DECLARATION OF WILLIAM J. McCONNELL PE, JD, MSCE

I, William J. McConnell, PE, JD, MSCE provide the following Declaration:

1. I am over the age of 18. I have personal knowledge of, and am competent to testify to, the matters contained in this declaration. The factual statements in this declaration are based on my personal and professional knowledge, and publicly available information. The opinions stated below are based on my knowledge, skill, training, and education in the construction industry. Various materials that I have relied upon in formulating my opinions are listed in the end notes.

2. I am the Chief Executive Officer of The Vertex Companies, Inc. ("Vertex"), an Architecture-Engineering-Construction firm with over 600 employees and offices in the United States, Canada, and Mexico. I have worked in the construction industry nearly my entire life. Upon graduating from the University of Maine in 1992 with a BS degree in Civil Engineering, I worked as a project engineer and assistant superintendent for Morganti Inc., which was an ENR Top 50 contractor at that time. Three years later, in 1995, I co-founded Vertex. For over a decade, Vertex has consistently been ranked as a top firm in multiple disciplines by ENR, and in 2021, ENR named Vertex a top Construction Management/PM-for-Fee (#38), Program Management (#49), Environmental (#160), and Design (#442) Firm in the US. While managing Vertex's practice for the past 26 years, I have overseen thousands of construction and engineering assignments, which include work on many mega-projects, which I define as projects that have construction costs that exceed $100M. During my time with Vertex, I've obtained a certificate from a multi-year part time program at MIT, a JD from the University of Denver, a MS degree in Civil Engineering from Columbia University, and I am currently working on a doctoral degree in construction from the University of Colorado. I am also a licensed general contractor in many jurisdictions and a licensed professional engineer in almost half of the states in the US.

3. Since 2006, I have prepared an annual State of the Construction Industry analysis. I also research construction spending, employment, inflation, and other industry trends on a weekly basis. I have prepared reports and presented at industry events on delay and productivity claims, economic trends in construction, construction risk, and other relevant topics which I also research and present expert opinions on.

Background

4. Section 2 of Executive Order 14042 requires federal contractors and subcontractors to adhere to the Safer Federal Workforce Task Force guidance (Guidance), so long as the Director of the Office of Management and Budget (OMB) approves such guidance and determines it "will promote economy and efficiency in Federal contracting."[i] Among other things, the Guidance mandates that, in order to be in compliance with contract clauses implementing Executive Order 14042, with minor exceptions, all contractors and subcontractors (of any tier) that work on covered federal construction contracts have a workforce fully vaccinated against COVID-19, and that these covered contractors designate an individual to administer the compliance of such requirements.[ii] The Director of the OMB approved the Guidance in November of 2021 and the approval notes that covered contractors and subcontractors must comply with the Guidance by January 18, 2022.[iii] AGC retained me to offer expert opinions regarding the likely consequences that Guidance adherence will have on the cost and efficiency of federal construction work.

Summary of Opinions

5. As discussed herein, the Guidance will not promote economy and efficiency in federal contracting. Adherence to the Guidance requirements—namely the vaccine mandate for all federal construction contractors and subcontractors (of any tier), will likely have the opposite effect and it will

exacerbate the current labor shortage on federal construction projects. This will further bolster labor wage inflation and cause a loss of labor productivity to the already taxed workforce, and this combination of circumstances will lead to increased construction costs and project delays on federal construction projects.

6. OMB's approval of the Guidance did not betray any consideration of these detrimental impacts, which cut against the economy and efficiency position taken by OMB and implementation of the Guidance will have the opposite of its asserted effect.

Current Labor Shortage in Construction Industry

7. Labor shortage has been ***the*** issue that has plagued the construction industry since 2016, when the unemployment rate of construction workers dipped below 5%.[iv] While the unemployment rate spiked in April of 2020 due to the pandemic, the rate has dropped fairly consistently since then and in August of 2021 it dropped below pre-pandemic levels, so this issue of labor shortage persists to date.[v] Several reasons account for this issue. First, private construction, which makes up nearly 80% of construction spending, has surged over the past decade. Second, the construction industry has less workers than it did in 2006 despite the growth in overall construction spending. Third, Baby Boomers, which make up approximately 40% of the construction industry, are retiring at record levels (the Great Retirement) and will continue to retire throughout this decade and new workers are not filling this gap.[vi, vii]

8. As one would expect, this confluence of events has led to significant labor inflation, which is currently at its highest annual level (4.43% through US Bureau of Labor Statistic's forecasted November figures) since the US Bureau of Labor Statistics (BLS) has published labor data (2006).[viii] Contractors are struggling to fill job openings, which BLS estimated to reach an estimated 420,000 in October of 2021 – a near record since 2000, when BLS began to publish job opening data.[ix] The only other month with more job openings was in April of 2019.[x] BLS' recent Job Openings and Labor Turnover Survey (JOLTS) report for

September 2021 notes that a total of 350,000 employees were hired in September 2021, a 9% decline from the September 2020 total of 385,000. The decline in hires despite an increase in end-of-month openings suggests contractors are having greater difficulty filling positions than a year ago, so this issue is getting worse.

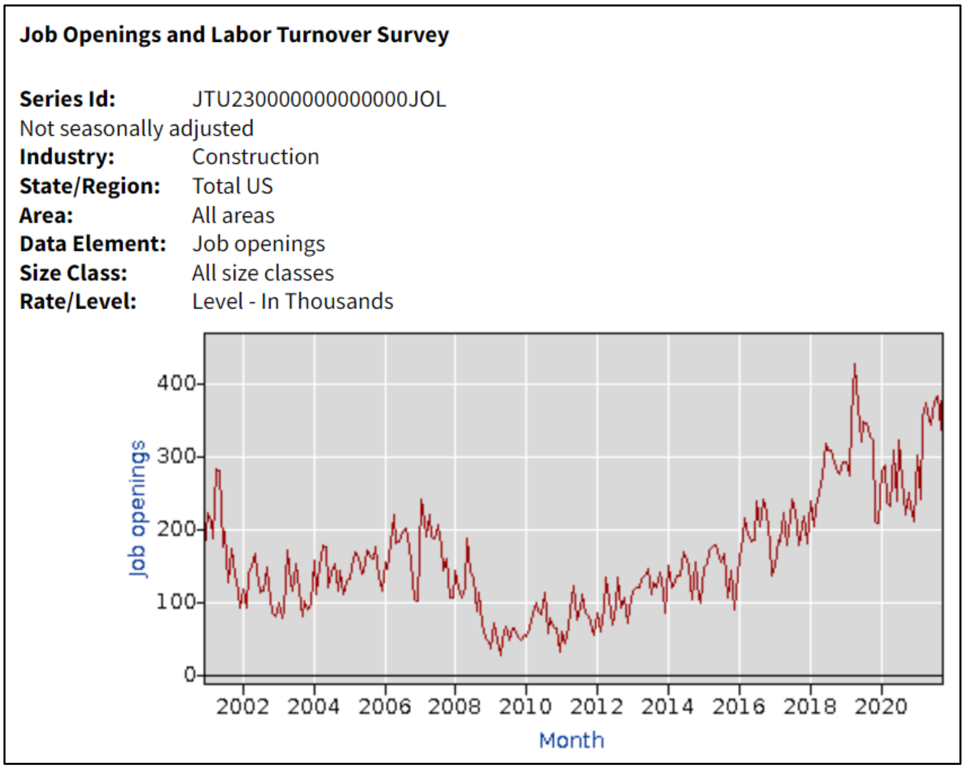

Figure 1. Construction Job Openings Over Time (Source: BLS) [xi]

9. Despite the demand for qualified construction workers in the US, the BLS data shows that the current employed construction workforce is made up of approximately 7.5 million people,[xii] which is less than it was in 2007, so the labor pool has not grown from its pre-Great Recession level even through construction spending has risen from approximately $1.2 trillion in 2006/2007 to approximately $1.6 trillion in 2021.[xiii] As a result of this stagnation, the workforce is working more hours to meet increasing project demands. In September of 2021, BLS data notes that the average construction worker put in an average of 40.1 hours per week, which is the highest recorded monthly average since BLS has maintained such data (2006).[xiv] Hence, BLS and US Census Bureau data demonstrate that the construction industry is currently experiencing one of the tightest labor markets over the past several decades. The construction

workforce has not expanded beyond 7.5 million workers in 15 years but put in place construction has accelerated and job postings are at near record highs.

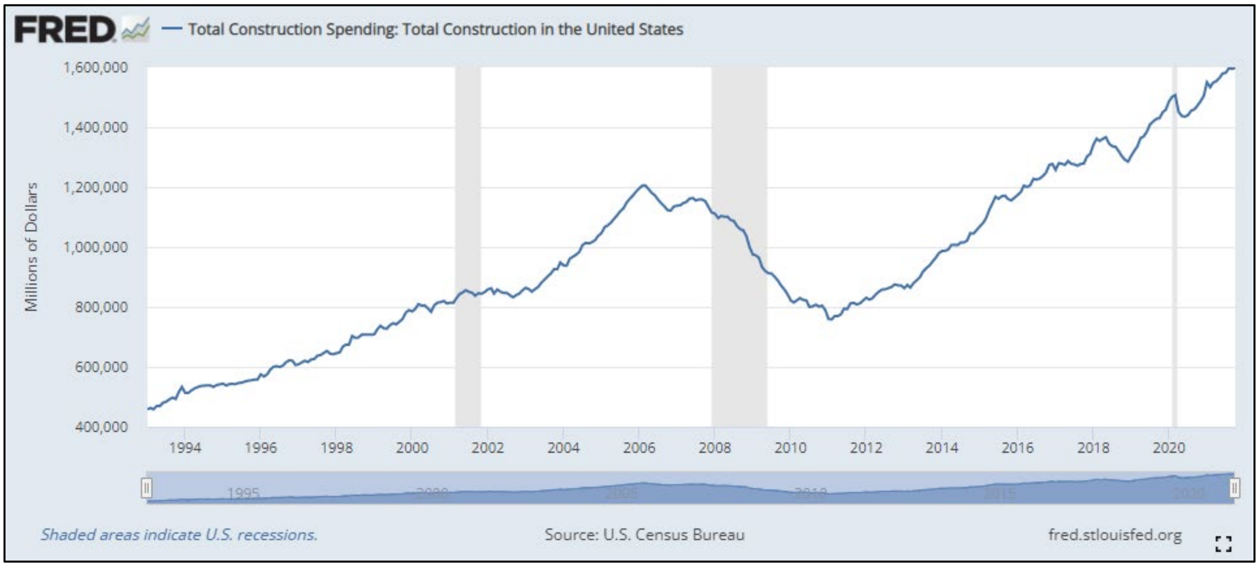

Figure 2. Total Construction Spending in the United States (Source: US Census Bureau) [xv]

10. Others have also highlighted the strain in construction employment. The US Chamber of Commerce has been publishing the Commercial Construction Index since 2017. The data related to contractors having difficulty finding skilled workers shows the following: from 2017 to the beginning of 2020, at least 88% of contractors reported either moderate to high difficulty finding skilled workers. Despite a small decrease during 2020 to 83% of responding contractors experiencing moderate to high difficulty finding skill workers, the numbers in 2021 are rising back up to the pre-COVID-19 levels.[xvi] The data for concerns over workers having adequate skills shows that between 83% and 94% of contractors have had medium to high concerns, with the most recent quarter at its highest level since the 2nd Quarter of 2017.

11. In its recent quarterly construction report issued on September 22, 2021, the US Chamber of Commerce reported that 92 percent of contractors nationwide indicate that they have had “moderate to high levels of difficulty” finding skilled workers. The Chamber of Commerce data also shows that more

contractors are struggling to hire skilled labor than at any other time in the past year and 93 percent of the responding contractors expect the construction labor shortage to remain the same.[xvii]

12. The vaccine mandate included within the Guidance would further squeeze the already tight labor conditions for federal construction projects and this would lead to increased project costs, increased disputes, increased quality issues, and increased project durations.

The Guidance Will Likely Exacerbate the Current Labor Shortage for Federal Construction

13. The construction industry is a fragmented marketplace that is comprised of 866,667 establishments as of Q2 of 2021.[xviii] Of these establishments, approximately 90% have less than 20 employees.[xix] As a result of the limited resources and ample construction work that exists today, contractors and subcontractors can be selective in the work they wish to procure. Construction professionals have even more freedom with the projects they wish to work on. If a construction craft worker or construction manager with vaccination hesitancy does not wish to be vaccinated in order to work on a federal construction project, he or she can easily "walk across the street" to find employment on non-federal projects. This is what sets the construction industry apart from the three or so industries that OMB references in its Guidance approval.[xx] OMB references mega-companies in other industries that are very different from the average federal contractor or subcontractor. In addition, OMB failed to recognize that the construction industry is more vaccination hesitant than other industries. Lastly, once construction workers exit a sector, it is challenging and time consuming for contractors to find and train new workers.

The Construction Industry Is More Vaccine Hesitant than Other Industries

14. Since the beginning of May 2021, US construction worker vaccination rates have stagnated between 48.8% and 57.6%. Recent data from October 24, 2021 shows a vaccination rate of

52.5% in comparison to all other occupations achieving an 80% vaccination rate, as shown below in Figure 3:

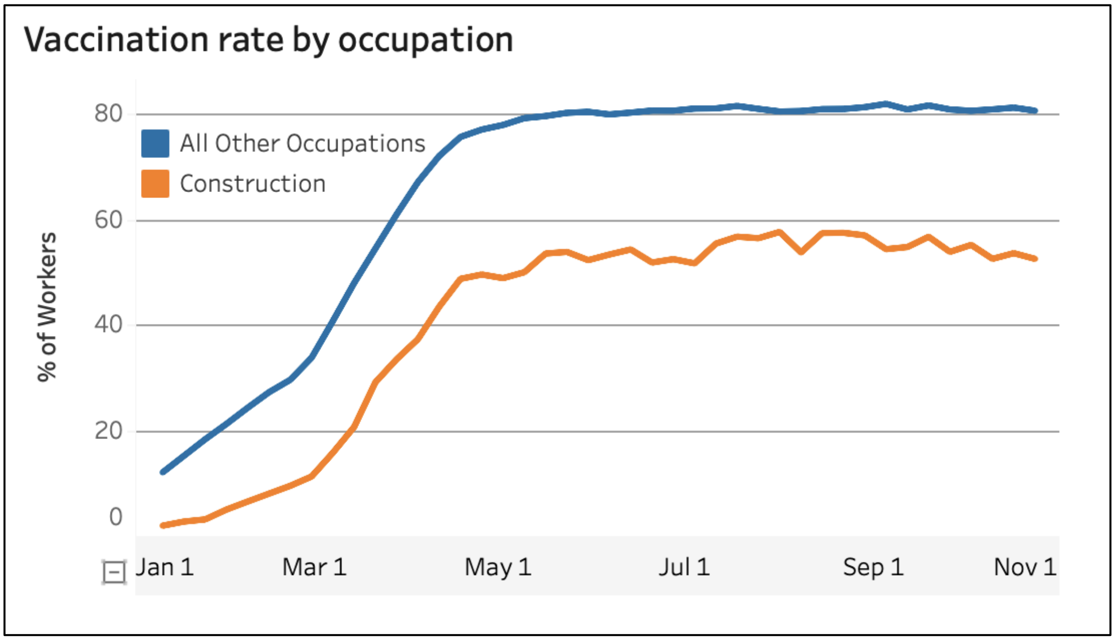

Figure 3. Construction Worker Vaccination Rate 2021 [xxi]

15. The construction safety and health research organization CPWR maintains a COVID-19 Vaccination Dashboard, which displays data from a daily survey of Facebook users conducted by the Delphi Group at Carnegie Mellon University.[xxii] For the week beginning October 24, 2021, the survey showed that 52.5% of respondents who identified their occupation as construction reported they had been vaccinated, compared to 80.7% of all other occupations. These weekly results have remained consistent since the week of May 30, 2021. The dashboard also shows 43.9% of construction respondents were "vaccine hesitant," compared to 17.3% of respondents in other occupations. Overall, the data shows craftworkers and other construction professionals in general have a much higher vaccine hesitancy rate compared to other occupations.

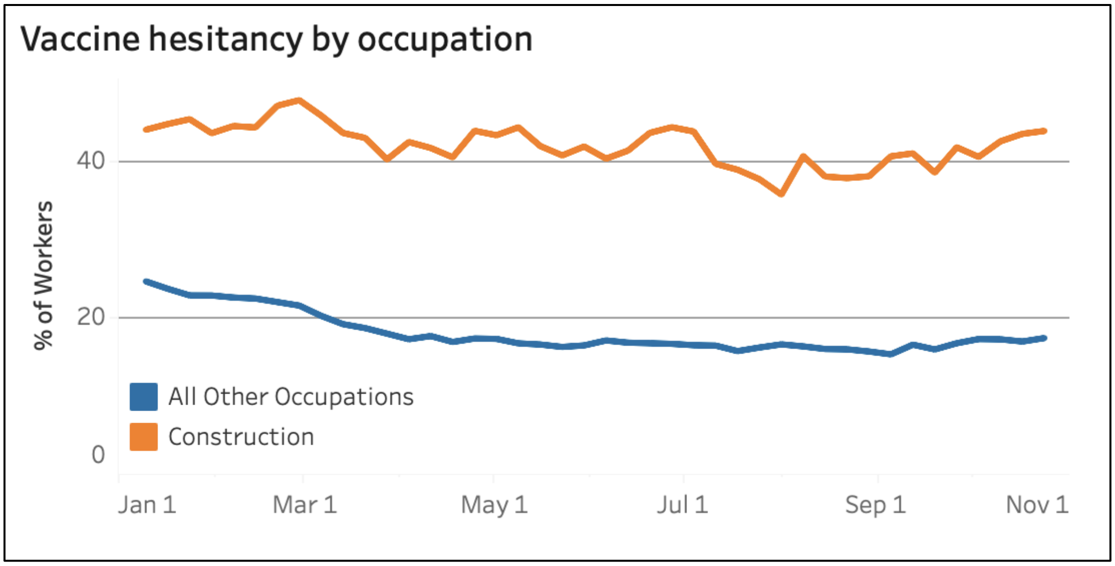

Figure 4. Vaccine Hesitancy by Occupation [xxiii]

16. Other studies further support this data wherein it is observed that 50% of construction workers will refuse the vaccine and that construction workers are the most hesitant group compared to other professions.[xxiv]

17. To determine what the likely reaction to vaccine mandates will be it is helpful to review information from countries where such mandates were implemented. Australia introduced a vaccine mandate for construction workers during September 2021. The mandate was greeted by protest action. The Washington Post reported that "angry mobs swarmed Australia's second-most-populous city, Melbourne, for a second straight day…after officials halted all nonessential building work in the city following a violent demonstration against vaccine mandates for the construction industry a day earlier."[xxv] It is further reported that the construction industry in Australia's Victoria province was forced to shut down for a two-week period because of the protests. Some estimates put the cost of the shutdown at a staggering 2 billion AUS Dollars (1.5 billion USD).[xxvi]

18. In the case of a vaccine mandate for federal contractors, the policy only impacts a portion of the construction industry. The mandate for federal contracting would create a situation in which vaccine-hesitant workers can move to other segments of the industry which are not subject to the

mandate, without physically relocating, as members of a fire department or other municipal entity would need to do to remain in the same profession. As the entire construction industry is experiencing a shortage in skilled craft labor in a tight market with low unemployment, vaccine-hesitant workers have an increased ability to transition to other sectors of the industry. Therefore, the labor availability for federal contractors could be impacted to an even greater extent, as the rest of the industry can absorb many of the workers leaving federal projects subject to a vaccine mandate. The workforce shift from federal construction contracts to non-federal work would likely be significant because construction workers are more hesitant to be vaccinated than workers of other industries. Thus, a vaccine mandate would likely lead to an ever-shrinking pool of workers to build federal construction projects, and this would affect federal contractor's and subcontractor's ability to meet staffing requirements and it would intensify wage inflation.

Construction Workers Can Easily Move to Projects with Non-Vaccine Mandates

19. Federal construction makes up a small percentage of overall construction spending. In 2020, the value of new federal construction put-in-place was approximately $30.28 billion.[xxvii] The value of all construction put in place in 2020 was approximately $1.47 trillion, of which approximately $1.11 trillion was private construction and $361 billion was public construction.[xxviii] Thus, federal construction made up less than 2% of put-in-place construction in the United States in 2020. As of October of 2021, the forecasted put in place value of federal construction is $26.78 billion, which is less than 2% of the $1.598 trillion forecast for overall put in place construction in 2021.[xxix]

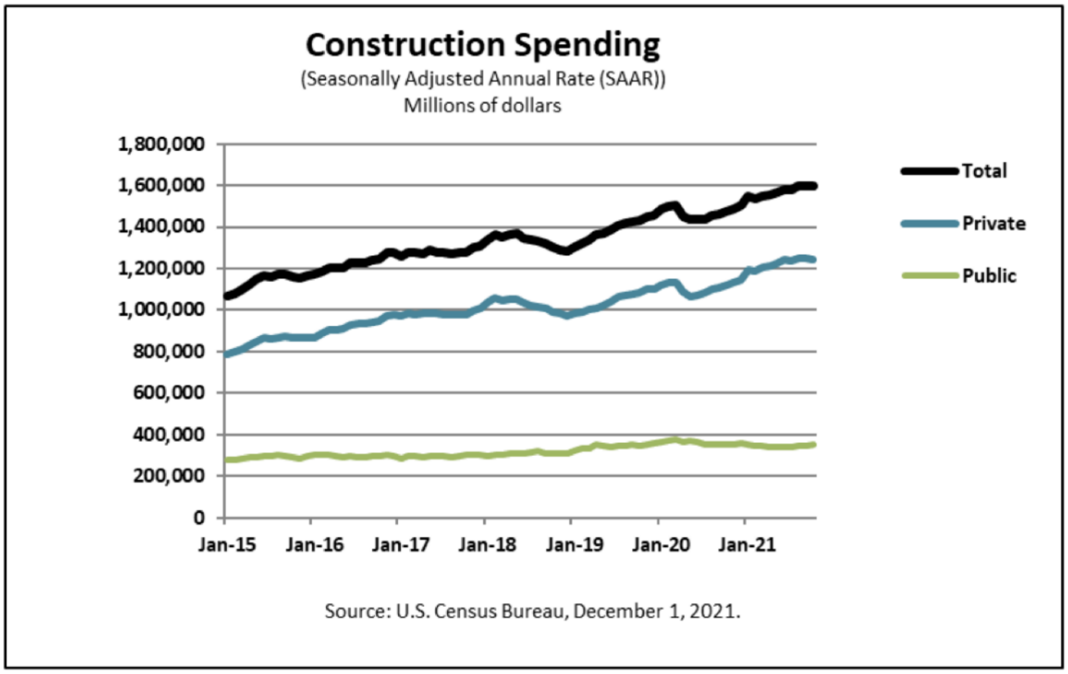

Figure 5. Construction Spending in the United States 2015 - 2021[xxx]

20. Because federal construction is such a small percentage of the overall construction industry, a significant opportunity exists for contractors, subcontractors, and workers to shift to non-federal construction work, and a vaccine mandate specifically applied to federal construction would be a catalyst for this shift. The implications of such a shift would be reduced competition and increased labor shortages in the federal construction market, which would have the effect of increasing the cost of federal construction projects.

The Federal Construction Labor Force Cannot be Replenished Easily After Departure

21. When construction workers retire or exit one construction sector for another construction sector, it is difficult for contractors and subcontractors to recruit and retain employees to fill the shoes of the exited work force. A federal vaccine mandate will further intensify this struggle for federal contractors and subcontractors. Deloitte's 2022 Engineering and Construction Industry Outlook study notes that as of August of 2021, the construction industry had yet to recover about 20% of jobs lost to the

pandemic, while many other labor-competing industries, such as transportation and warehousing, had recovered all jobs lost.[xxxi]

22. Workers who leave the workforce cannot be immediately replaced. Replacing skilled workers with journeyman level replacements can take upwards of three years due to apprenticeship programs and other training programs for skilled craft labor. The DOL's Bureau of Apprenticeship and Training provides the following information on the time typically required for individuals to complete registered apprenticeship programs in the following trades:

- Electrician: 4-5 years [xxxii]
- Plumber: 4-5 years [xxxiii]
- Sheet Metal Workers 4-5 years [xxxiv]
- Ironworker: 3-4 years [xxxv]
- Elevator and escalator installer: 4 years[xxxvi]
- Glazier: 3-4 years [xxxvii]
- Flooring Installer, Tile and Stone Setter: 2-4 years [xxxviii]

23. Apprenticeships and other training programs are not usually structured to support a large influx of apprentices. Registered apprentices typically train 1:1 with journey-workers and must complete on-the-job learning (OJL) supplemented by requisite hours of related instruction. Presently, 50% of contractors report high degree of concern about their workers having adequate skill levels, per US Chamber of Commerce data.[xxxix]

24. Research shows that among young adults, there is less desire to join the construction industry compared to other industries. Of respondents to a national poll of adults ages 18 to 25 asked about their preferred careers as part of a 2017 study conducted by the National Association of Home Builders Economics and Housing Policy Group, 74% of respondents said that they knew what career they wanted to have and the remaining 26% either were not sure or had no career preferences. Of the 74% of

respondents, only 3% stated that they would like to enter the construction trades.[xl] The following figure shows the results compared to other industries:

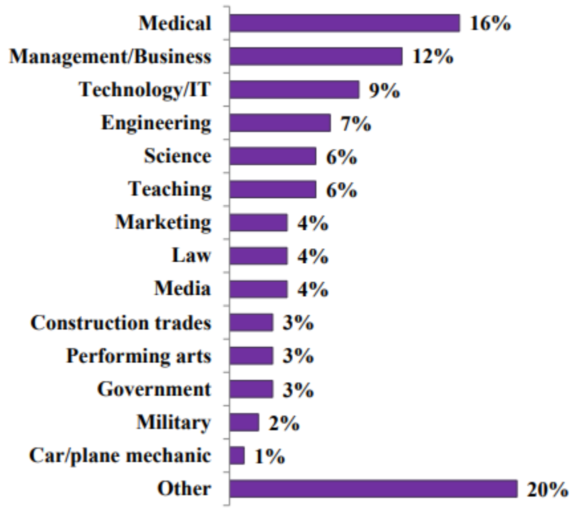

Figure 6. Career Preference of Adults Aged 18-25[xli]

25. The current dearth of young adults interested in entering construction means that current apprenticeship and training programs will not have enough recruits to manage the existing and rising demand for construction labor to meet current demands and to replace outgoing workers who are retiring.

26. In conclusion, the labor pool for public construction sectors has shown signs of compression despite the increase in construction revenue, and the time it takes for the industry to replenish this workforce with new entrants is a current constraint to growth and performance. A vaccine mandate would exaggerate this current problem for federal contractors and subcontractors as it would take significant time to find and train the resources to fill the shoes of departed workers who have vaccine hesitancy.

OMB's Comparison of Federal Contractors to Other Industry Titans is Flawed

27. In support of the vaccine mandate, OMB specifically references post-vaccination mandate results for United Airlines, Tyson Foods, and Kaiser Permanente and notes only mild workforce fallout

from such action. The comparison of these three Fortune 500 companies to typical federal contractors and subcontractors is flawed for several reasons.

28. First, the airline industry in the US is arguably an oligopoly where only a handful of firms control the market due to the substantial barriers to entry. United Airlines is a public corporation and one of the largest airlines in the US, so workers have limited opportunities to get jobs with other airlines, particularly when checkpoint travel numbers remain well below pre-pandemic levels.[xlii] As such, comparing United Airlines to a typical federal contractor or subcontractor is inappropriate. Second, Tyson Foods is a firm with nearly $50 billion in annual revenue and approximately 130,000 employees[xliii] that is the largest food company in the United States.[xliv] Tyson Foods is much larger than any construction company in the US and operates out of many remote locations throughout the country, where opportunities are limited. Hence, Tyson Foods is not comparable to an average contractor or subcontractor that has less than 20 employees. Third, Kaiser Permanente is an integrated managed care consortium that has over 300,000 employees—many of them nurses and physicians. It is worth noting that studies indicate that there is a 46.4% vaccine hesitancy in construction but only a 9.6% vaccine hesitancy in life/physical/social sciences.[xlv] Hence, comparing the health care industry to the construction industry is improper.

29. Moreover, note that OMB did not discuss any of the ~900k construction establishments in the US. I am not aware of any construction establishment in the US that has implemented an internal vaccine mandate. I believe this is the case because it will have a detrimental effect to operations for the reasons noted above.

30. In addition, it is important to point out that several professions, industries, and/or cities have implemented a vaccine mandate with varying degrees of success:

- Healthcare: Thousands of hospitals have implemented a vaccine requirement as a condition of employment amidst concerns of a possible mass resignation by employees in retaliation to the mandate. Healthcare facilities in more rural areas however are choosing not to impose a vaccine mandate due to staffing issues whereby staff are not as easily replaceable due to a smaller pool of available professionals to draw from.[xlvi] It is noted the healthcare community in general registers a significantly lower percentage of vaccine hesitancy compared to the construction industry e.g., pharmacists at 8.5%, physicians at 12.2%, nurses at 11.7%-19%, and medical aides or similar at 20.5%.[xlvii]

- Amtrak is expecting to cut back service in the beginning of 2022 due to approximately 5% of its employees not complying with the federal contractor vaccine mandate. As the January 4, 2022 deadline for the federal mandate approaches, Amtrak president Stephen Gardner has stated that Amtrak anticipates that they will not initially have enough employees to operate all the trains that are currently operating.[xlviii]
- Washington State Department of Transport (WSDOT) reported a loss of 6% of its workforce due to the vaccine mandate. Out of 6,813 WSDOT employees, 358 were fired for refusing to get the vaccine and another 63 employees took retirement in response to the mandate.[xlix]

31. In conclusion, OMB's juxtaposition of construction contractors to multi-billion dollar conglomerates such as United Airlines, Tyson Foods, and Kaiser Permanente is unsound due to the drastic difference in size and leverage that the comparison companies have when plotted against an average contractor or subcontractor, the difference in the work environment of these industries, and divergence in opportunities that contractors, subcontractors, and construction workers currently have on non-federal construction work.

The Guidance Will Likely Increase Construction Costs and Will Lower Worker Productivity

32. As shown above, the Guidance will tighten the already-constrained labor market for federal construction projects. This condition will cause one or more of the following scenarios. First,

contractors will not be able to price this variable with precision, so diligent bidders will include significant contingency funds to account for a reduced, more expensive, and less efficient workforce. This will lead to more expensive proposals in a market where overall inflation is at a near 40-year peak.[l] Second, contractors and subcontractors operating on existing federal construction projects will either incur losses resulting from this Guidance due to lack of at-bid consideration or will trigger costly dispute resolution against the federal government to pursue recovery of related damages. Third, successful bidders for federal construction work that fail to properly account for costs related to Guidance administration and vaccination requirements will incur significant worker productivity loss and labor overruns. Hence, the result of this Guidance will likely be a blend of increased construction costs, late project delivery, and a marked increase in disputes. This all points to a lack of economy and decreased efficiency.

33. Because construction was deemed an essential service not long after the start of the pandemic, it has performed well when compared to other industries such as hospitality and retail. The industry is nearly two years into a tragic pandemic yet put-in-place construction revenue increased steadily over this time. Accordingly, the construction industry is strained in terms of labor, but it is in good shape otherwise. The Guidance would likely reverse this trend for the federal construction sector.

The Guidance Will Likely Increase Labor Costs

34. For the US construction industry, as well as most other developed countries, labor costs can often comprise between 30-50% of the overall project cost.[li, lii] A shortage of labor supply generally leads to projects not meeting basic labor demands, resulting in higher wages due to increased demand, or premium labor rates for fewer skilled craft laborers to achieve the same output as a fully staffed project. These factors result in higher overall project costs.

35. According to JLL's H2 Construction Outlook report, construction industry wages increased by 4.46% between August 2020 and August 2021.[liii] The report also predicted an additional 3-6% to follow

over the subsequent six months. The following chart from the JLL report illustrates the coinciding decline in construction unemployment with the increase to average hourly compensation. This is the dynamic that adherence to the Guidance will likely amplify.

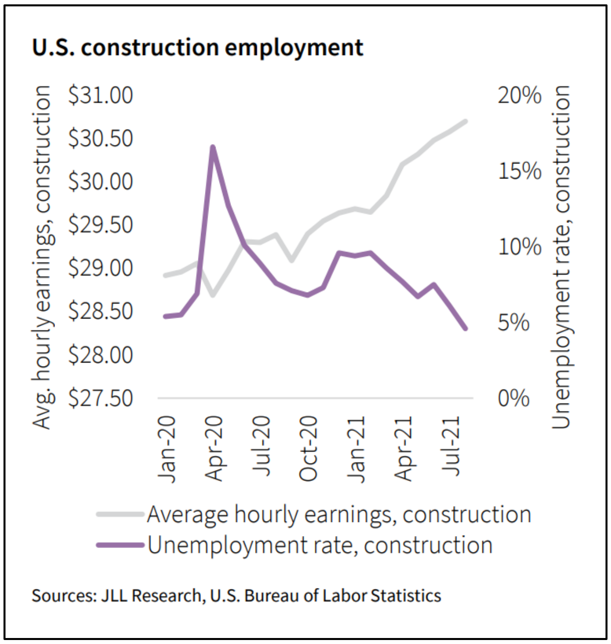

Figure 7. US Construction Employment and Wages [liv]

36. Since labor drives and informs such a considerable portion of total construction costs, it becomes critical that the estimated costs for projects are accurate and remain stable. However, where uncertainty exists, construction companies must hedge their bids to account for potential wage rate increases and/or shortages. Any active or proposed restrictions on the construction workforce, whether it be increased certifications or a vaccine mandate, will increase uncertainty in the future labor availability, particularly when those requirements only apply to a segment of the industry, such as federal construction only. As uncertainty increases, construction bids for future projects will increase to account for the potential rise in costs before the actual costs would reflect those changes. Non-federal construction work already competes for the same labor pool as federal work. Workers who are vaccine-hesitant or resistant may require additional pay as motivation to comply with the vaccine mandate, in lieu of taking similar (or greater) paying work outside of federal contracts, resulting in additional direct costs to the government.

The Guidance Will Likely Decrease Labor Productivity

37. Increased worker wages and rising construction costs due to strained labor markets are not the only way in which can impact construction projects. The availability of skilled labor can have a considerable impact on the labor productivity of a project and project cost risk, which diligent contractors will need to consider when cost estimating upcoming federal projects.

38. In a labor shortage where a contractor cannot retain or recruit the requisite number of skilled craft workers, contractors may need to resort to using less skilled or underqualified workers to perform the required work or implement overtime. Numerous industry studies demonstrate that these factors decrease labor productivity. In terms of overtime usage, studies have also consistently demonstrated an inverse relationship between the amount of overtime work and labor productivity. Groups who have performed studies on the effects of overtime include government agencies, trade organizations, and private companies. As modeled in the graph below, these studies show an average productivity loss of 10% when working 50 hours per week, 17% when working 60 hours per week, and 31% when working 70 hours per week.

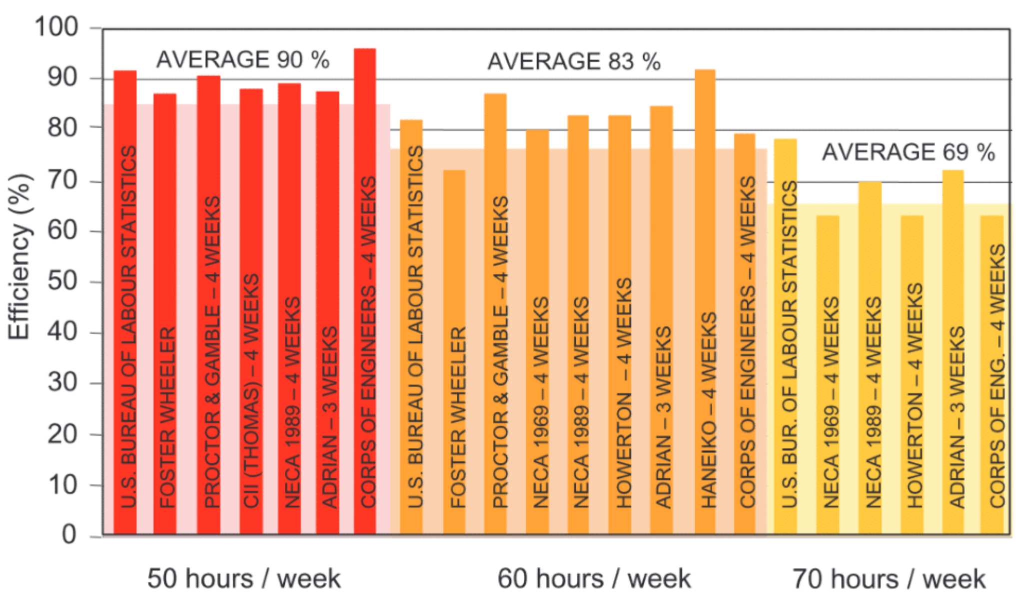

Figure 8. Efficiency Losses due to Overtime per Various Industry Studies [lv]

39. In the graph below from the Business Roundtable Construction Industry Cost Effectiveness Task Force, productivity losses associated with overtime also have a cumulative effect that worsens as overtime workweeks are prolonged.

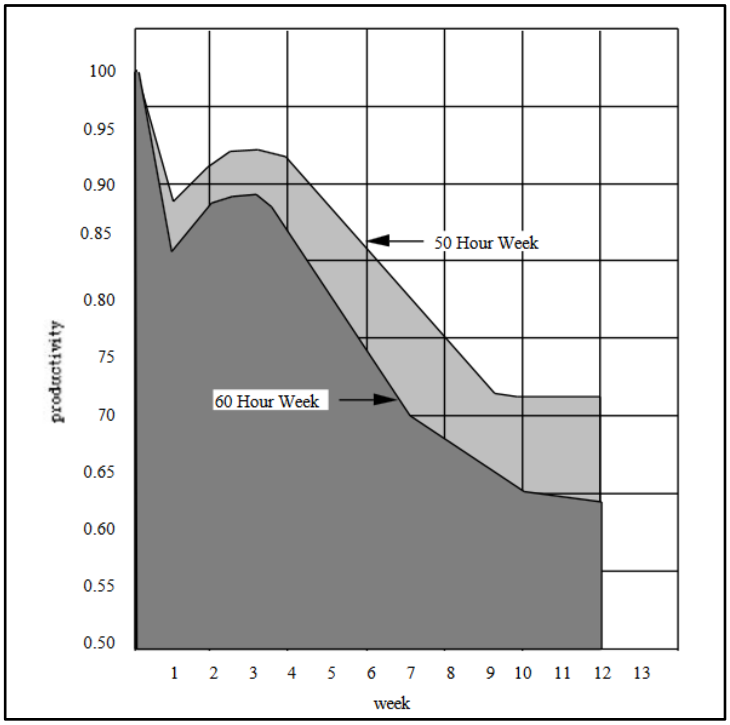

Figure 9. Cumulative Effect of Overtime on Productivity 50- and 60-Hour Workweeks [lvi]

40. Moreover, the negative impact of the availability of labor on project productivity is substantiated by several recent research studies. A 2018 research study reviewed data on 97 construction projects completed in the US and Canada regarding the relationship between labor availability and productivity. The results revealed that projects that experienced labor shortages showed a significantly higher occurrence of productivity related performance challenges.lvii Similarly, a 2017 study found that unavailability or lack of experienced skilled labor directly influenced the decline in productivity of construction projects.lviii

41. The Association for the Advancement of Cost Engineering (AACE) International's "Recommended Practice for Estimating Lost Labor Productivity in Construction Claims" report identifies the following labor related issues as part of a list of common causes of loss productivity:[lix]

- **Competition for Craft Labor –** If a nearby project(s) commences concurrently with the execution of a project that was estimated and planned to utilize a stated level of labor skill and availability, and a competition for that skilled labor base ensues, productivity may be adversely impacted. Financial incentives, work rule changes and other issues may result in labor leaving one site for another, resulting in lower productivity and increased costs for the first contactor. Further, the replacement labor may be more costly and less skilled.
- **Craft turnover** – If a crew suffers from continual craft turnover, it is unlikely that they will achieve good productivity simply because one or more members of the crew may be on the learning curve, and thus decrease the overall productivity of the entire crew.
- **Excessive overtime** – Numerous studies over many years have consistently documented the fact that productivity typically declines as overtime work continues. The most commonly stated reasons for this result include fatigue, increased absenteeism, decreased morale, reduced supervision effectiveness, poor workmanship resulting in higher-than-normal rework, increased accidents, etc. One author has gone so far as to suggest that "…on the average, no matter how many hours a week you work, you will only achieve fifty hours of results."[lx] The thought underlying this statement is that while overtime work will initially result in increased output, if it is continued for a prolonged period, the output may actually decline for the reasons stated earlier. Thus, long term overtime may lead to increased costs but decreased productivity. The effect of continued overtime work on labor productivity is, perhaps, one of the most studied productivity loss factors in the construction industry.
- **Fatigue** – Craftsmen who are tired tend to slow down work, make more mistakes than normal, and suffer more accidents and injuries, thus productivity may decrease for the entire crew.

42. The Mechanical Contractors Association (MCAA) provides guidance on estimating loss of labor productivity (Bulletin No. PD2), based on several known causes of lost productivity. Some of the labor-related factors from MCAA are identified below:

Factor	Percent of Loss per Factor		
	Minor	Average	Severe
2. MORALE AND ATTITUDE: Excessive hazard, competition for overtime, over-inspection, multiple contract changes and rework, disruption of labor rhythm and scheduling, poor site conditions, etc.	5%	15%	30%
3. REASSIGNMENT OF MANPOWER: Loss occurs with move-on, move-off men because of unexpected changes, excessive changes,or demand made to expedite or reschedule completion of certain work phases. Preparation not possible for orderly change.	5%	10%	15%
4. CREW SIZE INEFFICIENCY: Additional workers to existing crews "breaks up" original team effort, affects labor rhythm. Applies to basic contract hours also.	10%	20%	30%
13. FATIGUE: Unusual physical exertion. If on change order work and men return to base contract work, effects also affect performance on base contract.	8%	10%	12%
15. OVERTIME: Lowers work output and efficiency through physical fatigue and poor mental attitude.	10%	15%	20%

Table 1. Select MCAA Labor Factors [lxi]

43. The MCAA factors described represent the “cause,” and the impact intensity percent represents the “effect” that can result from the conditions outlined in each MCAA factor. MCAA recognizes 16 factors which impact productivity, and additional factors not included in the table above may also occur because of labor availability issues, such as Stacking of Trades, Concurrent Operations, Dilution of Supervision, and Logistics factors.

44. A decrease in available labor for federal projects may also mean increased labor hours for workers needed to achieve required output in the specified duration. As cited above, causes of productivity impacts include absenteeism and overtime, resulting in a decline in the quality of work and

increased rework. According to the BLS, 34.9% of new and untrained workers in the construction industry are injured during their first year on the job.[lxii] Additionally, existing workers may be compelled to put in longer hours and work irregular work schedules to fill in the gaps due to the labor shortage which inadvertently increases risk of injuries and accidents and can contribute to poor health and worker fatigue.

45. The National Institute for Occupational Safety & Health (NIOSH) explains that fatigue can slow down reaction times, reduce attention or concentration, limit short-term memory and impair judgement, and high levels of fatigue can affect any worker in any occupation or industry with serious consequences for worker safety and health.[lxiv] The National Safety Council estimates the loss of performance from fatigue can cost employers up to $3,100 annually per employee.[lxv]

46. Because adherence to the Guidance will likely reduce the qualified labor pool for federal construction contractors and subcontractors, upcoming federal construction projects will likely suffer a loss of productivity when compared to other construction sectors.

The Guidance Would Likely Increase Project Delays

47. Construction schedules rely on estimating the duration required to perform activities based on available resources. When available resources are unknown during initial estimating, the potential for scheduling estimation errors increase. When anticipated resources planned for construction are unavailable or fluctuate during construction performance, this can lead to delays.

48. Construction delays have been noted as "a pervasive phenomenon in construction project delivery." They are branded as the most common, costly, and risky problems encountered in construction projects – with a "debilitating effect on the parties of the contract."[lxvi] Delays and disruptions to contractors' progress are linked to time and cost overruns. In practice, delays and disruption to contractors' progress constitute a major source of claims and disputes in the construction industry.[lxvii]

49. Schedule delay claims not only present some of the most complex disciplines of construction law, but are one of the most researched, controversial, and featured topics at international forums and conferences on construction worldwide.[lxviii, lxix] Many problems are encountered in practice in the application, preparation, and assessment of delay claims. In many cases these problems might result in disputes.[lxx] Disputes over project delays have various negative effects on the project:

- It hampers the project's progress when disputes arise during the execution stage;
- It is detrimental to the relationship between the owner and contractor; and
- It contributes to the cost-and-time overruns.[lxxi]

50. The value of construction disputes increased drastically in 2020 in the United States. Although the time to resolve disputes decreased, dispute resolution remained extremely time consuming. On average construction disputes take 14.2 months to resolve.

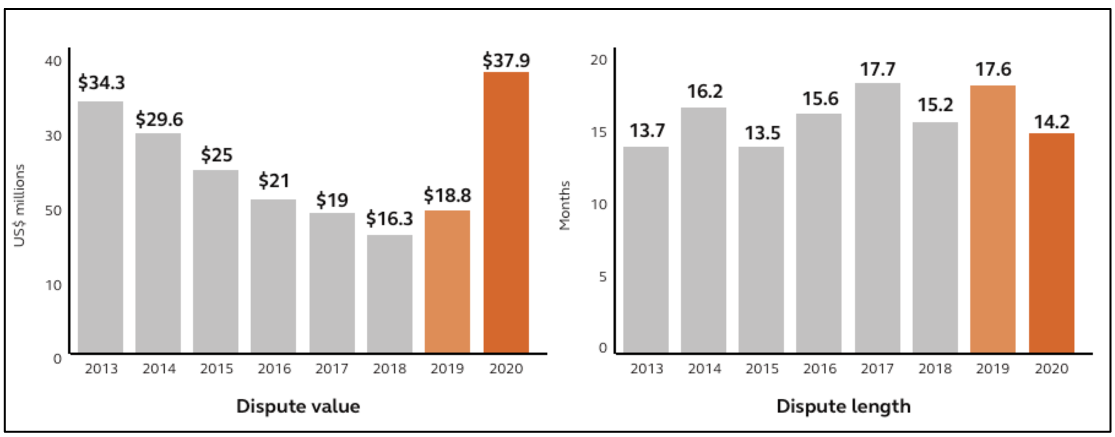

Figure 10. Dispute Value and Length in North America [lxxii]

51. A recent research study performed by one of my colleagues reviewed the results of 17 independent surveys to determine the predominant causes of construction delays. Labor related problems were identified as the most significant cause of delay impacting contractor's performance.[lxxiii] Labor availability issues (outside of strikes), are typically not considered excusable delays.[lxxiv] Thus, delays resulting from not being able to adequately staff a project is a risk which may be borne by the contractor

or subcontractor, which could result in extended project costs, as well as assessment of liquidated and/or actual damages.[lxxv]

52. As noted above, adherence to the Guidance will likely reduce labor resources and cause a loss of productivity on upcoming federal construction projects, which will likely lead to an influx of delay claims from impacted contractors and subcontractors to rebut the assessment of liquidated damages from project owners. Because such delays may not be excusable, impacted contractors and subcontractors may face large and unanticipated liabilities caused by the Guidance. Liquidated damage rates on federal construction projects can vary from project to project. Some examples of federal project liquidated damages provisions include:[lxxvi]

- Ambulatory Care Center and Dental Clinic Replacement at Joint Base Andrews, Maryland: Phase 1: $71,400 per day; Phase 2A: $14,900 per day; Phase 2B: $12,700 per day
- Façade Recladding at the Anthony J. Celebrezze Federal Building in Cleveland, Ohio: $30,950 per day.
- Fort Bliss Replacement Hospital in El Paso, Texas: $35,000 per day.
- Carl R. Darnall Army Medical Center Replacement, Fort Hood in Killeen, Texas: $25,000 per day.
- MCAS Operations Complex, Marine Corps Base Hawaii: $24,650 per day.
- South Range GTA in Oahu, Hawaii: $12,086 per day
- Transient Wounded Warrior Lodging & Park, Walter Reed National Military Medical Center in Bethesda, Maryland: $30,950 per day.

53. To manage this new risk profile related to federal construction work, contractors and subcontractors may either increase bid proposals, elect not to bid federal construction work, or bolster dispute resolution resources to vigorously pursue recovery. All these actions are detrimental to the prosecution of construction work.

The Guidance May Have Other Unintended Consequences

54. The Guidance may have overreaching impacts on fail-safes which are in place to ensure project completion in accordance with agreed upon contracts, considering the role of takeover sureties that attempt to fulfill performance bonds obligations issued on federal construction projects following a termination-for-cause. The Miller Act requires that prime contractors furnish a performance bond for any federal construction contract exceeding $150,000.[lxxvii] A surety bond is a three-party agreement between a principal obligor, an obligee, and a surety. In a performance bond context, the surety assures to the obligee that if the principal fails to perform its contractual duties, the surety will discharge the duties itself, either by performing them or paying the obligee the excess costs of performance.[lxxviii] Following a performance bond claim, the typical options available to a surety are as follows:

1) Deny liability.
2) Arrange for the Principal (Original Contractor), with consent of the Obligee, to complete the project. This may involve the surety financing the Principal.
3) Undertake to perform and complete the Project itself, through its agents or independent contractors. This may involve a bid / relet process, or the surety may simply select a known contractor or consultant to complete the work.
4) Arrange for a new contract between the Obligee and a Completion Contractor, with the Completion Contractor providing new bonds. This is known as a tender. It typically involves obtaining bids or proposals from qualified contractors acceptable to the Obligee.
5) Make payment of the penal limit of the bond to the Obligee or negotiate an amount for which the Surety may be liable to the Obligee. These options will result in a discharge of the original bond.

55. The third option identified above is a common outcome for performance bond claims, wherein the surety enters into a Takeover Agreement with the Obligee for the completion of the Project. In 2020, the top five surety writers employed over 250,000 employees. The current guidance may require surety bond providers to comply with the federal vaccine mandate under a scenario in which the surety undertakes to perform and complete the Project. Such a requirement carries an unforeseeable effect on surety willingness to underwrite bonds or exercise takeover options, which may be the most reasonable approach for project completion.

Conclusion

56. OMB's asserted purpose for requiring federal contractors and subcontractors to meet vaccine mandate guidance is to promote economy and efficiency in federal contracting. However, the Guidance as issued cannot be reasonably anticipated to have such an effect. Federal construction represents a small segment of the construction industry. Considering the high level of vaccine hesitancy for construction craftworkers and professionals, and an already constrained construction labor market, the implementation of restrictions on only the limited federal segment of the market, could result in an exodus of workers to other segments of the construction industry where employment opportunities are plentiful.

57. With limited entrants to the construction trades, and a lengthy training process, missing workers cannot be easily replenished. Labor (and labor availability) is a major driver of the cost of construction. Limited worker availability will lead to labor cost inflation, or uncertainty in ability to forecast performance. Under these circumstances, the vaccine mandate will lower the productivity of the companies that construct federal projects, increase the wages these companies will need to pay, and increase the time they require to perform, and for those reasons, it will also require them to increase their prices for future federal work, if they intend to pursue this work at all. While the vaccine mandate is

certain to have negative impacts on a contractor's ability to perform and forecast, its precise impacts on individual projects will be difficult to quantify with the precision necessary for contractors: (i) to recover their additional costs of performing their existing contracts, or (ii) to develop rational bids or proposals for future contracts.

DECLARATION

Pursuant to 28 U.S.C. § Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is correct.

Executed on this 12th day of December, 2021, in Denver, Colorado.

/s/ William J. McConnell

William J. McConnell PE, JD, MSCE

(Signed copy of document bearing signature of William J. McConnell is being maintained in the office of the Filing Attorney)

[i] Determination of the Acting OMB Director Regarding the Revised Safer Federal Workforce Task Force Guidance for Federal Contractors and the Revised Economy & Efficiency Analysis.
[ii] Id.
[iii] Id.
[iv] https://data.bls.gov/pdq/SurveyOutputServlet
[v] Id.
[vi] https://www.adp.com/spark/articles/2019/02/construction-grows-but-baby-boomers-retiring-leaves-gap.aspx
[vii] https://apnews.com/press-release/pr-newswire/baby-boomers-health-coronavirus-pandemic-2623521753c7a1c82738fd1151df7332
[viii] https://data.bls.gov/pdq/SurveyOutputServlet
[ix] Id.
[x] Id.
[xi] https://data.bls.gov/pdq/SurveyOutputServlet
[xii] Id.
[xiii] https://fred.stlouisfed.org/series/TTLCONS
[xiv] https://data.bls.gov/pdq/SurveyOutputServlet
[xv] https://fred.stlouisfed.org/series/TTLCONS
[xvi] CCI Reports from Q2 2017 through Q3 2021: www.uschamber.com
[xvii] https://www.uschamber.com/assets/archived/images/q3_cci_report_final.pdf
[xviii] https://www.bls.gov/iag/tgs/iag23.htm
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[xx] Determination of the Acting OMB Director Regarding the Revised Safer Federal Workforce Task Force Guidance for Federal Contractors and the Revised Economy & Efficiency Analysis,
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[xxii] Id.
[xxiii] Id.
[xxiv] https://www.roofingcontractor.com/articles/95635-survey-shows-construction-workers-most-hesitant-group-to-get-covid-vaccine
[xxv] https://www.washingtonpost.com/world/2021/09/21/australia-melbourne-vaccine-protests-construction-lockdown/
[xxvi] https://www.abc.net.au/news/2021-09-21/victorian-construction-ban-avoidable-and-costly/100479272
[xxvii] https://www.census.gov/construction/c30/historical_data.html
[xxviii] Id.
[xxix] Id.
[xxx] https://www.census.gov/construction/c30/pdf/release.pdf
[xxxi] Deloitte 2022 Engineering and Construction Industry Outlook: https://www2.deloitte.com/us/en/pages/energy-and-resources/articles/engineering-and-construction-industry-trends.html
[xxxii] https://www.bls.gov/ooh/construction-and-extraction/electricians.htm#tab-4
[xxxiii] https://www.bls.gov/ooh/construction-and-extraction/plumbers-pipefitters-and-steamfitters.htm#tab-4
[xxxiv] https://www.bls.gov/ooh/construction-and-extraction/sheet-metal-workers.htm#tab-4
[xxxv] https://www.bls.gov/ooh/construction-and-extraction/structural-iron-and-steel-workers.htm#tab-4
[xxxvi] https://www.bls.gov/ooh/construction-and-extraction/elevator-installers-and-repairers.htm#tab-4
[xxxvii] https://www.bls.gov/ooh/construction-and-extraction/glaziers.htm#tab-4
[xxxviii] https://www.bls.gov/ooh/construction-and-extraction/tile-and-marble-setters.htm#tab-4
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[xli] Id.
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[xliii] https://finance.yahoo.com/quote/TSN/financials?p=TSN
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[xlix] https://mynorthwest.com/3193738/wsdot-has-largest-segment-of-state-employees-to-leave-over-vaccine-mandate/
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[lxv] http://www.constructionexec.com/article/decrease-worker-fatigue-to-increase-productivity
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DECLARATION OF JORDAN HOWARD

I, Jordan Howard, hereby declare as follows:

1. I have been working for the Associated General Contractors of America ("AGC") since 2015. I began as the Sales and Program Coordinator for AGC's standard form contract documents, which a broad coalition of trade associations helps to produce, and which bear the name ConsensusDocs. Later, I served as the Associate Director of AGC's Federal and Heavy Construction Division, and today, I am serving as the Director of that division. I have personal knowledge of, and am competent to testify to, the matters contained in this declaration.

2. My responsibility is to oversee and manage the package of services that AGC has developed specifically to support the AGC members that regular construct projects for the federal government, including but not limited to the U.S. Army Corps of Engineers, the Naval Facilities Engineering Command, the General Services Administration, the Department of Veterans Affairs and the U.S. Department of State.

3. AGC is a trade association and not a professional society. Its members are companies and not individuals. In its records, AGC may have email addresses and other contact information for more than one executive or other employee of any one member. If the member is among the relatively few number of large companies among AGC's members, AGC may have contract information for many individuals. When AGC conducts a survey of its members, it may therefore contact more than one individual within single company, and if more than one of them responds to the survey, the number of responses will modestly exceed the number of companies contributing to the survey results.

4. Between October 6 and 12, 2021, I collaborated with several AGC colleagues on a survey of approximately 6,715 of the executives and other employees of the AGC members either known to regularly construct federal projects or appearing to do so, based on the following:

    - They had registered for one or more of the four annual conferences that AGC had held for federal construction contractors between 2018 and 2021;
    - They had joined one or more of the several AGC committees or task forces, and participated in one or more of the several related e-forums, that focus on the specific needs of the federal construction contractors; and/or
    - They had subscribed to the AGC newsletter devoted to federal construction and entitled "Federal Contractor Report."

5. The survey asked a series of questions that had arisen out of the mandate that federal contractors require at least many of their employees to get COVID-19 vaccinations. AGC received a total of 457 responses to one or more of the survey questions.

6. One of the survey questions asked whether "vaccine hesitancy [had] already made it harder for you or your subcontractors to find the workers needed to keep your projects on

schedule and within budget where, for example, private owners or local authorities have mandated vaccines." Approximately 65% of the 456 respondents answered "yes."

7. Another survey question asked whether "any of your subcontractors [had] reported that vaccinat[ion] mandates would make it harder or impossible for them to find the workers they need[ed] to keep future projects on schedule and within budget." Approximately 79% of the 397 respondents answered "yes."

8. Another survey question asked whether "any of your own employees [had] indicated they [would] quit if you mandated vaccines." Approximately 82% of the 377 respondents answered "yes."

9. Another survey question asked the following: "If the federal mandate for vaccines leads either your own or your subcontractors' employees to quit, will those resignations threaten your ability to keep your current federal projects on schedule and within budget?" Approximately 88% of the 367 respondents to this question answered "yes."

10. Another survey question asked the following: "If the federal mandate for vaccines leads either your own or your subcontractors' employees to quit, will that affect how you estimate the time required to perform future federal contracts and/or the cost of performing those contracts?" Approximately 91% of the 360 respondents answered "yes."

11. Another survey question asked whether "you [had] already lost employees in response to the announcement that the federal government intends to require federal contractors to vaccinate their employees." Approximately 14% of the 353 respondents answered "yes.

12. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is correct.

Executed on this 9th day of December, 2021, in New Orleans, Louisiana

Jordan Howard
Jordan Howard

DECLARATION OF ROBERT V. BARNES III

I, Robert V. Barnes III, hereby declare as follows:

1. I am the President and CEO of Dee Brown, Inc. ("DBI"). I am a third-generation leader of this family-owned business. I began my career in the masonry industry in 1986. I have served as President since January 2008 and have been in this current role for 5 years. I have worked for DBI for a total of 29 years. I have personal knowledge of, and am competent to testify to, the matters contained in this declaration.

2. My grandfather founded Dee Brown Masonry in 1955, which was later incorporated as DBI in 1980. DBI is a full-service masonry company that provides interior and exterior stone, masonry, and terra cotta services for new constructions, maintenance and restoration efforts, and special projects. Approximately 60 percent of our projects are performed outside.

3. DBI is headquartered in Richardson, Texas and has two other Texas locations in Tomball and Garland. Approximately two-thirds of our business is in the Dallas-Fort Worth area.

4. DBI is an active contractor member of Texo, and a member of the National AGC. I previously served two terms as a director on the Texo Board of Directors in 2010-2012; and more recently 2017-2018. My education includes an MBA from the Cox School of Business at Southern Methodist University.

5. Generally, DBI performs work as a first-tier subcontractor major prime contractors, including Turner Construction Company and Balfour Beatty Construction. DBI has worked on commercial, federal, and state/local construction projects for over 50 years. DBI is currently completing a contract at the Federal Reserve Bank in Houston, and over the past several years completed small projects at the Federal Reserve Bank in Dallas, and interior marble finish work at the George Allen Federal Courthouse in Dallas, Texas.

6. DBI's team is comprised of seasoned professionals who offer decades' worth of experience. Our office staff has an average tenure of 19 years, the field staff has an average tenure of 20 years, and our company-wide average tenure is 15 years. Moreover, the type of masonry work that DBI performs requires a high level of skill. It takes about five years to become a qualified brick mason, including an apprenticeship that lasts between three and four years.

7. DBI has not required its employees or its subcontractors to be vaccinated for COVID-19. However, DBI has encouraged all employees to get vaccinated and provided the necessary information to help them protect themselves and their families as well as further educate them about the science behind the vaccine. DBI quickly adopted mask mandates, and educated our workforce on the CDC requirements, provided physical and electronic documentation on best practices. We bought several cloth masks and gear for all employees whether they were salaried or hourly, and adopted companywide policy associated with Federal and CDC requirements. On a companywide basis, we put in sanitizing stations at all locations, and we were early adopters to all employee daily temperature logging. We purchased ought and practiced using UV cleaners in all our

meeting locations. We put in thermographic scanners at all entrances at our main office, and limited access to the employees from outside visitors. We quipped and trained all office staff employees prior to the original lockdown with home offices, and trained them on the ability to use Microsoft Teams, Zoom, etc. to help maintain communications beyond normal cell phone activity to enable the business to continue forward.

8. DBI recently deployed a survey to its employees, which had a response rate of 50 percent. Of those who responded, 68 percent stated that they have been vaccinated, approximately 12% stated that they would consider if it became a job requirement, and 20 percent stated that they would not comply with the vaccine mandate. It would appear that we would lose a large portion of our Houston Division, including critical personnel that would make it very difficult to maintain a presence there. The 20 percent of respondents who are strongly opposed to the vaccine mandate included a few members of our senior management team.

9. Our understanding of the scope of the federal contractor vaccine mandate for covered employees means that almost all of DBI's employees would be covered. This would make it too complicated to rotate unvaccinated employees from government to commercial work and keep them out of contact with employees working on government projects.

10. These survey results are troubling because they reveal how a vaccine mandate would constrain DBI's business—even if just half of the respondents who stated that they would quit would do so (and this does not account for the 50 percent of our employees who declined to respond at all). Given the amount of skill and experience that our employees have, they cannot be easily replaced with a qualified candidate. DBI is already experiencing issues with labor shortages that are driving up its costs. Thus, the loss of these vaccine-hesitant employees would undoubtedly increase labor costs and drive schedule delays for several reasons.

11. ***First***, DBI would have to spend more money on overtime for its skilled employees. Currently one-third of our masonry employees work 40 hours per week and two-thirds work 56 hours per week. Depending on which employees would quit as a result of the vaccine mandate, the total overtime costs could vary dramatically.

12. ***Second***, DBI would have to bear the cost of recruiting and onboarding employees. The current labor market makes it difficult to attract and retain qualified brick masonry employees, and DBI could not solve a labor shortage by relying on unskilled workers.

13. Effectively, DBI would have to change its entire business model to account for the loss of certain employees. These costs would be incalculable because DBI would not be able to quantify exactly how much it would cost to complete projects with its current crews versus a restructured workforce.

14. Another issue is that DBI will have no legal means to recover the increased cost flowing from the vaccine mandate because its commercial customers are not responsible for the federal mandate. In fact, there is a real risk that DBI could actually be liable to its

commercial customers for the resultant delays. In turn, for any new federal projects that include the vaccine-mandating clause, the costs will likely be unrecoverable because the Government could say that DBI agreed to assume the compliance costs when bidding on a fixed-price contract.

15. To ensure that DBI does not perform at a loss, DBI would need to price its bids for federal contracts and subcontracts at a substantially higher amount.

16. DBI has already experienced this problem. We were awarded a commercial contract in the second week of October 2021 that we priced to accommodate a restricted ability to staff the project largely due to shot verification requirements. This is a substantial external building repair project at AT&T corporate headquarters in downtown Dallas. The labor cost was forecasted to be approximately 7.5% higher due to not being able to appropriately staff the project with the most qualified team leading to loss in productivity and increased overtime associated with a smaller less skilled workforce. If project timelines increase due to flow-down of work not ready for our trade or extended work times in our discipline, non-productive items such as equipment, scaffold, and extended general conditions will escalate as well, and ultimately hyperinflationary costs with the remaining workforce. This is a simple supply and demand equation, and at this time these costs cannot be accurately forecasted. This project is not federal; however, it is my belief that any vaccine mandate would exacerbate the already strained labor environment and would correlate to a similar amount of increased costs for federal projects for the same aforementioned reasons.

17. For the reasons summarized above, DBI has made the decision to implement a policy of no longer bidding on federal contracts or subcontracts. We just can't accept the risk associated with losing valuable craft workers and managers.

18. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is correct.

Executed on this 6th day of December, 2021, in Richardson, Texas.

Robert V. Barnes III, President & CEO
Dee Brown, Inc.

DECLARATION OF ROBERT FABBRO

I, Robert Fabbro, hereby declare as follows:

1. I am the President of Whitesell-Green, Inc. ("WGI"). I have served in this role for 5 years and have been with WGI for over 25 years. I have 33 years of experience in the construction industry and 33 years of experience with federal contracts, CONUS and OCONUS. I have personal knowledge of, and am competent to testify to, the matters contained in this declaration.

2. WGI is a general contractor headquartered in Pensacola, Florida that specializes in federal, commercial, and municipal construction. Our company started out serving the area's numerous military bases in the 1970s. Since then, the company has become a regional construction-services provider, with projects from Texas to Virginia. WGI has earned multiple Awards of Merit from the Department of the Navy and the U.S. Army Corps of Engineers for its work on federal projects.

3. Historically, 90 percent of WGI's current work is with the federal Government, with most of its performance taking place on military bases. WGI performs certain construction work itself (*e.g.*, concrete, finishing, and front-end work), but relies largely on subcontractors to perform the majority of the construction work, including mechanical, electrical, and trade work.

4. During the course of the pandemic, a number of our employees caught COVID. We managed to continue performing at no additional cost to our customers, with some schedule extensions.

5. WGI has not required its employees or its subcontractors to be vaccinated for COVID-19, nor does it plan to do so. If WGI were to accept the vaccine-mandating clause, then the mandate would cover all of its employees, without exception, because of how our office is organized and our employees interact with one another.

6. WGI anticipates that it would lose a large portion of its workforce and subcontractors if it were to impose a vaccine mandate. Many of our employees have expressed that they will not comply with the vaccine requirement and have in no uncertain terms told me, "You will have to fire me." These issues with employee vaccination are not limited to just my construction personnel. A lot of WGI's office staff and project managers have also declined to get vaccinated. For example, several of our project managers who have recovered from COVID have stated that they do not want to get vaccinated because they now have natural immunity.

7. WGI currently finds it challenging to hire construction employees—especially employees who can gain access to military bases, which involves a Government-imposed background check and screening process.

8. Losing our current staff could jeopardize our ability to perform under any of our contracts. We rely on the knowledge and skills of our managers and laborers to deliver

the quality service we have earned a reputation for. Without them, WGI would cease to exist.

9. I anticipate that WGI's small-business subcontractors will also refuse to accept the vaccine-mandating contract clause if WGI attempted to flow it down. WGI has already been receiving fewer responsive bids from subcontractors lately, oftentimes, limited to only one or two responsive bids. This federal vaccine mandate would damage our relationships with subcontractors who would decline to do business with us because of their not wanting to be subject to a vaccine mandate.

10. Without employees or subcontractors, WGI's ability to deliver to the Government under its current or future contracts, if any, will be severely constrained. Given the disruption caused by staff attrition, it would become commercially impracticable for WGI to perform under its federal contracts. Generally, our federal construction contracts are performed under a firm-fixed price, which means that WGI bears the financial risk for disruptions related to its personnel (*e.g.*, extended overhead costs). Moreover, our federal contracts typically include liquidated damages clauses, which can result in up to $15,000 dollars per day owed to the Government for the delayed completion of a project.

11. In light of these factors, WGI has stopped bidding on any new federal contracts because the federal vaccine mandate threatens its ability to maintain a workforce and relationships with its subcontractors. WGI has also declined to execute any contract modifications to incorporate the clauses at FAR 52.223-99 or DFARS 252.223-7999. Not only will WGI be forced to shift its business from Government-contracts work due to the risk of vaccine-related attrition, but the Government will lose the services of a contractor who has served the U.S. military for over half a century.

12. The lost business with the federal government is incalculable because WGI will not know what contracts (and revenue) it could have won, but this burden is better than the alternative where WGI loses so much of its workforce that it can no longer operate.

13. Pursuant t 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is correct.

Executed on this 3rd day of December, 2021, in Pensacola, Florida.

Robert A. Fabbro, President
Whitesell-Green, Inc.

DECLARATION OF TASHA A. GARDNER

I, Tasha A. Gardner, hereby declare as follows:

1. I am the VP-Finance/CFO of Sargent Corporation ("Sargent" or "Company'). I have served in this role for 4 years and have been with Sargent for 4 years. Prior to joining Sargent, I was a partner in a local CPA firm, having worked in the public accounting profession for 25 years, where I specialized in providing accounting and consulting services to the construction industry, as well as to Sargent. I am a Certified Public Accountant ("CPA") and a Certified Construction Industry Financial Professional ("CCIFP"). I have personal knowledge of, and am competent to testify to, the matters contained in this declaration.

2. Sargent is a construction contractor that specializes in infrastructure projects, ranging from building airport runways, roads and highways, to wind and solar energy farms. We are headquartered in Stillwater, Maine, and serve Government and commercial customers throughout the Northeast U.S. and Mid-Atlantic region. We operate in the "heavy civil" sector of the commercial construction industry.

3. Sargent is a 100% employee-owned company, through an Employee Stock Ownership Plan ("ESOP") business model. Our roughly 400 employees are eligible to participate in the ESOP, which allows them to have a personal interest in the Company's success by sharing in its growth and profitability.

4. As a construction contractor, Sargent anticipates that any federal contract or covered subcontract that it is awarded will now necessarily include the vaccine-mandating clause at FAR 52.223-99 or DFARS 252.223-7999.

5. Sargent has not required its employees or its subcontractors to be vaccinated for COVID-19. However, Sargent has encouraged them to consider being vaccinated.

6. Many of Sargent's employees have told us they will quit before complying with a vaccine mandate. Recently, we conducted an informal, anonymous poll of our employee-owners. Approximately 70% of the employee-owners participated. Of those participating, approximately 53% are not vaccinated, and of those, 45% answered they are not willing to be vaccinated and would quit if vaccines are mandated. Sargent estimates the number of employees who will quit to be approximately 70-80 employees, many of whom are in critical Company roles.

7. The loss of these employees would make performance extremely difficult for Sargent because these employees' skills and expertise would be difficult to replace. Sargent's performance relies on the institutional knowledge of its employees and losing this human capital would jeopardize Sargent's ability to perform. Moreover, we have found it challenging to recruit and retain qualified employees in the current labor market.

8. Several of Sargent's competitors who are not subject to the federal vaccine mandate are already trying to recruit Sargent's employees. For example, certain competitors are posting on Facebook that employees who join them will not be forced to receive the

COVID vaccine. Such recruitment efforts reaffirm our vaccine-hesitant employees' position that they can easily be employed elsewhere without having to be subject to the vaccine mandate.

9. An immediate consequence of imposing a vaccine requirement for our employees would be delays to Sargent's projects because of labor shortages. This would lead to additional overhead costs and the risk of liquidated damages being imposed by project owners. Sargent would also incur additional costs in recruiting, onboarding, and training replacement employees. Sargent would be unable to recover for the vaccine mandate's cost impacts because its commercial customers had no say in whether the federal vaccine mandate applies. In fact, there is a real risk that Sargent will be liable to its commercial customers for the resultant delays. In turn, for any new federal projects that already include the vaccine-mandated clause, the costs will likely be unrecoverable because the contracting officer will say that Sargent agreed to assume the compliance costs when bidding.

10. A more long-term consequence of imposing a vaccine mandate is tied to Sargent's ownership structure. Sargent is 100% employee owned and offers employees an employee stock ownership plan (ESOP). One consequence of this structure is that significant disruptions in the workforce will affect the company's capital structure and retirement benefit plans. When an employee who owns shares in Sargent under the ESOP quits or is terminated, Sargent is obligated to begin making distributions to the employee no later than 1 year after the plan year in which the employee left. A significant exodus of vaccine-hesitant employees from Sargent would put a tremendous cash demand on the ESOP and start the clock for a deadline by which Sargent would need to begin distributing account balances in a significantly higher proportion than normal. The full impact of such widespread distributions is incalculable because Sargent cannot accurately forecast what its financial position will be in the future. Depending on the timing and number of resignations, we might be forced to terminate the ESOP. If the number of distributions is too high, then there is a risk that Sargent will go out of business or be forced to undertake a major recapitalization because of the vaccine mandate's impact on its business model. If employee-owners do not resign, but we also do not have work that can accommodate an unvaccinated employee-owner, the Company would be faced with having to terminate the employee-owner. If the number of forced terminations were too high, then there is the risk of a partial termination of our ESOP. That would have a dramatic negative financial impact on Sargent, harming the Company's working capital and deteriorating the Company's ability to successfully bid larger projects. Significant resignations or terminations will also likely cause a significant decline in the value of the stock owned to plan participants and depressing their retirement benefits.

11. The concerns summarized above has led Sargent to assess if we may no longer be in a position to bid on federal contracts or subcontracts.

12. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is correct.

Executed on this 10th day of December, 2021, at Stillwater, Maine.

Tasha Gardner

Tasha A. Gardner, VP-Finance/CFO
Sargent Corporation

DECLARATION OF JEFF HARPER

I, Jeff Harper, hereby declare as follows:

1. I am the President of Harper Construction ("Harper"). I have served in this role for 16 years and have been with Harper for 36 years. In that span, Harper has completed 175 federal contracts, on more than 20 different federal installations across the country, for a value of more than $4 billion dollars. I have personal knowledge of, and am competent to testify to, the matters contained in this declaration.

2. Harper Construction is a construction contractor headquartered in San Diego, California specializing primarily in Design-Build construction for federal and public works projects. We provide a full spectrum of pre-construction, estimating, design-assist, design development, construction, and quality control services. Harper Federal is our subsidiary that self-performs on federal projects, principally as a subcontractor in ten different trades.

3. Federal contract work currently comprises approximately 90 percent of Harper's business. Harper mostly holds design-build contracts with the Navy and the Army, many of which are performed on-site at military bases across the country.

4. Harper has over 135 employees, but largely relies on subcontractors to perform the construction work, with a preference for drawing from the local labor force for each worksite. In addition, the number of people that are employed by Harper Federal typically ranges between 50-150 employees.

5. During the course of the pandemic, Harper experienced a few COVID outbreaks on its projects. But none of these have resulted in any price increase to any of our customers, including federal government customers. Instead, these outbreaks resulted in Harper being able to get limited to adjustments to the project schedule, without the imposition of liquidated damages. We never received any price adjustment for COVID delays on these projects.

6. Harper has not mandated COVID vaccinations for its employees, and we had not planned to do so before the federal vaccine mandate for contractors was announced.

7. We now anticipate that the federal vaccine mandate will result in the turnover of many significant employees and that, as a result, we will be unable to secure several key subcontractors to support our performance.

8. We took an informal survey of the employees at Harper Construction in November and found that approximately 15% of our employees would quit, due to not wanting to comply with the federal vaccine mandate. Harper Federal took an informal survey of the employees at Harper Federal in November and found that between 25% to 30% of our typical workforce would quit, due to not wanting to comply with the federal vaccine mandate.

[redacted]

9. We are very concerned that Harper will lose critical personnel with experience and knowledge that would be impossible to replace. Examples include our field superintendent staff, and employees who perform critical compliance roles such as Quality Assurance/Quality Control and Site Safety and Health Officers. These employees have extensive training and experience in federal contracting, including the FAR's, DFAR's, EM 385-1-1 Safety & Health Manual, SBA requirements, and a multitude of federal labor laws, and regulatory compliance matters. Most of these employees possess contract required experience, some possess the required 4-year college and/or specialty degree, and/or specialized training. In addition, many of these employees have relocated along with their families to remote locations making it extremely difficult to find replacements. Employees with specialized knowledge and experience cannot be replaced on short notice, especially in the current labor market.

10. We also expect that several of our subcontractors will reject the vaccine mandate. The San Diego representative of one of our key electrical subcontractors (with a parent company of more than 30,000 employees nationwide) has told us that they plan to withdraw from the Federal market to avoid significant employee turnover. Another subcontractor that provides highly specialized and proprietary fabric hangar doors for DoD projects has indicated that their experienced installation crew will not work on federal projects if the vaccine mandate is required. One small business sheet metal subcontractor has indicated that 5-10% of their key field employees will quit rather than comply with a vaccine mandate. In addition, many Harper Federal employees that perform demolition, grading, HVAC, plumbing, insulation, framing, drywall, and painting will quit due to not wanting to comply with the vaccine mandate. This will severely hurt Harper Federal's capabilities and, consequently, Harper Construction's bottom line, and our ability to complete work on-time and under budget. Also, there are several unique trades like elevators, cranes, and DDC controls that are very specialized, government oriented, and where qualified firms are scarce in the government arena. If any of those trades decide to exit the federal market, we are unsure where to find firms to perform that specialized work.

11. We fear that Harper will suffer staff attrition as a result of the vaccine mandate, and damage to our relationships with subcontractors who will prefer not to do business with Harper than risk being subject to the federal vaccine mandate. Based on the level of vaccine hesitancy among personnel in the construction industry, as well as the tight labor market, Harper would face a significant challenge in trying to replace them.

12. We are also worried that losing Harper's small subcontractors would make it nearly impossible to meet our contractual subcontracting goals for small businesses.

13. We are also concerned about incalculable financial risk associated with our surety bonds. If our projects are delayed due to a reduced workforce caused by the vaccine mandate, the anticipated profits for each job will likely be diminished, and monthly revenue (burn rate) will decrease, resulting in a lower surety bonding capacity. This reduced bonding capacity would limit the amount of work we would be permitted to pursue, which would invariably lead to the forced downsizing of Harper Construction.

[redacted]

14. We conducted a review of a recently awarded, $100,000,000+, new construction Navy aircraft hangar where we employ 55 subcontractors. Harper just completed the identical hangar next door and were awarded this new hangar using most of the same subcontractors and labor force as the first hangar. Our review of the potential increased costs due to the vaccine mandate projects significant higher costs to the government. We anticipate that the added costs would exceed 5% of the contract price and could be substantially higher if a significant amount of the labor force refuses to vaccinate.

15. The financial risks and uncertainties imposed by the vaccine mandate will force us to reconsider the extent to which we will continue to bid on federal projects. For the time being, we are very hesitant to bid on new federal projects in order to minimize the business risk to our company.

16. Harper Construction submitted a bid to the Army for a large project on September 2, 2021, prior to any definitive COVID vaccine mandate. The Army is now asking for an updated price on 12/14/21 that includes, among other things, the vaccine mandate for all employees and subcontractors. In addition, the Army has asked for cost saving ideas that might reduce the overall price. Our plan is to submit a cost saving idea for a large deductive amount if the government does not require the vaccine mandate. While we have not completed our estimate, our preliminary calculations lead us to expect that this cost differential will be in the million dollar range. This is primarily due to the detrimental effect that the mandate will have on the workforce of Harper Federal and other subs that would be unwilling to perform work on the job.

17. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is correct.

Executed on this 8th day of December, 2021, in San Diego, California.

Jeff Harper, President
Harper Construction Company Inc.

DECLARATION OF EDDIE STEWART

I, Eddie Stewart, hereby declare as follows:

1. I am the Chairman & CEO of Caddell Construction ("Caddell") and I was a member of Caddell's founding team in 1983. I have served in this role for over 10 years and have been with Caddell for 38 years. I have held various other positions at Caddell, including Vice President of Estimating and Purchasing, Executive Vice President, and President & Chief Operating Officer. I have 43 years of experience in the construction industry and 43 years of experience with federal contracting. I previously served as the President of the Associated General Contractors of America, I am a current member of the National Academy of Construction, and I was inducted into the Alabama Construction Hall of Fame in 2020. I have personal knowledge of, and am competent to testify to, the matters contained in this declaration.

2. Caddell is an international construction contractor that offers design-build services to U.S. Government and commercial customers in 34 countries. Caddell has over 125 employees at its headquarters in Montgomery, Alabama and over 4,800 permanent employees worldwide, including in its offices in Atlanta, Georgia; Bentonville, Arkansas; and, Jacksonville, Florida.

3. Approximately 80 percent of Caddell's business is with the federal Government. Caddell has served as the prime contractor on various domestic federal projects, such as the Stanley J. Roszkowski federal courthouse in Rockford, Illinois and the Third Army Headquarters complex at Shaw Air Force Base in South Carolina. We regularly bid on domestic federal projects across the country. Just in the last 3 years, we have bid on over \$11.3 billion of Federal work and been awarded \$1.0 billion in 4 states. Caddell has also constructed a number of U.S. Embassies for the U.S. Department of State, including the Embassy Compound at The Hague, Netherlands; Nassau, Bahamas; and Malabo, Equatorial New Guinea.

4. Caddell is currently performing approximately 22 federal contracts, totaling \$3.7 billion and has submitted bids for 27 federal solicitations during calendar year 2021 that exceed \$3.9 billion. The Federal vaccine mandate was included in 7 of the 27 bids we have submitted this year to date.

5. Caddell relies on trusted subcontractors to perform about 90 percent of the project work on domestic projects.

6. Caddell anticipates that any contract award for domestic federal projects it will receive will include the vaccine-mandating clause at FAR 52.223-99 or DFARS 252.223-7999.

7. The federal contractor vaccine mandate will cover most—if not all—of Caddell's employees who work within the United States and its outlying territories. Our home office supports federal contracts in some capacity and many key Caddell employees travel to the various worksites and locations.

8. Caddell has already begun implementation of the Federal vaccine mandate, resulting in employee attrition and a significant blow to staff morale. Of the 350 salary employees who are subject to the policy we adopted in response to the mandated, more than 25 employees have not submitted proof of vaccination. More than 25 others have requested accommodations, some of which are still under consideration. At least five employees who originally sought an accommodation have withdrawn from the process and made no effort to show proof of vaccination. This indicates that they do not intend to become fully vaccinated

9. One of the most significant consequences of Caddell's vaccine mandate has been the loss of key senior employees. As of the date of this declaration, we have already lost six highly-skilled employees. I anticipate that we will lose more.

10. Losing valuable employees means that other employees will need to pick up the slack. The more employees we lose, the more strained our performance becomes. It is already difficult to get skilled laborers who can satisfy all of the federal requirements, such as the background and security clearance requirements for access to military bases and other federal facilities. Some of our senior employees are indispensable to our business; they have decades' worth of experience, insight, and institutional knowledge that will be lost if they leave the company, thereby causing a significant negative impact on Caddell's operations.

11. The effect of the vaccine mandate on employee turnover will also lead to schedule delays and increased costs. It is difficult to calculate exactly what the cost impact will be as the disruptions may also have a cumulative effect, which occurs when a series of disruptions have a synergistic and compounding effect that cannot be neatly traced to a single event (such as a single employee leaving).

12. One concern we have as a company is how to bid on federal contracts to account for the federal vaccine mandate. Caddell wants to ensure that the price is fair and we do not believe that adding money in an unsophisticated manner is appropriate. We also don't want to submit bids that cause us to lose money on projects. The vaccine mandate will convert our systematic approach to project bidding into a pure guessing game, and present unacceptable business risks.

13. We are already starting to see the impact of the vaccine mandate. We have been asked by federal customers to rebid several contracts deemed to be covered by the vaccine mandate. In response, we have increased the price of our bids. In one case, we raised our bid by approximately $3.5M to account for the projected negative impact of the mandate. This is a 5% increase in our bid price in a 2-month period, with no change in scope other than the addition of the mandate. We expect many more such examples, with the overall result of a substantial increase in project costs to our government customers.

14. Caddell has also experienced issues with its subcontractors/vendors who anticipate that the vaccine-mandating clause will be flowed-down to them. We have several subcontractors whose own lower-tier subcontractors have pending bids on federal

projects for which their subcontractors have sought to re-bid their prices and schedules to account for the federal contractor vaccine mandate.

15. Aside from increasing prices for the federal Government, I anticipate that many of the subcontractors on which we rely will simply leave the federal sector. This issue is exacerbated by the fact that many of our subcontractors are already finding it difficult to satisfy all of the federal regulatory requirements, such as the new cybersecurity regulations. In turn, the commercial marketplace is booming and certain vendors already appear to be withdrawing from the federal market. Without any subcontractors, neither Caddell nor its first-tier subcontractors will be able to perform. Thus, a vaccine mandate with a flow-down requirement threatens to destroy Caddell's business relationships with its subcontractors.

16. The possibility of a subcontractor defaulting to avoid compliance also poses a risk to Caddell's bonding capacity, which could further constrain its ability to bid on federal projects.

17. Another concern Caddell has is that it faces the choice of risking the loss of future business or the loss of profitability on a project. Specifically, Caddell may lose future solicitations due to the way it prices its bids to account for the still-unquantifiable cost impacts of achieving compliance with the federal vaccine mandate (*i.e.*, pricing the costs of compliance may mean its bids are less competitive). The value of lost future business is incalculable because Caddell may not know with certainty whether it would have won but for the price increase.

18. At this time, I believe it is too early for Caddell to know what it will do as a result of the vaccine mandate. Our leadership is considering refraining from bidding on additional federal work to limit exposure for the time being. However, Caddell is committed to serving its Government customers and does not plan to exit the federal market entirely.

19. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is correct.

Executed on this 3RD day of December, 2021, at Montgomery, Alabama.

Eddie Stewart

Eddie Stewart, Chairman & CEO
Caddell Construction

DECLARATION OF BRIDGETTE WIGGINS

I, Bridgette Wiggins, hereby declare as follows:

1. I am the Vice President of JMJ Construction Company, Inc. ("JMJ"). I have served in this role for 3 years and have been with JMJ for 3 years. I am on JMJ's Board of Directors and am a part owner of the company. I have 17 years of experience in the construction industry and 14 years of experience with federal contracting. I have personal knowledge of, and am competent to testify to, the matters contained in this declaration.

2. JMJ is a company that specializes in small to mid-sized construction projects, including new constructions, renovations, and design-build projects. JMJ serves Government and commercial customers throughout Wisconsin. JMJ is a 49 percent woman-owned small business.

3. JMJ is based in New Lisbon, Wisconsin, in a rural part of central Wisconsin, approximately 80 miles northwest of Madison.

4. As a prime contractor, JMJ self-performs approximately 35 percent of the work on our construction projects and relies on subcontractors to complete the remainder. Generally, JMJ engages subcontractors to perform electrical, plumbing, mechanical, earthwork, excavation, paving and some concrete and roofing work.

5. Since 2018, JMJ has performed as a contractor at U.S. Army Fort McCoy in Monroe County, Wisconsin. Our on-base projects at Fort McCoy have included the repair and renovations of military barracks, the gun range, and a rubberized playground installation.

6. Approximately one-third of JMJ's business is with MICC – Fort McCoy. JMJ holds a Multiple Award Indefinite Delivery, Indefinite Quantity ("MAID-IQ") contract with MICC Fort McCoy and is performing under various task orders for design-build work at Fort McCoy.

7. As a construction contractor, JMJ anticipates that any task order it is awarded under the current MAID-IQ will now necessarily include the vaccine-mandate clause at FAR 52.223-99 or DFARS 252.223-7999. We currently have two open Task Orders on our existing MAID-IQ contract, both of which are over $250,000. This contract is in place through February 14, 2024.

8. JMJ recently submitted a bid for a new project under our MAID-IQ contract that will exceed $250,000 in value. This bid was submitted before President Biden issued Executive Order 14042 on September 29, 2021. JMJ has been awarded this task order. The vaccine mandate clause was not included in the task order. The Contracting Officer indicated that he does not plan to issue an addendum adding it at this time. However, he did not guarantee that it will not be added in the future.

9. We fully expect that the vaccine mandate clause will be added. In August 2020, JMJ received a letter from a Fort McCoy Contracting Officer which notified JMJ that she was

implementing Section 889(a)(1)(B) as a result of interim FAR rule 2019-009. A copy of that letter is attached as Exhibit 1 to this declaration. The letter stated that our contract would be modified in October 2020 to include this provision. She also stated that not responding to the request "will impact my ability to extend the period of performance of your contract and/or issue any additional task/delivery orders after 13 Aug 2020." I believe a similar letter would be issued to incorporate the vaccine mandate clause, thus giving JMJ no room to reject the modification.

10. In my experience of working on Federal Contracts, when a change order or other letter implementing a change to the contract is issued, there is both an obligation and expectation for the contractor to sign and return the document. Not doing so will cause the Contracting Officer to withhold payment or otherwise impede the contractor's ability to proceed with the contract. Since the payment terms of Federal contracts requires work to be completed and accepted before payment is issued, a decision not to sign would leave JMJ vulnerable for completing work for which we cannot get paid and cannot receive funds to pay subcontractors. On a project of this magnitude, this could jeopardize JMJ's entire business.

11. Our government customer has made it clear that they intend to include the vaccine mandate clause in all new task orders issued under existing MAID-IQ contracts, including ours. This decision is very frustrating. This amounts to a subsequent condition imposed by the government that deprives us of the substantial economic benefit typically provided by IDIQ contracts. One of the reasons companies like ours bid on IDIQ contracts is because, by being pre-qualified, we're in a better position to compete successfully for task orders issued under those contracts. This is because there is a smaller number of qualified contractors with whom we would compete. It is a significant administrative burden for a small company like ours to get pre-qualified. Among other things, it costs time and money to put together a successful proposal. Insertion of this clause in subsequent task orders issued under an IDIQ contract penalizes a company like JMJ. As a practical matter, it deprives us of the economic benefit we thought we would enjoy by completing the pre-qualification process.

12. On September 26, 2021 JMJ was issued a task order for a yearlong project to renovate Range 31A at MICC Fort McCoy; the total contract value is roughly $900,000.00. We signed and returned the Task Order and the project is currently in design. We chose to go ahead and sign the TO only because we were uncertain about the status of the vaccine mandate. We believed that we would have a reasonable cause to back out of the contract without penalty if we were unable or unwilling to comply with terms of a future change order to include the mandate, as it was not within our expectations during bid time. We believed we did not have much of a choice. Had we elected not to sign the task order, MICC Fort McCoy would have had the right to file a claim on JMJ's bid bond, causing significant financial harm to our firm. If the clause requiring the vaccine mandate is added to this Task Order, JMJ will not be able to accept it.

13. Given how our workforce and offices are organized, the federal contractor vaccine mandate would apply to virtually all JMJ employees. There is no practical way for us to separate employees based on whether they support federal projects or commercial

projects because everyone either works on both or works at a location where at least one employee supports a federal project.

14. JMJ has not required its employees to be vaccinated for COVID-19 and has no plans to implement a vaccine mandate. Consistent with our company's values, we believe that the question of getting the vaccine, like other medical procedures, is a matter of personal choice. JMJ has not required any of its subcontractor employees to be vaccinated. However, JMJ has encouraged both our employees and our subcontractors to protect themselves and to learn about the vaccine.

15. JMJ took a number of specific precautionary steps in response to the pandemic, including the following: 1. JMJ held an informational meeting at the beginning of the pandemic, informing all workers about the risks of COVID and the CDC's recommendations. JMJ's infection control plan as well as fliers from the CDC and the Wisconsin Department of Health were presented and handed out during this meeting. 2. We have encouraged social distancing wherever possible and provided hand sanitizer, masks and hand washing stations. 3. JMJ has permitted all employees time off to receive the COVID vaccine and recover. 4. Any employee experiencing symptoms has been told to stay home and testing has been encouraged. 5. Employees who have notified the company of their exposure to a positive case have been allowed to stay home (without penalty) during their quarantine period. 6. JMJ encourages employees who are parents to stay home with their children when their children have been exposed or are experiencing symptoms. 7. JMJ's office staff switched to working from home in March of 2020 and have not been required to return to the office unless their personal preference is to do so.

16. Since the start of the pandemic, four of JMJ's employees have tested positive for COVID to the best of my knowledge. We managed to continue performance on our projects on schedule by continuing to follow the safety measures described above and by reassigning some of our employees.

17. On August 21, 2021, I surveyed JMJ's employees. The purpose of my survey was to see who would be available to work on projects which may have mandated vaccines for those working on the jobsite. At that point, we were not discussing requiring the vaccine ourselves but it seemed apparent that the customer for our federal projects may require personnel on site to be vaccinated. Of the 20 employees who are currently still with JMJ, 11 had not been vaccinated and did not intend to be. Several members of our senior management team and our highly-skilled craft workers have already told us they will leave JMJ before complying with a vaccine requirement. This means that more than 50% of our team would rather face losing their jobs than staying with a company that mandates the vaccine.

18. Losing these employees would be devastating and would threaten JMJ's very existence. Our co-owners and senior managers are the lifeblood of JMJ's operations. They have decades' worth of experience when planning and managing JMJ's projects that cannot be replaced with qualified individuals. The loss of one such team member would constrain JMJ's ability to perform; the loss of several would devastate JMJ's ability to operate. Moreover, the quality of JMJ's work is dependent on its skilled craft employees. JMJ's

craft workers would be difficult to replace in the present labor market, which has made recruiting and retaining qualified employees difficult—even before the federal vaccine mandate was announced. Losing our craft workers would also inevitably create safety issues on our jobs.

19. An immediate consequence of the vaccine mandate and the loss of employees would be delays to JMJ's federal and commercial projects because JMJ's leadership and workforce would be stretched thin. This result would necessarily lead to additional overhead costs and the risk of contractual liquidated damages imposed by our project owners. JMJ would also incur costs in recruiting, onboarding, and training replacement employees. JMJ might be able to seek an equitable adjustment from the Government for some of these costs, but recovery will depend on whether the Government customer accepts liability for the impact to JMJ's performance. However, JMJ will have no way to recover for the cost impacts to JMJ's commercial projects that result from the vaccine mandate, because these contracts are with commercial customers who had no say in the federal vaccine mandate. In fact, there is a real risk that JMJ will be liable to its commercial customers for the resultant delays. Finally, for any new federal projects that already include the vaccine-mandated clause, there is a real risk that the costs will be unrecoverable because the contracting officer will say that JMJ agreed to assume the compliance costs when bidding.

20. I have also spoken with a number of JMJ's subcontractors. They have stated that they are opposed to mandatory vaccination of their employees. For example, one of JMJ's unionized electrical subcontractors has stated that its employees' union refuses to budge on its opposition to mandatory vaccination.

21. Generally, JMJ awards its subcontracts to the lowest qualified bidder. Therefore, if JMJ has to replace a subcontractor because of the vaccine mandate, then JMJ's cost of performance will go up. But this assumes that JMJ will be able to find another subcontractor who is willing to submit to the vaccine mandate. If JMJ cannot rely on subcontractors, then our business model will no longer work because we are not capable of performing all aspects of construction ourselves, which is a real concern given the current labor shortage in our area. Because we are operating in a very tight labor market, I expect that some subcontractors may simply choose to no longer work under federal contracts and stick to commercial projects.

22. I am also concerned that JMJ will have to deal with claims against the performance bonds it is required to post on our federal jobs. If subcontractors refuse the COVID vaccine mandate and default on their subcontracts, then JMJ's bonding capacity will suffer. A subcontractor default would preclude JMJ from being able to bid on any future public work, including state and federal projects. The negative impact on JMJ's balance sheet due to the loss of future government business would be both significant and incalculable, as there is no way to know for certain what contracts the company would have won. Moreover, a claim filed on our bond would come with a financial impact to JMJ. The bonds are financially secured by the company and its owners. In order to continue to receive any bonding, JMJ's shareholders would be required to pay the bonding company for the claim.

23. JMJ finds itself between a rock and a hard place because it faces either losing its employees and subcontractors if it complies with the vaccine mandate, or losing a third of its revenue by no longer serving the federal Government.

24. Because of these reasons, JMJ has decided to stop bidding on any additional federal projects for the time being, with the hope that it can limit its exposure to the vaccine mandate to just its current projects. JMJ's Board of Directors has officially voted that no further Federal work can be pursued unless and until it is clear that JMJ will not be required to comply with this mandate.

25. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foreguiding is correct.

Executed on this 7th day of December, 2021, at New Lisbon, Wisconsin.

Bridgette Wiggins, Vice President
JMJ Construction Company, Inc.