construction and testing inherent to the Work for providing superpave, including but not limited to superpave surface course materials, layout, placement, grading, butt joints, tack coat, compaction of superpave course, and lane striping to meet and match existing roadway, as shown and described within the Contract Documents.	

ITEM 11: Cement Concrete Sidewalk and Driveways, 4 inches Thick	
Measurement	Per square yard in place
Payment	Unit price per square yard
Schedule of Payment	Monthly based on Work completed and accepted
Includes all labor, services, materials, handling, transportation, tools and equipment to provide and install new cement concrete sidewalks and driveways at the locations and limits indicated on the Drawings including but not limited to: saw cutting; excavation of existing pavement, sidewalk, subbase; unclassified excavation; removal and disposal of unsuitable/excess soils and materials; subgrade grading and compaction; gravel borrow; gravel sub-base to meet indicated grades; fine grading and compacting; cement concrete; form work including materials and carpentry, fastening, supporting devices, dowels, concrete curing compounds; material testing, in place compaction testing; matching of new sidewalk to adjacent existing surfaces to meet and match pre-construction conditions, feather sidewalk grade to meet surrounding elevations, and ensure smooth transition; provision and construction of expansion and control joints, fillers and sealants; surface finishing; and all other Work incidental to the satisfactory completion of the Work.	

ITEM 12: Pavement Markings	
Measurement	Portion of Work completed and accepted
Payment	Percent of lump sum price based on Schedule of Values
Schedule of Payment	Monthly based on progress
Includes all labor, services, materials and equipment associated with, but not limited to, providing pavement markings as indicated on the drawings or matching preconstruction pavement markings; surface cleaning and preparation, symbols, lines & words per the Manual on Uniform Traffic Control Devices (latest edition) and other incidentals necessary to complete the Work.	

ITEM 13: Concrete Ribbon Curb, 8-inch	
Measurement	Complete in place, as shown on the Drawings
Payment	Unit price per linear foot
Schedule of Payment	Monthly based on Work completed and accepted
Material and equipment, services, installation, construction and testing inherent to the Work for providing concrete ribbon curb, including but not limited to, installation of concrete ribbon curb, finishing, grading, backfilling and compaction, as shown and described within the Contract Documents	

ITEM 14: Stormwater Best Management Practices	
Measurement	Portion of Work completed and accepted
Payment	Percent of lump sum price based on Schedule of Values
Schedule of Payment	Monthly based on progress
Includes all labor, services, materials and equipment associated with, but not limited to, the installation of stormwater best management practices including swales, infiltration trenches as indicated on the drawings including excavation, crushed stone, filter fabric, catch basin structures, coring of structures, frame and grates, structure modification, pipe, grading, compaction, surface restoration, and all other Work incidental to the satisfactory completion of the Work.	

ITEM 15A: 15-inch Class III Reinforced Concrete Pipe ITEM 15B: 18-inch Class III Reinforced Concrete Pipe ITEM 15C: 24-inch Class III Reinforced Concrete Pipe	
Measurement	Per linear foot in place
Payment	Unit price per linear foot
Schedule of Payment	Monthly based on total linear feet completed
Includes all labor, services, material, handling, transportation and equipment associated with furnishing and installing the drain pipe regardless of depth including: saw cutting, removing and disposing of excess materials, removing and disposing of existing culvert, hauling and disposal of materials, pipe connections; rubber sleeve connections and mortar sealing of pipe and structure; unclassified excavation; shoring and bracing; dewatering; installation and compaction of backfill and bedding materials; geotextile fabric; material testing; re-connection to existing pipe and/or structures (including pipe couplings, coring of new penetrations and plugging abandoned penetrations in existing structures); provision and reconfiguration of brick invert of new and existing manholes, removal and off-Site disposal of unsuitable excess soil materials, and all other Work incidental to the satisfactory completion of the Work.	

ITEM 16: FDOT Drainage Manhole	
Measurement	Per each in place
Payment	Unit price per each
Schedule of Payment	Monthly based on each completed
Includes all labor, services, materials, handling, transportation, tools and equipment to provide and install FDOT drainage manholes regardless of depth including: anti-floatation slab; pipe connections; joint sealant; excavation, shoring and bracing; bituminous concrete pavement and concrete saw cuts; dewatering; provision, installation and compaction of backfill and bedding materials; geotextile fabric; material testing; provision & installation of brick invert; removal and off-Site disposal of unsuitable excess soil materials; drain manhole frame and cover including brick & mortar to raise manhole cover to grade, anchors, concrete collars and all other Work incidental to the satisfactory completion of the Work.	

ITEM 17. – FDOT Ditch Bottom Inlet Type C	
Measurement	Each installed, complete in place, as shown on the Drawings
Payment	Unit price per each
Schedule of Payment	Monthly based on progress; 90 percent upon installation, 10 percent upon acceptance and cleanup.
Includes but is not limited to all materials, equipment, services and for furnishing and installing FDOT Ditch Bottom Inlet Type C, including brick and mortar leveling courses or concrete grade rings as specified, and asphalt collar over frame base. Contractor is responsible for setting frame and grate grades during temporary and final paving and all resetting, raising or lowering associated with roadway and laying final pavement shall be included in this item, pavement cutting, clearing and grubbing, excavation, bedding, shoring/bracing and wood sheeting left in place, backfill and compaction, shoring and bracing; supports, construction of inverts, providing frame and grate, hydraulic cement, coring, testing, landscape restoration, inlet structure, loam and seed, resetting of curbs; and all other appurtenances contained within the manhole.	

ITEM 18: Earthwork and Fine Grading	
Measurement	Portion of Work completed and accepted
Payment	Percent of lump sum price based on Schedule of Values
Schedule of Payment	Monthly based on progress
Includes all labor, materials, equipment, transportation, services, construction and testing inherent to the Work at the locations and limits indicated on the Drawings associated with grading activities and as required including, but not limited to handling, moving, spreading, feather and fine grading to meet surrounding elevation and ensure smooth transitions, installing and compacting existing and imported soils; compaction and material testing; backfill; coordination and delivery of suitable surplus materials not utilized for Contract work to a location as directed by the Owner; disposal of unsuitable soils and all other required Work incidental to the satisfactory completion of the Work. All material management and handling operations are considered incidental.	

ITEM 19: Soil Amendments and Sodding	
Measurement	Portion of Work completed and accepted
Payment	Percent of lump sum price based on Schedule of Values
Schedule of Payment	Monthly based on progress
Includes all labor, services, materials and equipment associated with, but not limited to, the placement of soil amendments and sodding within the limit of Work unless otherwise noted on the Drawings including spreading loam, seeding, watering, maintaining until stabilized, and all other Work incidental to the satisfactory completion of the Work.	

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION (NOT USED)

END OF SECTION

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SECTION 01 43 05

QUALIFICATION REQUIREMENTS

PART 1 – GENERAL

1.01 SUMMARY

- A. Meet or provide capability to meet the criteria specified below and in individual Specification sections in connection with various portions of the Work of the Contract Documents.

1.02 GENERAL REQUIREMENTS

- A. Contractor shall have been regularly and actively engaged in similar Work as described in the Contract Documents, operating under the same business name and business organization structure, for the last 5 years on at least 5 projects.
- B. Contractor shall have successfully completed at least 5 projects involving construction of similar facilities in Florida within the last 10 years. “Similar facilities” means similar in type, character, physical size, and complexity to that required by the Contract Documents.
 - 1. Contractor shall have regularly engaged experienced engineers/design professionals licensed in the state the Project is located performing work similar to that specified.
- C. Contractor shall have:
 - 1. a full-time on-Site superintendent in responsible charge of the Work with at least 10 years’ experience as superintendent on comparable projects; and
 - 2. a full-time project manager (but not on Site full-time) in responsible charge of the Work with at least 10 years’ experience as project manager on comparable projects.

1.03 SPECIAL REQUIREMENTS

- A. Contractor shall have successfully completed:
 - 1. at least 5 projects that included a combination of stormwater, potable water, and pavement/street repair within public streets within the last 10 years; and
 - 2. at least 5 projects that included pavement and street repair within public streets within the last 10 years.

END OF SECTION

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SECTION 01 50 00

TEMPORARY FACILITIES AND CONTROLS

PART 1 – GENERAL

1.01 SUMMARY

- A. This Section specifies temporary facilities and controls for execution of the Work put into place for use only during the period of construction, that will be removed when no longer required for construction operations. This Section applies to all Specifications and Drawings and provisions of this Section may be supplemented in other sections of Division 01.
- B. Certain provisions required by Laws and Regulations may be referenced. Contractor is responsible to determine and obtain applicable Laws and Regulations and to review and interpret the full text of such Laws and Regulations.
- C. Section Includes

1.02 TEMPORARY CONSTRUCTION FACILITIES

- Barriers
- Protection of Work
- Security
- Safety Facilities
- Access Roads
- Parking
- Field Offices
- Staging Area
- Project Identification
- Progress Cleaning and Waste Removal

1.03 TEMPORARY UTILITIES

1.04 TEMPORARY CONTROLS

- Pest Control
- Dust Control
- Water Control and Dewatering
- Erosion and Sediment Control
- Noise Control
- Pollution Control
- Traffic Regulation

1.05 REMOVAL OF TEMPORARY UTILITIES, FACILITIES, AND CONTROLS

1.02 TEMPORARY CONSTRUCTION FACILITIES

A. Barriers

1. Comply with the requirements of Paragraph 6.11. of the Standard General Conditions and Supplementary Conditions, if any.
2. Furnish barriers to prevent unauthorized entry to and clear delineation of construction areas, to allow for Owner's use of Site, and to protect existing facilities and adjacent properties from damage from construction operations as recommended by OSHA and as otherwise required for the protection of life and property during construction.
3. Construct barricades and protective facilities in accordance with local and state regulations. Furnish and install signs, lights, reflectors, and such protection facilities as may be required.
4. Furnish barricades required by governing authorities for public rights of way.
5. Provide protection for plant life designated to remain. Replace damaged plant life.
6. Protect non owned vehicular traffic, stored materials, Site and structures from damage.
7. If required, furnish commercial grade, minimum 8 foot high chain link fence around construction Site. Equip with vehicular gates with locks.

B. Protection of Work

1. Protect Work during working and non-working hours.
2. Provide special protection where specified in Specifications or Drawings and in accordance with manufacturer recommendations.
3. Furnish temporary and removable protection for installed equipment and material. Control activity in immediate Work area to minimize damage.
4. Protect exterior areas of Work from damage. Prohibit traffic from landscaped areas.

5. Buildings and Enclosures

- a. Furnish protective coverings at walls, projections, jambs, sills, and soffits of openings and protect finished floors, stairs, and other surfaces from traffic, dirt, wear, damage, or movement of heavy objects, by protecting with durable sheet materials.
 - b. Prohibit traffic or storage upon waterproofed or roofed surfaces. If traffic or activity is necessary, obtain recommendations for protection from waterproofing or roofing material manufacturer.
6. Whenever gale or high winds are forecast, take measures to secure loose material, equipment or other items that could be blown and be damaged or cause damage. Do not leave such loose items unsecured at end of a working day. Particular attention shall be taken with scaffolding and items placed or stored on roofs or within a structure prior to being enclosed.
7. Provide for removal of snow and ice which may impede Work, damage the finishes or materials, be detrimental to workers, or impede trucking, delivery, or moving of materials at the Site, or prevent adequate drainage of the Site or adjoining areas.

C. Security

1. Provide protection to stored items, the Work and Owner's operations from unauthorized entry, vandalism, or theft, and against fire, storms and other losses during working and non-working hours.
2. Coordinate with Owner's security program.

D. Safety Facilities

1. Provide first aid and other safety facilities required by Laws and Regulations during working and non-working hours.

E. Access Roads

1. Construct and maintain temporary roads accessing public thoroughfares to serve construction area. Control dust and water.
2. Extend and relocate as Work progress requires. Provide detours necessary for unimpeded traffic flow.
3. Provide for emergency access and maintain throughout the Work Site.

- F. Parking: off-Site at a location determined by Contractor.
 - 1. Do not allow construction vehicle parking on existing pavement or sidewalks.
- G. Field Offices: Not required for the Project.
- H. Staging Area: Owner is not providing a location for staging area. Determine and secure a location for staging area.
- I. Project Identification: provide signage required by EPA Grant in accordance with Section 00 73 74.
- J. Progress Cleaning and Waste Removal
 - 1. Comply with the requirements of Paragraph 6.11.B and C of the Standard General Conditions and Supplementary Conditions, if any.
 - 2. Maintain areas free of waste materials, debris, and rubbish and maintain the Site in a clean and orderly condition.
 - 3. Remove debris and rubbish from spaces and other closed or remote spaces before enclosing the space.
 - 4. Collect and remove waste materials, debris, and rubbish from Site at least weekly and legally dispose off-Site.

1.03 TEMPORARY UTILITIES

- A. Power service: Not required for the Project.
- B. Telephone service and internet access to field offices: Not required for the Project.
- C. Water service: Not required for the Project.
- D. Furnish and maintain required sanitary facilities and enclosures. Do not use existing facilities.
- E. Furnish lighting for construction operations. Furnish lighting for exterior staging and storage areas and for security purposes. Maintain lighting and provide routine repairs.
- F. Furnish heat devices and heat and cooling devices as required to maintain specified conditions for construction operations.
- G. Ventilate enclosed areas to assist cure of materials, to dissipate humidity, and to prevent accumulation of dust, fumes, vapors, or gases.

H. Fire Protection

1. Provide temporary fire protection equipment and services during construction per NFPA and local fire code and regulations, and fire marshal's requirements.
2. Use Work procedures that minimize fire hazards to the extent practicable and materials that are fire resistant where possible. Collect and remove combustible debris and waste materials from the Site each day. Store fuels, solvents, and other volatile or flammable materials away from the construction and storage areas in well-marked, safe containers in accordance with Laws and Regulations.

1.04 TEMPORARY CONTROLS

- A. Pest Control: Provide methods, means, and facilities to control and prevent spread of pests during construction operations. If required, provide for extermination of pests in accordance with Laws and Regulations. For extensive infestations, obtain the services of a licensed exterminator and coordinate plan with Owner and Engineer.
- B. Dust Control: Execute Work by methods to minimize raising dust from construction operations. Provide positive means to prevent air-borne dust from dispersing into atmosphere. Utilize the application of sprinkled water and calcium chloride as needed to reduce the emission of air-borne soil particulates from the Project Site.
1. Spread additional calcium chloride in response to complaints at no additional cost to Owner.
- C. Water Control and Dewatering: as specified below.
1. Comply with requirements specified in State of Florida Erosion and Sediment Control Designer and Reviewer Manual.
 2. Grade Site to drain away from excavations to approved drainage collection facilities. Ensure collected surface drainage water meets permitted criteria for sediment content prior to discharge.
 3. Maintain excavations free of water. Furnish, operate and maintain pumping equipment.
 4. Dewater excavations and legally dispose of water in a manner that will not cause injury to public and private property.
 5. Protect Site from puddling, ponding or running water.

6. Obtain necessary regulatory approvals for the disposal of dewatering flows, including, among others, approval by the Environmental Protection Agency under the National Pollutant Discharge Elimination System (NPDES) program for construction dewatering activities. Submit the completed and approved construction dewatering permit to the Engineer immediately upon receipt.
 7. Design, furnish, install, maintain, operate and remove temporary dewatering systems as required to lower and control water levels and hydrostatic pressures in excavations during construction; legally dispose of pumped water; construct, maintain, observe and, except where indicated or required to remain in place, remove dewatering equipment and system at the completion of construction.
 - a. Dewatering may include: lowering the water table, intercepting and collecting seepage which may penetrate the support of excavation, slopes or bottom of the excavation; increasing the stability of excavated slopes; preventing loss of material from beneath the slopes or bottom of the excavation; reducing lateral loads on sheeting and bracing; limiting horizontal displacements and stresses in support of excavation to tolerable and allowable levels; preventing displacements of existing structures, utilities, pavements, and sidewalks; improving the excavation and hauling characteristics of sandy soil; preventing rupture or heaving of the bottom of any excavation; and disposing of pumped water.
 8. Grade Site to drain away from excavations to approved drainage collection facilities. Ensure collected surface drainage water meets permitted criteria for sediment content prior to discharge.
 9. Prepare a Construction Flood Contingency Plan detailing Contractor's means and methods for stabilizing the Work area and emergency notification procedures if the Work area becomes subject to flooding as a result of a storm event or water removal system failure.
- D. Erosion and Sediment Control: as specified below.
1. Comply with:
 - a. FL DEP requirements
 - b. FL DOT requirements within State rights of way
 - c. State of Florida Erosion and Sediment Control Designer and Review Manual (latest update July 2013)
 2. Plan and execute construction using methods to control surface drainage from cuts and fills, from borrow and waste disposal areas and prevent erosion and sedimentation.

3. Submit erosion and sediment control plan to Engineer prior to the start of construction.
4. Install erosion and sediment controls as required by Laws and Regulations. Install additional erosion and sedimentation control measures as necessary to stabilize the Site. Coordinate temporary erosion controls with permanent erosion controls to the extent practical. Provide and maintain devices to control erosion, siltation, and sedimentation that occur during construction operations. Undertake reasonable precautions and measures to avoid erosion of soil and to prevent silting of drainage ditches, storm sewers, rivers, streams, and lakes.
5. Employ pollution prevention measures, erosion and sedimentation control before, during, and after soils are exposed. Implement measures prior to soil disturbance or soil storage to the extent possible to ensure that such measures are in place before activity occurs and employ additional measures as the Work progresses. Implement and maintain as necessary until the Site is permanently stabilized.
6. Perform inspections of disturbed soil areas, material storage areas exposed to precipitation, and erosion control measures with Engineer a minimum of once every 14 days and also within 24 hours after any storm event greater than 0.5 inches of rainfall. Immediately correct deficiencies in the erosion control measures identified or indicated by failures or erosion by implementing additional measures or different techniques to correct and prevent subsequent erosion at no additional cost to Owner.
7. In the event that silt or debris breaches erosion control, immediately remove and clean silt or debris from drainage ditches and storm sewers and revise erosion control measures as required by the Conservation Commission or the Engineer. Should silt or debris breach erosion controls and reach rivers, streams or lakes, immediately notify local, state or Federal representatives as required and implement required remediation methods at no additional cost to Owner.
8. Limit duration of the exposure of soils on embankments, excavations, and graded areas to a minimum.
9. Provide temporary measures such as berms, dikes and drains to prevent water flow. Install erosion control measures in any ditch, swale or channel before water is allowed to flow in the waterway. Handle water pumped from trenches to minimize discharge of silty water to the maximum extent practicable.
10. Stabilize storm drain outfalls before the discharge points become operational. Install inlet protection immediately upon construction of culverts.

11. Stabilize disturbed areas with temporary and permanent erosion control practices as soon as practicable, but no more than 14 days after construction activity on a particular portion of the Site has temporarily or permanently ceased. Exceptions to this time requirement include: a) where construction activities will resume on the particular portion of the Site within 21 days; and b) where snow cover delays initiation of stabilization measures.
12. Place stockpiled topsoil on the Site away from natural drainages, in piles with side slopes of 50 percent to 70 percent. Install siltation fence around the base of the pile to prevent eroding soil from washing into drainages. Cover topsoil piles which are to remain for a period of 21 days or more with temporary seed and mulch immediately following stockpiling.
13. Conduct pavement sweeping to remove sediment and soil debris accumulation on pavement resulting from construction activity.

E. Noise Control

1. Provide methods, means, and facilities to minimize noise from construction operations.
2. Provide noise attenuation systems capable of meeting the federal and state Department of Environmental Protection Air Quality Control Regulations.
3. Construct sound enclosures or utilize other noise reduction techniques if the equipment does not meet the noise level requirements.
4. Submit a Noise Control plan for:
 - a. Night work: 7 p.m. – 7 a.m.
 - b. Pumping operations and Work which extend beyond regular working hours.
 - c. Any other Work as determined by the Engineer which warrants special noise prevention measures.

F. Pollution Control: as specified below.

1. Provide methods, means, and facilities to prevent contamination of soil, water, and atmosphere from discharge of noxious, toxic substances, and pollutants produced by construction operations.
 - a. Water Pollution Control
 - 1) Ensure that sediment, debris, petroleum, chemicals, or other contaminants will not enter existing drainage facilities and channels. Use construction methods that will prevent entrance of pollutants and wastes into existing streams, rivers, lakes, and flowing and dry watercourses.

- 2) Obtain legal disposal sites and dispose of pollutants and wastes in a legal manner.
- 3) Respond immediately to emergencies as directed when water quality of existing streams, rivers, lakes and flowing and dry watercourses is threatened. Take corrective action to remove or contain pollutants until a permanent solution is determined.
- 4) Submit a plan and employ additional protective measures to prevent harm to wetland resource areas if required by local, state and federal Laws and Regulations.

b. Air Pollution Control

- 1) Equipment and vehicles that exhibit excessive exhausts emissions due to poor engine adjustments or inefficient operation will not be permitted to operate until corrective repairs or adjustments are made.
- 2) Burning of materials from clearing or grubbing operations, combustible construction materials, and rubbish will not be allowed.

G. Traffic Regulation: as specified below.

1. Submit traffic control plans and coordinate with Owner and local agencies. Submit plan for traffic control to Owner for review 14 days in advance of any Work within public right-of-way, street closure or detour.
2. Provide and maintain traffic control and maintenance devices in accordance with Part 6, Temporary Traffic Control, of the "Manual on Uniform Traffic Control Devices for Streets and Highways", published by the U.S. Department of Transportation, Federal Highway Administration and other applicable codes and standards as specified. Operate devices 24 hours per day as required.
3. Maintain minimum of one moving lane on roadways at all times.
 - a. Where detours are permitted, provide necessary barricades, flashers, flashing arrows and signs in accordance with referenced Manuals and Laws and Regulations.
 - b. Provide gravel borrow and bituminous concrete to maintain temporary passable travel lane ramps, temporary bridging, steel plates, temporary pavement, wood-framed walkways, caution, safety and other necessary signs directing the pedestrian and vehicular traffic towards unblocked and safe areas.

- c. Except when road closure and road blockage permits are obtained, maintain two lanes of traffic (one in each direction) throughout construction and during non-working hours to the maximum extent possible.
4. Provide safe access/egress to businesses and abutting property owners within the Project area. In areas where the construction activity is in progress, provide directional signs in front of businesses indicating "OPEN FOR BUSINESS" or similar for guidance of customers.
 - a. Certain construction operations such as utility work and roadway/sidewalk reconstruction may restrict access/egress on some roads and to businesses and abutting property owners. Under these circumstances, schedule operations during off-peak hours or late evenings with Owner approval so that a particular work activity can be completed in the shortest possible time.
 - b. Provide 48 hours' notice to businesses and abutting property owners when access/egress will not be available or restrictions will exist.
5. Exercise particular care to establish and maintain such methods and procedures that will not create hazards.
 - a. Remove or properly cover traffic control, safety devices and/or signs having messages that are irrelevant to normal traffic conditions at the end of each Work period. Keep signs clean at all times and provide that legends are distinctive and unmarred.
 - b. Place excavated material and construction equipment so that vehicular and pedestrian traffic is maintained at all times unless road closure permit is obtained. If the Contractor's operations cause traffic hazards, implement appropriate safety measures immediately.
 - c. In areas of high pedestrian and vehicular traffic volume, the remove waste materials and construction equipment from the Work Site on a daily basis. Do not park construction equipment overnight on the Site or the adjacent roads unless permitted by Owner.
 - d. Provide night watchmen where special hazards exist.
6. Post signage clearly stating that any vehicle impeding the progress of construction will be towed at the vehicle owner's expense. Towing charges incurred by Owner for Contractor's failure to post such signs will be borne by the Contractor.

1.05 REMOVAL OF TEMPORARY UTILITIES, FACILITIES, AND CONTROLS

- A. Remove temporary utilities, equipment, and facilities before Final Application for Payment inspection.
- B. Remove temporary underground installations and grade Site as indicated. Clean and repair damage caused by installation or use of temporary utilities, facilities, and controls.
- C. Restore existing facilities and areas used during construction to original condition. Restore permanent facilities used during construction to specified condition.

END OF SECTION

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SECTION 01 57 32

TEMPORARY STORMWATER DRAINAGE BYPASS

PART 1 – GENERAL

1.01 SUMMARY

- A. Furnish, install and maintain temporary measures for storm drain bypass, including but not limited to, temporary bypass piping, plugs, and pumping.

1.02 PRICE AND PAYMENT PROCEDURES

- A. Measurement and payment requirements: per Division 01 General Requirements.

1.03 ADMINISTRATIVE REQUIREMENTS

- A. Coordination, Sequencing, and Scheduling: in accordance with Division 01 General Requirements.

1.04 SUBMITTALS

- A. Submit in accordance with the Division 01 General Requirements.
- B. Bypass Pumping Plan for **each** bypass location to Engineer and Owner 2 weeks prior to bypassing stamped by a professional engineer registered in the state where Project is located.
- C. Bypass Pumping Plan must contain at a minimum:
 - 1. Standard Operating Procedure: Describe the normal sequence of events to be followed while setting up, pumping, and breaking down pumping equipment. Plan must address strategies and safeguards to ensure that public safety and environmental health is constantly maintained, the possibility of property damage and wetlands impacts, and overall level of inconvenience is minimized.
 - 2. A bypass routing diagram including pump location for **each** Work zone,
 - 3. Calculations: estimates of anticipated peak flows, pump rates, pump curves, and other relevant design.
 - 4. List of the equipment that will be used during normal pumping operation.

5. Emergency Response Plan: Describe the intended means of handling the following situations, include both response and clean-up measures. List equipment to be used and where it will be stored in case of emergency:
 - a. Break or failure of bypass line (pipe)
 - b. Failure of bypass pump
 - c. Overflow
 - d. Back up into dwelling or onto private property
 - e. Failure of bypass pumping system to accommodate flow.
- D. Shop Drawings for equipment and materials including, but not limited to:
 1. Pumps
 2. Pipe or hose
 3. Joints/couplings
 4. Plugs and/or bladders

1.05 SITE CONDITIONS

- A. Existing Conditions: per Division 01 General Requirements.

PART 2 – PRODUCTS

2.01 PUMPS, PIPES & FITTINGS

- A. Pump: suitable for usage with storm drainage and capable of conveying the volume of flow anticipated with a sufficient margin of safety. Provide for 100 percent redundancy (two pumps shall be provided at the Site for every one pump required) if flow cannot be returned to the storm drain at any time if pumping system failure occurs. Redundant pump: include suction and discharge piping and quick connect couplings to facilitate change out of pumps.
- B. Pipe and fittings: constructed of carbon steel, or fused high-density polyethylene pipe or approved equal. Fittings shall be quick-disconnect type.
- C. Lay flat hose: extra heavy duty, highly abrasion resistant and fitted with gasketed couplings. Hose shall be rated for 150 percent of working pressure.
- D. Provide a temporary enclosure for the bypass pumping system for sound attenuation operating outside of regular working hours meeting state and local Laws and Regulations for noise requirements.

PART 3 – EXECUTION

3.01 GENERAL

- A. Adequately bypass flow around the affected section of the Work, even instantaneous peak flows, without damage or overflow. Be aware of potential large instantaneous flow contributors connected to the storm drain under repair.
- B. Allow for passage of traffic. Protect bypass piping at driveway and street crossings.
- C. Maintain roadway drainage system during precipitation events to prevent flooding of public right-of-way and adjacent properties.
 - 1. Protect against surcharging of the existing system upstream during dry weather and wet weather flows.
 - 2. Protect Site from flooding. Provide measures to adequately isolate the Site from backflow of adjacent waterways to provide dry working conditions.
- D. Continuously monitor bypass operations regardless of duration or timing of bypassing.
- E. Coordinate bypassing with low-flow times, to the extent feasible. Ensure no overflows or backups occur.
- F. Temporary damming of waterways is not allowed.
- G. If it is determined that bypass pumping is not required at a location due to lack of flow or that a Work item does not require bypass pumping to be performed, and the decision is agreed upon by the Engineer, provide protection of flows from any construction debris and ensure that no debris enters the storm drain system.
- H. Bypass Pumping
 - 1. Bypass storm drain pumping: a typical manhole to manhole or catch basin to manhole bypass pumping setup.
 - 2. Submit a bypass plan to Engineer prior to implementation of such Work and prior to the start of construction.
- I. Restore normal service to entire system at the end of normal working hours every day or post an attendant on Site.
- J. Repair any damage that occurs to existing pipes and structures to the satisfaction of the Engineer.
- K. Temporary Bypass will be considered incidental to the Work to be performed, unless otherwise indicated.

3.02 FLOW DATA

- A. Active storm drains exist in the entire Project area. Therefore, flows and flow data are variable depending on location, weather conditions and tides. Visiting areas of the Site prior to Work to visually inspect flow conditions is encouraged. Maintain flows as specified under all flow conditions.
- B. Portions of the Project area are subject to tidal infiltration and inflow. Account for tide elevations, tide cycles, and tidal I/I volume in the planning and conduct of the Work.
- C. Portions of the Project area are subject to groundwater inflow. Account for groundwater infiltration in the planning and conducting the Work.

3.03 TEMPORARY POWER

- A. Provide fuel and/or power to run pumps associated with the bypass at no additional cost to the Owner. Include emergency backup power or backup fuel storage as part of the Bypass Pumping Plan.

3.04 PIPING

- A. Lay temporary piping along the general lines of the street in a manner that causes the minimum amount of disruption and is least likely to be damaged. Make provisions at driveways, provisions to permit property owners to drive over the temporary pipe by use of temporary bituminous pavement, cold patch, or other approved material to form a ramp on each side of the pipe to the satisfaction of the Engineer or by depressing the pipe as directed by the Engineer.

3.05 OPERATION AND MAINTENANCE

- A. Constantly attend the bypass system. Provide an attendant if bypass pumping must continue beyond working hours.

END OF SECTION

SECTION 01 60 00

PRODUCT REQUIREMENTS

PART 1 – GENERAL

1.01 SUMMARY

- A. This Section specifies general requirements for products, materials and equipment. This Section applies to all Specifications and Drawings and provisions of this Section may be supplemented in other sections of Division 01.
- B. Certain provisions required by Laws and Regulations may be referenced. Contractor is responsible to determine and obtain applicable Laws and Regulations and to review and interpret the full text of such Laws and Regulations.
- C. Section Includes

- 1.02 SOURCE QUALITY CONTROL
 - General
 - Independent Testing Agency Certification
 - Factory Testing

- 1.03 PRODUCT REQUIREMENTS
 - General
 - Transportation and Handling
 - Storage and Protection

- 1.04 WARRANTIES

1.02 SOURCE QUALITY CONTROL

- A. General
 - 1. Subject material and equipment furnished under the Contract Documents to a complete factory testing program as specified.
 - 2. Shop Drawings and submittals: reviewed by Engineer before initiating testing program.
 - 3. Perform checks and tests in accordance with manufacturer's recommendations and referenced standards.

4. Evaluate test results and advise Owner immediately of any discrepancy between test results and test limits or the failure of any device or system under test. Include test limits for acceptability applicable to each test on the certified test records.
 5. Record test information, including the evaluation of testing results, on forms approved by Owner and Engineer.
- B. Independent Testing Agency Certification
1. If specified, furnish certificates from an independent testing agency.
 2. Independent testing agency to certify that material and equipment components have been examined and tested and are in conformance with the requirements specified in the Contract Documents.
 3. Take Samples in accordance with the requirements specified in the Contract Documents, as selected by Owner or independent testing agency. Furnish and ship at no additional cost to Owner.
- C. Factory Testing
1. Provide 14 days prior written notice of factory inspections and tests to Owner and Engineer.
 2. If failure to give proper written notice results in material and equipment being assembled or covered before a factory inspection or test, make material and equipment ready for inspection or test and reassemble or recover at no additional cost to Owner.
 3. Owner may inspect any portion of material and equipment furnished at any reasonable time during manufacture and may witness testing of any portion of material and equipment wherever located. Owner and Engineer to witness tests only.
 4. Furnish, set up and operate test equipment and facilities.
 5. If facilities for conducting required tests are unavailable to the manufacturer, conduct tests elsewhere or have them performed by an independent agency approved by Owner.
 6. Protect material and equipment after testing and checking to provide that subsequent testing of other equipment or systems does not disturb, damage or otherwise interfere with functional capability of material and equipment.
 7. Assume responsibility for protection of material and equipment and safety of all personnel during factory testing program.

8. Grounds for rejection: failure to withstand tests; failure to meet ratings; failure to meet applicable standards.
9. In the event of failure
 - a. Submit revisions of documents requiring approval for changes required for rectification.
 - b. Obtain Owner's and Engineer's approval before making such changes.
 - c. Provide written details of any changes to be made not requiring approval.
 - d. Notify Owner and Engineer in writing before retesting.
 - e. Furnish new material and equipment which meets requirements of the Specifications if rejected material and equipment cannot be rectified to satisfaction of Owner and Engineer.
 - f. Retest after rectification in presence of Owner or Engineer.
10. Assume responsibility for all costs, including, but not limited to: loss or damage to materials and equipment resulting from testing; retesting; rectification; new material and equipment to replace damaged or non-rectifiable material and equipment; removal, furnishing, transportation, unloading, and installation of replacement material and equipment; and witness of testing by Owner and Engineer including travel, lodging, meals, and payroll.
11. Submit certified test reports which define tests, list results, and are signed by Contractor's representative, and copies of raw data collected during tests. Submission of certified test reports does not relieve Contractor of responsibility for material and equipment meeting requirements of the Contract Documents after installation.

1.03 PRODUCT REQUIREMENTS

A. General

1. Products include new material and equipment incorporated into the Work and may also include existing material and equipment required for reuse. This does not include machinery and equipment used for preparation, fabrication, conveying, installation and erection of the Work.
2. Do not use materials and equipment removed from existing Work Site, except as specifically permitted.
3. Provide complete with accessories, trim, finished, safety guards, and other devices and details need for a complete installation and for the intended use or effect.

4. Provide standard products which have been produced and used successfully on other similar projects for similar applications. Provide products which are likely to be available to Owner in the future for items required for maintenance and repair or replacement Work.
5. Furnish interchangeable components of the same manufacturer, for similar components.

B. Transportation and Handling

1. Transport and handle material and equipment in accordance with manufacturer's instructions.
2. Notify Engineer and Owner in writing upon acceptance of a shipment.
3. Promptly inspect shipments to assure that material and equipment comply with requirements, quantities are correct, and material and equipment are undamaged.
4. Furnish equipment and personnel to handle material and equipment by methods to prevent soiling, disfigurement, or damage.
5. Uncrate equipment and dispose of packing material properly.

C. Storage and Protection

1. Store and protect material and equipment in accordance with manufacturer's instructions, with seals and labels intact and legible. Store sensitive material and equipment in weather tight, climate controlled enclosures.
2. For exterior storage of fabricated material and equipment, place on sloped supports, above ground.
3. Provide for bonded off Site storage and protection when Site does not permit on Site storage or protection.
4. Cover material and equipment subject to deterioration with impervious sheet covering. Furnish ventilation to avoid condensation or potential degradation of material and equipment.
5. Store loose granular materials on solid flat surfaces in a well-drained area. Avoid mixing with foreign matter.
6. Furnish equipment and personnel to store material and equipment by methods to prevent soiling, disfigurement, or damage.

7. Arrange storage of material and equipment to permit access for inspection. Periodically inspect to assure material and equipment are undamaged and are maintained in acceptable conditions.
8. After receipt of material and equipment, assume responsibility for loss and damage including but not limited to breakage, corrosion, weather damage, and distortion.

1.04 WARRANTIES

- A. Provide warranties for equipment and material in accordance with Paragraphs 6.19 and 14.03 of the Standard General and Supplementary Conditions, if any.
- B. Provide extended or special warranties as indicated in individual Specification sections.

END OF SECTION

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SECTION 01 70 00

EXECUTION AND CLOSEOUT REQUIREMENTS

PART 1 – GENERAL

1.01 SUMMARY

- A. This Section specifies general execution requirements and startup/commissioning and performance testing for closeout of the Work. This Section applies to all Specifications and Drawings and provisions of this Section may be supplemented in other sections of Division 01.
- B. Certain provisions required by Laws and Regulations may be referenced. Contractor is responsible to determine and obtain applicable Laws and Regulations and to review and interpret the full text of such Laws and Regulations.
- C. Section Includes

1.02 OVERALL EXECUTION REQUIREMENTS

- Coordination
- Existing Conditions
- Field Engineering
- Cutting and Patching
- Electrolytic Corrosion Prevention
- Quality Assurance and Control of Installation
- Manufacturers' Field Services
- Independent Testing
- Record Documents

1.03 STARTUP, TESTING, AND COMMISSIONING

- Spare Parts
- Consumables
- Checkout and Starting Systems
- Starting, Adjusting, and Balancing
- Startup and Commissioning/Performance Testing
- Demonstration and Training

1.04 CLOSEOUT REQUIREMENTS

1.02 OVERALL EXECUTION REQUIREMENTS

A. Coordination

1. Conduct preconstruction and pre-installation meetings before commencing certain Work that requires coordination or has special requirements or approvals.
2. Comply with the required Work sequence and coordination as may be specified in Summary of Work and reflect in the Project scheduling.
 - a. Comply with working hours specified in Section 00 73 10.
3. Coordinate Work such that Work is completed with minimum disruption to residents and businesses.
4. Coordinate space requirements and installation of Work. Utilize spaces efficiently to maximize accessibility for other installations, maintenance, and repairs.
 - a. A primary Site restriction is the width of the streets and volume of traffic within the Project Site which may require complete shut down or partial blocking of the streets during construction. Coordinate with the Fire Department and Police Department.
5. Coordinate Work of the various Specifications with interdependent responsibilities for installing, connecting to, and placing in service, operating equipment.
6. Coordinate related Work at the Site in accordance with Article 7 of the Standard General and Supplementary Conditions, if any.
7. Coordinate completion and cleanup of Work of separate sections in preparation for Substantial Completion and for portions of Work designated for Owner's partial occupancy.
8. After Owner occupancy of premises, coordinate access to Site for correction of defective Work and/or incomplete Work to minimize disruption of Owner's activities.

B. Existing Conditions

1. Paragraph 4.01 of the Standard General and Supplementary Conditions, if any, covers Availability of Lands.
2. Paragraph 4.02 of the Standard General and Supplementary Conditions, if any, covers Subsurface and Physical Conditions.

3. Pursuant to Paragraph 4.04 of the Standard General and Supplementary Conditions, if any, existence and location of Underground Facilities and other utilities and construction indicated as existing are not guaranteed. Before beginning Work investigate and verify the existence and location of Underground Facilities and other utilities and construction.
 - a. Contact Florida Sunshine 811 at www.sunshine811.com and/or by dialing 811.
 - b. Conduct test pits and other utility research and properly restore utilities interfered with or damaged during construction at no cost to the Owner.
 - c. Engage a professional subsurface utility locator to verify the existence and location of underground utilities prior to starting Work.
 4. Paragraph 4.05 of the Standard General and Supplementary Conditions, if any, covers Reference Points.
 5. Paragraph 4.06 of the Standard General and Supplementary Conditions, if any, covers Hazardous Environmental Conditions at Site.
- C. Field Engineering: Not required for the Project.
- D. Cutting and Patching
1. Employ skilled and experienced personnel to perform cutting and patching.
 2. Submit written request in advance of cutting or alteration which affects:
 - a. structural integrity of any element of Project;
 - b. integrity of weather exposed or moisture resistant elements;
 - c. efficiency, maintenance, or safety element;
 - d. safety, traffic, or hazard barriers;
 - e. visual qualities of sight exposed elements; and
 - f. work of Owner or separate contractor.
 3. Execute cutting, fitting, and patching including excavation and fill to complete Work and to:
 - a. fit materials together, to integrate with other work;
 - b. uncover Work to install ill-timed Work;
 - c. remove and replace defective or non-conforming Work;
 - d. remove Samples of installed Work for testing when requested; and
 - e. provide openings in element of Work for penetration of mechanical and electrical work.

4. Execute Work by methods to avoid damage to other work and which will provide appropriate surfaces to receive patching and finishing.
5. Provide adequate temporary support for Work to be cut.
6. Restore Work with new materials in accordance with requirements of Contract Documents. Use materials identical with original materials where recognized that satisfactory results can be produced.
7. Provide protection from elements for areas which may be exposed by uncovering work.
8. Refinish surfaces to match adjacent finishes. For continuous surfaces, refinish to nearest intersection or natural break. For an assembly, refinish entire unit. Restore exposed finishes of patched areas; and, where necessary extend finish restoration onto retained adjoining Work in a manner, which will eliminate evidence of patching.
9. Identify any Hazardous Waste, Hazardous Environmental Condition, or hazardous substance exposed during the Work to Owner for decision or remedy in accordance with Paragraph 4.06 of the Standard General and Supplementary Conditions, if any.
10. Cut work by methods least likely to damage Work to be retained and work adjoining. Cut Work with sawing and grinding tools, not with hammering, chopping, or burning tools. Cut masonry and concrete materials with masonry saw or core drill. Do not use pneumatic tools without prior approval. Core drill openings through concrete Work. Adhere to mandatory cutback requirements when saw cutting concrete and roadway openings.
11. Do not cut and patch structural Work in a manner resulting in reduction of load-carrying capacity or load/ deflection ratio.
12. Fit Work tight to pipes, sleeves, ducts, conduit, and other penetrations through surfaces. Maintain supports to ensure structural integrity of the Work. Provide devices and methods to protect other portions of Project from damage and seal voids. For interior work at penetrations of fire rated walls, partitions, ceiling, or floor construction, completely seal voids with fire resistant material, to full thickness of the penetrated element.
13. Do not cut and patch operational or safety-related components that reduce capacities to perform in manner intended. Do not cut and patch Work that reduces visual qualities. Remove and replace unsatisfactory cutting patching as directed by Engineer or Owner.

E. Electrolytic Corrosion Prevention

1. Prevent galvanic action, bimetallic corrosion, anodic or cathodic action, and electrolysis at all electrical grounds and for all galvanic scale (electromotive series or table of oxidation potentials). Do not allow contact of dissimilar metals further apart than 0.35 on the galvanic scale (electromotive series or table of oxidation potentials). The electrode potential of common metals is listed below.

	Electrode Potential Volts (Relative to Hydrogen)
Magnesium	+2.37
Aluminum	+1.70
Zinc+	+0.76
Chromium	+0.56
Iron and Steel	+0.44
Cadmium	+0.40
Nickel	+0.25
Tin	+0.14
Lead	+0.13
Copper	-0.34

2. Unless otherwise indicated, provide dielectric insulators between ferrous and nonferrous pipe and equipment.

F. Quality Assurance and Control of Installation

1. Monitor quality control of Subcontractors, Suppliers, manufacturers, material, equipment, services, Site conditions, and workmanship, to produce Work of specified quality. Conduct field quality control and testing specified.
2. Comply fully with manufacturers' installation instructions, including each step in sequence. If manufacturers' instructions conflict with Contract Documents, request clarification from Engineer before proceeding.
3. Comply with specified standards as a minimum quality for the Work except when more stringent tolerances, codes, or specified requirements indicate higher standards or more precise workmanship.
4. Perform Work using persons qualified to produce workmanship of specified quality.

5. Install field Samples and mockups at the Site as required in Specifications for review. Acceptable Samples and mockups represent a quality level for the Work. Where field Sample or mockup is specified to be removed, clear area after field Sample or mockup has been accepted by Engineer or after Work is complete when mockup is to serve as a control reference.
6. Protect adjacent construction in accordance with Paragraph 6.13 of the Standard General and Supplementary Conditions, if any.

G. Manufacturers' Field Services

1. If required in the Specifications, arrange and pay for material or equipment Suppliers or manufacturers to provide qualified staff personnel (field representative) to perform the following services and services specified. Submit reports of activities, actions taken and test results to Engineer within 10 days of completion.
 - a. Observe Site conditions, conditions of surfaces and installation, quality of workmanship.
 - b. Report observations and Site decisions or instructions given to applicators or installers that are supplemental or contrary to manufacturers' written instructions.
 - c. Assist with field assembly as required.
 - d. Furnish, setup, and operate required test equipment and facilities.
 - e. Perform and record results of manufacturer recommended inspections and tests, and tests specified for material and equipment.
 - f. Be responsible for protection of material and equipment and safety of all personnel during testing.
 - g. Perform any other services normally provided by field representative's company.
 - h. Instruct operating personnel in proper use of material and equipment.
 - i. Instruct and supervise field repairs before acceptance by Owner.

H. Independent Testing

1. Employ and pay for specified services of an independent firm in accordance with Paragraph 13.03 of the Standard General and Supplementary Conditions to perform inspection and testing as may be specified except where responsibility for a specific inspection or test is expressly allocated to Owner in the Specifications or by Laws and Regulations.

2. Reports will be submitted by the independent firm to Owner, in duplicate indicating observations and results of tests and indicating compliance or noncompliance with Contract Documents.
3. Inspection, testing, and source quality control may occur on or off the Project Site.
4. Cooperate with independent firm. Furnish samples of materials, design mix, equipment, tools, storage and assistance as requested.
5. Notify Owner and independent firm 24 hours before expected time for operations requiring services.
6. Make arrangements with independent firm and pay for additional Samples and tests required for Contractor's use.
7. Retesting required because of nonconformance to specified requirements will be performed by the same independent firm if instructed by Owner. Payment for retesting will be charged to Contractor by deducting inspection or testing charges from the Contract Price.
8. Testing or inspecting does not relieve Contractor from performing Work in accordance with requirements of the Contract Documents.

I. Record Documents

1. Provide record documents in accordance with Paragraph 6.12 of the Standard General and Supplementary Conditions, if any, and in accordance with Section 01 15 30.

1.03 STARTUP, TESTING, AND COMMISSIONING

A. Spare Parts

1. Provide spare parts required for construction, startup, testing and commissioning of the Work prior to achievement of Substantial Completion, including spare parts for flushing and consumable supplies such as bolts, nuts, gaskets, filters, insulating tape, etc., normally consumed in the startup, commissioning and testing.
2. If spare parts are to be purchased by Owner as specified, Contractor shall have the right to use the spare parts purchased by Owner provided that such spare parts are replaced prior to Substantial Completion at Contractor's expense. Replacement spare parts, replaced by Contractor, shall be new, unused and identical as the original spare part used.

B. Consumables

1. Provide initial fills of consumables including equipment lubricants, resins, chemicals, desiccants, and fuels. Provide subsequent fills if required during Warranty Period if acts or omissions of Contractor cause such consumables to require replacement.
2. Coordinate with Owner for consumables required.

C. Checkout and Starting Systems

1. Coordinate schedule for startup and operation of various equipment and systems with Owner.
2. Notify Owner 7 days before startup of each major piece of equipment or system, including a staffing request for Owner's operations and maintenance personnel required to adequately and safely support each specific startup and operation activity.
3. Verify that each system or piece of equipment item has been assembled, constructed, or completed in accordance with the Contract and capable of functioning as intended.
4. Verify that each piece of equipment or system has been checked for proper lubrication, drive rotation, magnetic center alignment, belt tension, control sequence, or other conditions which may cause damage.
5. Verify that each piece of equipment or system has successfully completed construction testing and cold commissioning, including hydrostatic testing, loop checks, relay checks, calibration, and continuity checks and that all tests, meter readings, and specified electrical characteristics agree with those required by the equipment or system manufacturer.
6. Verify wiring and support components for equipment are complete and tested.
7. Execute startup under supervision of responsible manufacturers' representative or Contractor's personnel in accordance with manufacturers' instructions utilizing Owner's qualified operations and maintenance staff trained by Contractor.
8. When specified in individual Specification Sections, require manufacturer to provide field representative to be present at Site to inspect, check and approve equipment or system installation before startup, and to supervise placing equipment or system in operation.

D. Adjusting and Balancing

1. Supply necessary equipment, material, construction power, and consumables (except for those provided by Owner) needed to startup and fully test the Work and replenish the same until Substantial Completion is achieved. Contractor may utilize Owner's operating spare parts, such use requiring timely replacement at Contractor's expense.
2. Coordinate as required for conduct of independent testing.
3. Perform specified and required adjusting and balancing concurrently to the maximum extent possible on individual equipment and systems and prior to startup and commissioning/performance testing.

E. Startup and Commissioning/Performance Testing

1. Conduct startup and commissioning/performance tests to demonstrate the Work meets the requirements of the Contract Documents, satisfies the Owner's requirements, and is in accordance with Paragraph 14.04. of the Standard General and Supplementary Conditions, if any. Conduct testing in accordance with individual Specifications.
2. Prepare and submit a written startup and commissioning/performance testing procedures no later than 60 days prior to start of testing for review and final test procedures no later than 30 days prior to start of testing. Submit a staffing request for Owner's operations and maintenance personnel.
3. Calibrate test equipment and instrumentation on Site or provide acceptable certificate of calibration conducted within 30 days of testing.
4. Complete functional testing prior to initiating the startup and commissioning/performance testing as specified.
5. Complete specified startup and commissioning/performance tests prior to Substantial Completion. Owner and Engineer will witness Performance Testing. Notify Owner and Engineer in writing at least 7 days prior to starting any startup and commissioning/performance testing. Coordinate for witnessing of tests by required regulatory representatives.
6. Submit written test reports.

F. Demonstration and Training

1. Provide formal demonstration and training of Owner's personnel as specified in individual Specifications.

1.04 CLOSEOUT REQUIREMENTS

- A. Substantial Completion shall have been achieved when the following has been completed and the requirements of Paragraph 14.04 of the Standard General and Supplementary Conditions, if any, have been met.
 - 1. Work is complete, systems are successfully operating, and final testing has been successfully completed.
 - 2. A full inventory of the spare parts and special tools purchased by the Owner are replenished and in the custody of the Owner.
 - 3. The Site has been restored to the satisfaction of the Owner.
 - 4. An inspection of the Work has been completed by the Engineer and the Owner.
 - 5. An updated Punch List is provided.
 - 6. The Contractor's written warranty and guarantee has been submitted as required by Paragraph 6.19.D. of the Standard General and Supplementary Conditions, if any.
 - 7. A Certificate of Substantial Completion has been provided in accordance with Paragraph 14.04.C. of the Standard General and Supplementary Conditions, if any.
- B. The Contractor shall have sole care, custody, and control of the Work until achievement of Substantial Completion. During the period between Substantial Completion and the date for Final Completion, Contractor shall be given access to correct items on the Punch List and achieve Final Completion.
- C. The date of achieving Substantial Completion is the date set forth in the Certificate of Substantial Completion that is accepted and signed by the Owner.
- D. Final Completion shall have been achieved when the Work is complete, the requirements of Paragraphs 14.06 and 14.07 of the Standard General and Supplementary Conditions, if any, have been met, and when the following is complete.
 - 1. Substantial Completion has been achieved and liquidated damages for failure to meet Substantial Completion Date have been paid.
 - 2. All Work including Punch List Items has been completed.
 - 3. Final cleaning has been conducted and Contractor equipment and supplies including waste materials have been removed from the Site and legally disposed of.

4. A full set of record documents have been submitted as specified in subparagraph 1.02.I. above and Contractor's written warranty and guarantee has been resubmitted if adjusted.
5. Inspections required by Laws and Regulations are complete. Certificates and permits to occupy and operate have been issued if required.
6. Spare parts, maintenance and extra materials have been delivered in quantities specified to Project Site and stored as directed.
7. A request for final inspection in accordance with Paragraph 14.06 of the Standard General and Supplementary Conditions, if any, has been submitted to the Engineer and the inspection has been completed and the results accepted by the Owner.
8. A Final Application for Payment has been submitted to the Engineer identifying total adjusted Contract Price, previous payments, and balance due along with required documentation in accordance with Paragraph 14.07.A. of the Standard General and Supplementary Conditions, if any.

END OF SECTION

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