

MODIFICATIONS TO AIA DOCUMENT A201-1997, *General Conditions of the Contract for Construction*

The provisions of these Modifications shall delete, replace and supplement the provisions contained in the "*General Conditions of the Contract for Construction*", AIA Document A201-1997 Edition. The provisions contained in these Modifications will supersede any conflicting provisions of the AIA Document. The term "Agency", as used in these Modifications, shall mean the United States of America, acting through the United States Department of Agriculture.

ARTICLE 1, GENERAL PROVISIONS

1.2 Add the following subparagraph to paragraph 1.2:

1.2.4 Concurrence in the Contract by the Agency is required before the contract is effective.

ARTICLE 2, OWNER

2.2.5 Delete subparagraph 2.2.5 and substitute the following:

2.2.5 The Contractor will be furnished, free of charge, five (5) copies of the Drawings and Project Manuals necessary for execution of the Work. Additional copies will be available from the Architect at the cost of reproduction and handling.

ARTICLE 3, CONTRACTOR

3.4.2 Add after the word "Owner" the words "and Agency".

3.7.1 Delete subparagraph 3.7.1 and substitute the following:

Unless prohibited by local authorities, the Owner shall secure and pay for the health and environmental impact fees due to water and sewer connections, and the zoning regulation fees and permits. The Contractor shall secure and pay for the building, mechanical, electrical, and plumbing permits and other governmental fees, licenses, and inspections necessary for proper execution of and completion of the Contract which are legally required when bids are received or negotiations concluded.

ARTICLE 4, ADMINISTRATION OF THE CONTRACT

4.2.12 Delete the words "and will not be liable for results of interpretations or decisions so rendered in good faith" in the last sentence of subparagraph 4.2.12.

4.4.5 Add after the word "but", the words "may be" in the second sentence of subparagraph 4.4.5.

4.6.1 Replace the word "shall" with the word "may" in the first and second sentences of subparagraph 4.6.1.

4.6.2 Delete subparagraph 4.6.2 and substitute the following:

4.6.2 The arbitration provisions in this subparagraph may be initiated by either party to this Contract by filing with the other party and the Architect a written request for arbitration. The other party may accept or reject the request by filing a written answering statement with the requesting party and the Architect within fourteen (14) calendar days of the receipt of such request. If the request is accepted the provisions of this section shall apply. If the request is rejected or an answering statement is not filed within the fourteen (14) day period, the provisions in this subparagraph will not apply.

4.6.2.1 Within fourteen (14) calendar days or any mutually agreeable time period thereafter, each party to this Contract will appoint one arbitrator. Within fourteen (14) calendar days or any mutually agreeable time period thereafter, the two arbitrators will select a third arbitrator. Failure to appoint an arbitrator within the mutually agreeable time periods will terminate further actions under this subparagraph.

4.6.2.2 The arbitrators will select a hearing location as close to the Owner's locale as possible.

4.6.2.3 The procedure for conducting the hearings will follow the Construction Industry Arbitration Rules of the American Arbitration Association.

4.6.3 Replace the word "demand" with the word "request" in the first sentence of subparagraph 4.6.3.

4.6.5 Replace the word "demand" with the word "request" in the first sentence of subparagraph 4.6.5.

ARTICLE 7, CHANGES IN THE WORK

7.1.2 Insert the words ", Agency" after the word "Owner" in subparagraph 7.1.2.

7.2.1 Delete subparagraph 7.2.1 and substitute the following:

7.2.1 A change order is a written order to the Contractor utilizing Form RD 1924-7, "Contract Change Order," signed by the Owner, Architect, Contractor, and the Agency representative. It is issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. The Contractor's signing of the change order indicates complete agreement therein. When the aggregate amount of all Change Orders exceeds twenty percent (20%) of the original contract amount and surety has been provided for the full amount of the contract, additional surety must be provided to cover the additional amount.

7.3.1 Add the following sentence to subparagraph 7.3.1.

A Construction Change Directive may be used only for a change in response to an emergency, as described in Paragraph 10.6.

- 7.3.3 Delete subparagraph 7.3.3.
- 7.3.4 Delete subparagraph 7.3.4.
- 7.3.6 Delete Subparagraph 7.3.6.

ARTICLE 8, TIME

- 8.2 Add the following subparagraph to paragraph 8.2:

8.2.4 The Notice to Proceed shall be issued within twenty (20) calendar days of the execution of the Agreement by the Owner. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement of the Owner and Contractor, with the concurrence of the Agency. If the Notice to Proceed has not been issued within the twenty (20) calendar day period or within the period mutually agreed, the Contractor may terminate the Agreement without further liability on the part of either party.

- 8.3 Add the following subparagraph to paragraph 8.3:

8.3.4 As outlined in article 3 of the Agreement, the Contractor agrees to pay liquidated damages to the Owner for each calendar day the Contractor shall be in default.

ARTICLE 9, PAYMENTS AND COMPLETION

- 9.3.1.1 Add the following sentence to clause 9.3.1.1:

Work performed and materials supplied under a Change Order may be included for payment only after the Change Order has been approved by all appropriate parties, including the Agency.

- 9.3.2 Delete Subparagraph 9.3.2 and substitute the following:

9.3.2 Unless otherwise provided in the Contract documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Payment shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest.

- 9.4.1 Replace the word "seven" with the word "ten (10)" in the first sentence; and add the words, "using Form RD 1924-18, 'Partial Payment Estimate'," after "Certificate for Payment" in Subparagraph 9.4.1.

- 9.4 Add the following subparagraph to paragraph 9.4:

9.4.3 The Architect shall obtain Agency concurrence on all Certificates of Payment before payment is made.

- 9.6 Add the following subparagraph to paragraph 9.6:

9.6.8 No progress payments will be made that deplete the retainage, nor place in escrow any funds that are required for retainage, nor invest the retainage for the benefit of the Contractor.

- 9.7.1 Replace the word "seven" with the word "ten (10)" in the first sentence, second and third lines of subparagraph 9.7.1.

9.8.4 Add the words ", in collaboration with the Agency," after "prepare" in the first sentence of subparagraph 9.8.4.

9.8.5 Delete subparagraph 9.8.5 and substitute the following:

9.8.5 When the Work has been substantially completed, except for the Work which cannot be completed because of weather conditions, lack of materials or other reasons, which, in the judgment of the Owner, are valid reasons for non-completion, the Owner may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the Work still to be completed.

9.9.1 Delete subparagraph 9.9.1 and substitute the following:

9.9.1 The Contractor agrees to the use and occupancy of a portion or unit of the Project before formal acceptance by the Owner under the following conditions:

9.9.1.1 A Certificate of Substantial Completion shall be prepared and executed as provided in subparagraph 9.8.4, except that when, in the opinion of the Architect, the Contractor is chargeable with unwarranted delay in completing the Work or the Contract requirements, the signature of the Contractor will not be required. The Certificate of Substantial Completion shall be accompanied by copies of Contractor's insurance policies, written endorsements of the Contractor's insurance carrier, and the surety permitting occupancy by the Owner during the remaining period of the Project Work. Occupancy and use by the Owner shall not commence until authorized by public authorities having jurisdiction over the Work.

9.9.1.2 Occupancy by the Owner shall not be construed by the Contractor as being an acceptance of that part of the Project to be occupied.

9.9.1.3 The Contractor shall not be held responsible for any damage to the occupied part of the Project resulting from the Owner's occupancy.

9.9.1.4 Occupancy by the Owner shall not be deemed to constitute a waiver of existing claims in behalf of the Owner or Contractor against each other.

9.9.1.5 If the Project consists of more than one building, and one of the buildings is to be occupied, the Owner, prior to occupancy of that building, shall secure permanent property insurance on the building to be occupied and necessary permits which may be required for use and occupancy.

9.9.2 Delete subparagraph 9.9.2 and substitute the following:

9.9.2 With the exception of clause 9.9.1.5, use and occupancy by the Owner prior to Project acceptance does not relieve the Contractor of the responsibility to maintain all insurance and bonds required of the Contractor under the Contract Documents until the Project is completed and accepted by the Owner.

9.9.3 Delete subparagraph 9.9.3.

9.10.2 Delete the second and third sentences of subparagraph 9.10.2.

ARTICLE 11, INSURANCE AND BONDS

- 11.1.2 Replace the words "the Contract Documents" with the words "subparagraph 11.1.4 of the Attachment to the Federal Supplementary Conditions of the Contract for Construction" in the first sentence of subparagraph 11.1.2.
- 11.4.2 Replace the word "Owner" with "Contractor" in the first sentence of subparagraph 11.4.2.
- 11.4.3 Delete the last sentence in subparagraph 11.4.3.
- 11.4.5 Delete subparagraph 11.4.5.
- 11.4.7 Delete subparagraph 11.4.7.
- 11.5.1 Delete subparagraph 11.5.1 and substitute the following:

11.5.1 The Contractor shall furnish the Owner Bonds covering faithful performance of the Contract and payment of obligations arising thereunder within ten (10) calendar days after receipt of the Notice of Award. The surety company executing the Bonds must hold a certificate of authority as an acceptable surety on Federal Bonds as listed in Treasury Circular 570, as amended, and be authorized to transact business in the State where the Project is located. The Bonds (using the forms included in the Bidding Documents) shall each be equal to the amount of the Contract Sum. The cost of these Bonds shall be included in the Contract Sum.

11.5.1.1 The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the surety to affix thereto a certified and current power of attorney.

11.5.1.2 If at any time a surety on any such Bond is declared bankrupt or loses its right to do business in the State in which the Work is to be performed or is removed from the list of surety companies accepted on Federal Bonds, the Contractor shall within ten (10) calendar days after notice from the Owner to do so, substitute an acceptable Bond in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums of such Bond shall be paid by the Contractor. No further payment shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable Bond to the Owner.

- 11 Add the following paragraph to article 11:

11.6 LATENT DEFECTS PROTECTION

11.6.1 If applicable, the Contractor shall provide surety or guarantee acceptable to the Owner and the Agency against latent obligations and defects in connection with the construction in accordance with the following:

- .1 The Contractor shall furnish a properly executed corporate latent defects bond, a maintenance bond, an unconditional and irrevocable letter of credit, or a cash deposit into a supervised bank account. Whichever instrument is used shall be in the amount of 10 percent of the Contract Sum.
- .2 The period of protection against latent obligations and defects shall be one year from the final acceptance of Work by the Owner and the Agency.

- .3 Final payment to the Contractor shall not be issued until the provisions of clause 11.6.1.1 have been met.

ARTICLE 13, MISCELLANEOUS PROVISIONS

- 13.5 Add the following subparagraph to Paragraph 13.5:

13.5.7 The Contractor shall reimburse the Owner for services provided by the Architect in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

- 13 Add the following paragraphs to article 13:

13.8 EQUAL OPPORTUNITY REQUIREMENTS

Non-discrimination in Employment by Federally Assisted Construction Contractors, by Executive Order 11246.

13.8.1 This section summarizes Executive Order 11246, as amended, which prohibits employment discrimination and requires employers holding non-exempt Federal contracts and subcontracts and federally-assisted construction contracts and subcontracts in excess of \$10,000 to take affirmative action to ensure equal employment opportunity without regard to race, color, religion, sex, or national origin. The Executive Order requires, as a condition for the approval of any federally assisted construction contract, that the applicant incorporate nondiscrimination and affirmative action clauses into its non-exempt federally assisted construction contracts.

13.8.2 Executive Order 11246, as amended, is administered and enforced by the Office of Federal Contract Compliance Programs (OFCCP), an agency in the U.S. Department of Labor's Employment Standards Administration. OFCCP has issued regulations at 41 C.F.R. chapter 60 implementing the Executive Order. The regulations at 41 C.F.R. part 60-4 establish the procedures which the Agency, as an administering agency, must follow when making grants, contracts, loans, insurance or guarantees involving federally assisted construction which is not exempt from the requirements of Executive Order 11246. The regulations which apply to Federal or federally assisted construction contractors also are published at 41 C.F.R. part 60-4.

13.8.3 OFCCP has established numerical goals for minority and female utilization in construction work. The goals are expressed in percentage terms for the contractor's aggregate workforce in each trade. OFCCP has set goals for minority utilization based on the percentage of minorities in the civilian labor force in the relevant area. There is a single nationwide goal of 6.9 percent for utilization of women. The goals apply to all construction work in the covered geographic area, whether or not it is federal, federally assisted or non-federal. A notice advises bidders of the applicable goals for the area where the project is to be located.

13.8.4 Application. This section applies to all of a construction contractor's or subcontractor's employees who are engaged in on-site construction including those construction employees who work on a non-Federal or non-Federally assisted construction site.

13.8.4.1 Agency officials will notify the appropriate Regional Director of OFCCP that an Agency financed construction contract has

been awarded, and that the equal opportunity clauses are included in the contract documents.

13.8.4.2 The Regional Director, OFCCP-DOL, will enforce the non-discrimination requirements of Executive Order 11246.

13.8.5 The prospective contractor or subcontractor must comply with the Immigration Reform and Control Act of 1986 by completing and retaining Form I-9, "Employment Eligibility Verification," for employees hired. This form is available from the Immigration and Naturalization Service, and Department of Justice.

13.8.6 The prospective contractor or subcontractor must submit Form RD 400-6, "Compliance Statement," to the applicant and an Agency official as part of the bid package, prior to any contract bid negotiations and comply with the Executive Order 11246 as stated in the contract documents.

### 13.9 STATUTES

13.9.1 The contractor and each subcontractor shall comply with the following statutes (and the regulations issued pursuant thereto, which are incorporated herein by reference):

13.9.1.1 Clean Air Act (42 U.S.C. 7414), section 114, and the Water Pollution Control Act (33 U.S.C. 1813), section 308. Under Executive Order 11738 and Environmental Protection Agency (EPA) regulations 40 C.F.R. part 15, all Contracts in excess of \$100,000 are required to comply with these Acts.

13.9.1.2 Restrictions on Lobbying (Public Law 101-121, section 319) as supplemented by Department of Agriculture regulations (7 C.F.R. part 3018). This Law applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, the Contractor must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Contract. The certification and disclosure forms shall be provided by the Owner.

13.9.1.3 Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 C.F.R. part 3). This Act provides that each Contractor shall be prohibited from inducing, by any means, any person in connection with the construction to give up any part of the compensation to which the person is otherwise entitled.

13.9.1.4 Davis-Bacon Act (40 U.S.C. 276a) as supplemented in Department of Labor regulations (29 C.F.R. part 5). If applicable, the Contractor must comply with the minimum rates for wages for laborers and mechanics as determined by the Secretary of Labor in accordance with the provision of this Act.

### 13.10 RECORDS

13.10.1 If the Contract is based on a negotiated Bid, the Owner, the United States Department of Agriculture, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to a specific Federal loan program for the purpose of making audit, examination, excerpts, and transcriptions. The Contractor shall maintain records for at least

three years after the Owner makes final payment and all other pending matters are closed.

#### 13.11 ENVIRONMENTAL REQUIREMENTS

13.11.1 Mitigation Measures - The contractor shall comply with applicable mitigation measures established in the environmental assessment for the project.

13.11.2 The Contractor, when constructing a Project involving trenching, excavating, or other earth moving activity, shall comply with the following environmental constraints:

13.11.2.1 Endangered Species, Historic Preservation, Human Remains and Cultural Items, and Paleontology - Any excavation or other earth moving activity by the Contractor that provides evidence of the presence of endangered or threatened species or their critical habitat, uncovers a historical or archaeological artifact, human remains or cultural items, a fossil or other paleontological materials will require the Contractor to:

- .1 Temporarily stop work;
- .2 Provide immediate notice to the Architect and the Agency, and in the case of potentially hazardous materials, provide immediate notice to local first responders and take such measures as necessary to protect the public and workers;
- .3 Take reasonable measures as necessary to protect the discovered materials or protected resource;
- .4 Abide by such direction as provided by the Agency, or Agencies responsible for resource protection or hazardous materials management; and
- .5 Resume work only upon notice from the Architect and the Agency.

13.11.2.2 Where the stop work condition extends beyond two working days, the Contractor shall be entitled to reasonable compensation for costs of stopping and resuming work and additional services related to resource protection or hazardous materials management. Such costs shall be as determined in preparation of a Change Order by the Architect.

13.11.2.3 Wetlands and Floodplains - The Contractor, when disposing of excess, spoil, or other construction materials on public or private property, will not fill in wetlands or the 100-year floodplain areas delineated on the latest Federal Emergency Management Administration floodplain maps.

13.11.3 Lead-Based Paint - The Contractor and Owner shall comply with applicable Agency requirements of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851) for rehabilitation work on residential property built prior to 1978.

#### 13.12 DEBARMENT AND SUSPENSION

13.12.1 The Contractor shall comply with the requirements of 7 C.F.R. part 3017, which pertains to the debarment or suspension of a person from participating in a Federal program or activity.

13.13 FEDERAL INSPECTION

13.13.1 The authorized representatives and agents of the Federal Government shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

13.14 LANDS AND RIGHTS-OF WAY

13.14.1 Prior to the start of construction, the Owner shall obtain all lands and rights-of-way necessary for the execution and completion of work to be performed under this contract.

13.15 IDENTITY OF INTEREST

13.15.1 If applicable, the Owner will complete and sign Form RD 1944-30, "Identity of Interest (IOI) Disclosure Certificate." If applicable, the Contractor or any Subcontractor, Material Supplier, or Equipment Lessor sharing an identity of interest will, prior to receipt of any payment, complete and sign Form RD 1944-31, "Identity of Interest (IOI) Qualification."

13.15.2 If applicable and when an identity of interest exists, the Contractor, Subcontractor, Material Suppliers, or Equipment Lessor:

13.15.2.1 Will, prior to receipt of any payment, provide the Owner and the Agency a written assertion that it has an accounting system suitably designed to provide for a line-item basis comparison of the actual cost with the estimated cost.

13.15.2.2 Will, prior to receipt of any payment, provide the Owner and the Agency with a detailed breakdown of the estimated cost amount for evaluation, using Form RD 1924-13, "Estimate and Certificate of Actual Cost."

13.15.2.3 Will deduct any discounts or rebates from invoices provided to the Owner for payment. Any discounts or rebates received on invoices already paid by the Owner will be refunded to the Owner or subtracted from any payment retainage.

13.15.2.4 Will not be entitled to receive payment for general overhead, profit, or general requirements, respectively, in excess of the amounts represented on the estimate of cost breakdown in accordance with clause 13.13.2.2.

13.15.2.5 Will, prior to receipt of final payment, provide the Owner and the Agency with a detailed breakdown of the actual cost compared to the estimated cost, using Form RD 1924-13. When required, the actual cost will be audited by a Certified Public Accountant, or Licensed Public Accountant licensed on or before December 31, 1970, who will provide an opinion concerning whether the actual construction costs present fairly the costs of construction in conformity with eligible construction costs as prescribed in Rural Development regulations.

13.15.2.6 Will, prior to receipt of final payment, provide the Owner and the Agency with documentation on all Form RD 1924-13 actual cost line items that are a minimum of fifteen percent (15%) higher or lower than the estimated costs. The documentation will provide justification for the deviations.

13.15.3 If applicable and when an identity of interest exists between the Owner and Contractor, the Contractor is entitled to receive a builder's fee (general overhead and profit) only when the highest subcontract Sum is no more than fifty percent (50%) of the Contract Sum, and the total of the highest three Subcontract Sums is no more than seventy-five percent (75%) of the Contract Sum. Any payments made to the Contractor for a builder's fee to which contractor is not entitled will be refunded to the Owner or subtracted from any payment retainage.