



# Community Facilities

Reference Manual for Architect's



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UNITED STATES  
DEPARTMENT OF  
AGRICULTURE

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October 1, 2004

SUBJECT: Community Facilities Architects Reference Manual for USDA Rural  
Development Financed Projects Located in Idaho

TO: Architects Working on USDA Rural Development Projects

The Idaho State Office of USDA, Rural Development has developed this Reference Manual for use by Architect's working on community facility projects partially or wholly funded by our agency. The manual contains flow charts, document lists, contacts, examples of documents, Rural Development bulletins, instructions and forms. The information in the manual is intended to guide the architect through the Rural Development process from the initial application to warranty inspection.

A general overview of the architect's responsibilities is outlined in the flow chart contained in Section 1.0. The subsequent sections provide the architect more specific guidance on how to prepare the documents outlined in the flow chart.

All Rural Development instructions, forms and bulletins can be copied and used as necessary. All AIA documents used must be valid licensed copies. All projects wholly or partially funded by Rural Development in Idaho must use the documents contained and described within this manual. If deviation from the documents specified herein is desired, Rural Development State Office approval must be obtained.

Updates to the manual will be available on USDA Rural Developments Idaho website at <http://www.rurdev.usda.gov/id/RUSManuals.htm>. Updated sections within the manual will be highlighted in the bookmark portion of the PDF file. Before each project check the revision date of your manual or last download and, if necessary, download any updates. The updated sections can be printed and inserted into this bound hard copy.

An Idaho Rural Development, Community Programs staff phone directory is contained in Section 1.0. If you have any questions concerning our program please contact the appropriate Area Office or the State Office for assistance.

Sincerely,

//Signed//

DANIEL H. FRASER  
Director, Community Programs

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# Community Facility Project

## Reference Manual for Architect's

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## Community Facilities Reference Manual

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10-1-04

No revisions to date

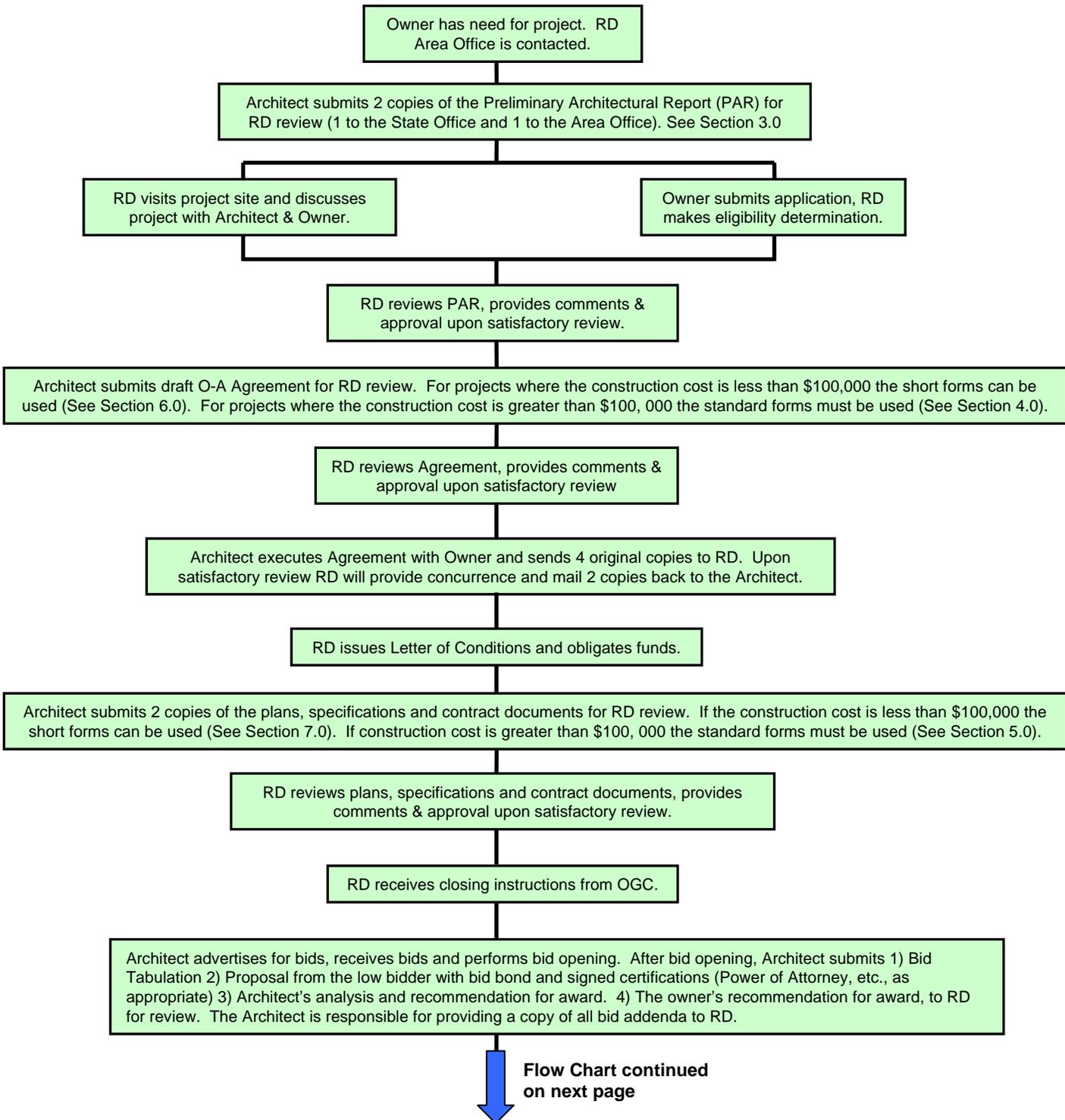
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# **SECTION 1**

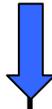
## **Flow Chart & Rural Development Contacts**

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# Community Facility Loans/Grants Architect Flow Chart



**Flow Chart continued  
from previous page**



Upon satisfactory review of the bid documents, RD will provide a letter of concurrence for award.

Owner issues Notice of Award. Architect prepares and sends RD 5 original copies of the Agreement (signed by owner and contractor), Performance and Payment bonds, Power of Attorney, Certificates of Insurance (as required in contract) and Certificate of Owner's Attorney. All items must be bound with the contract documents and sent through the RD Area Office, then forwarded to State Office for concurrence.

Upon satisfactory review of bound contracts, RD will sign for agency concurrence and mail 3 originals back to the Architect for distribution to owner and contractor.

Prior to the preconstruction conference, the Architect must submit a resume of qualifications of the resident inspector to the owner and to RD for acceptance in writing. Full-time resident inspection is required for all construction unless a written exception is made by RD upon written request of the owner. The resident inspector is required to maintain a record of daily construction progress.

Pre-construction conference is held with Architect, RD, other funding agencies, owner, contractor, significant subcontractors and others as needed.

Owner issues Notice to Proceed.

Invoices for payment of construction costs must be approved by the owner, Architect and concurred in by RD. Typically this will be done on a monthly basis.

Any change orders that may arise during the course of construction must be clearly identified and explained through use of USDA RD Form 1924-16. All change orders must be approved by the owner, Architect and concurred in by RD. In order to be approved, the change order must be justified and the cost must be reasonable.

A prefinal inspection will be made by the owner, resident inspector, Architect, contractor, representatives of other agencies involved and RD representatives, generally both Area and State Office. The inspection results will be recorded by the Architect and a copy provided to all interested parties.

Architect executes AIA G704 "Certificate of Substantial Completion" and provides a copy to RD.

A final inspection will be made by the owner, Architect and RD before final payment is made.

Architect delivers as-built plans and O&M manuals to the owner.

Architect, Owner and RD representative perform 11 month inspection. If no items of concern are noted during the inspection the project is complete.



**USDA, RURAL DEVELOPMENT**  
**Community Programs**  
**IDAHO DIRECTORY**

**STATE OFFICE:** 9173 W. Barnes, Suite A1, Boise, ID 83709-1555  
Fax No: (208) 378-5643

**STATE DIRECTOR:** Michael A. Field

**COMMUNITY PROGRAMS STAFF:**

Daniel H. Fraser, Director	(208)378-5617
Catherine D. Chivers, Specialist	(208) 378-5619 x 2
F. Gary Hayne, Engineer	(208) 378-5619 x 1
Noel LaRoque, Engineer	(208) 378-5619 x 3
Janus Arnold, Technician	(208) 378-5618

**Northern Idaho Area Office (1)**

7830 Meadowlark Way, Ste C3	(208) 762-4939
Coeur D'Alene, ID 83815	<b>Fax:</b> (208) 762-9799
Morris E. Cavasar, Manager	<b>Ext:</b> 126
Ted Anderson, Specialist	119
Jeffery T. Beeman, Specialist	118
Shirley Quakkelaar, Technician	116

**Counties Served:** *Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone.*

**Western Idaho Area Office (2)**

2208 E. Chicago St., Ste C	(208) 459-0761
Caldwell, ID 83605	<b>Fax:</b> (208) 459-0762
M. Stewart Brent, Manager	<b>Ext:</b> 113
David Flesher, Specialist	116
Thelma Garrison, Technician	123

**Counties Served:** *Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley & Washington*

**Central Idaho Area Office (3)**

1441 Fillmore, Ste C	(208) 733-5380
Twin Falls, ID 83301	<b>Fax:</b> (208) 734-0428
Larry Stachler, Manager	<b>Ext:</b> 120
Terry Stigile, Specialist	118
Diane Shigihara, Technician	114

**Counties Served:** *Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, & Twin Falls*

**Eastern Idaho Area Office (4)**

725 Jensen Grove Dr., Ste 1	(208) 785-5840
Blackfoot, ID 83221	<b>Fax:</b> (208) 785-6561
Gary C. Gamble, Manager	<b>Ext:</b> 119
R. Craig Thurgood, Specialist	115
Patricia Casella, Technician	101

**Counties Served:** *Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power & Teton*

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# Community Programs

## Office Locations and Areas

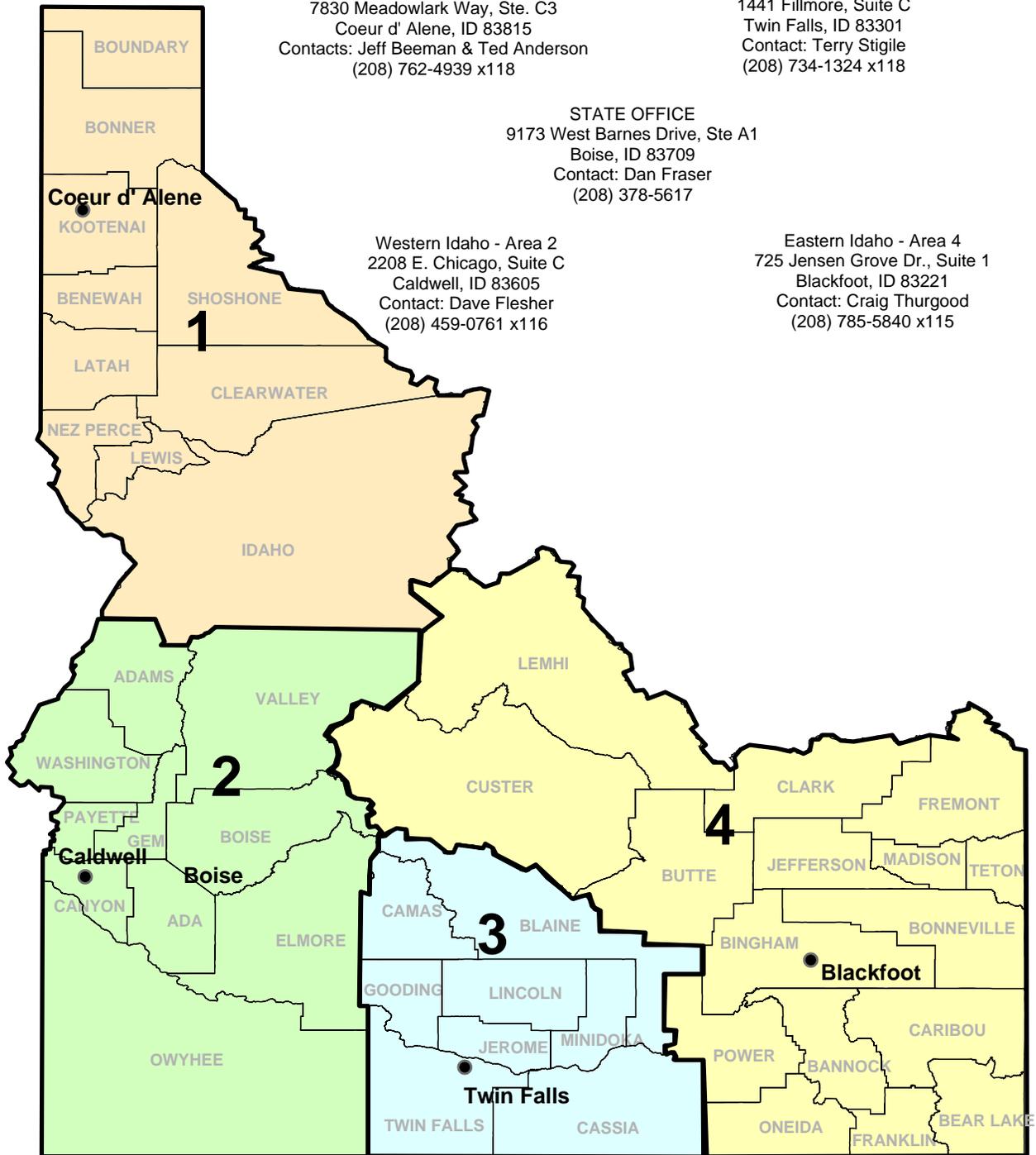
Northern Idaho - Area 1  
 7830 Meadowlark Way, Ste. C3  
 Coeur d' Alene, ID 83815  
 Contacts: Jeff Beeman & Ted Anderson  
 (208) 762-4939 x118

Central Idaho - Area 3  
 1441 Fillmore, Suite C  
 Twin Falls, ID 83301  
 Contact: Terry Stigile  
 (208) 734-1324 x118

STATE OFFICE  
 9173 West Barnes Drive, Ste A1  
 Boise, ID 83709  
 Contact: Dan Fraser  
 (208) 378-5617

Western Idaho - Area 2  
 2208 E. Chicago, Suite C  
 Caldwell, ID 83605  
 Contact: Dave Flesher  
 (208) 459-0761 x116

Eastern Idaho - Area 4  
 725 Jensen Grove Dr., Suite 1  
 Blackfoot, ID 83221  
 Contact: Craig Thurgood  
 (208) 785-5840 x115



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# **SECTION 2**

## **Community Facility Loans RD Instruction**

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§1942.18 Community Facilities - Planning, Bidding, Contracting, Constructing.

(a) General. This section is specifically designed for use by owners including the professional or technical consultants and/or agents who provide assistance and services such as architectural, engineering, inspection, financial, legal or other services related to planning, bidding, contracting, and constructing community facilities. These procedures do not relieve the owner of the contractual obligations that arise from the procurement of these services. For this section, an owner is defined as an applicant, borrower, or grantee.

(b) Technical services. Owners are responsible for providing the engineering or architectural services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the owner's "in house" engineer or architect or through contract, subject to Rural Development concurrence. Architects and engineers must be licensed in the State where the facility is to be constructed.

(c) Preliminary reports. Preliminary architectural and engineering reports must conform with customary professional standards. Preliminary report guidelines for water, sanitary sewer, solid waste, storm sewer, and other essential community facilities are available from Rural Development.

(d) Design policies. Facilities financed by Rural Development will be designed and constructed in accordance with sound engineering and architectural practices, and must meet the requirements of Federal, State and local agencies.

(1) Natural resources. Facility planning should be responsive to the owner's needs and should consider the long-term economic, social and environmental needs as set forth in this section. Rural Development's environmental considerations are under Subpart G of Part 1940 of this chapter.

(i) Floodplains and wetlands. Facilities must avoid, to the extent possible, the long and short-term adverse impacts associated with the occupancy and modification of floodplains and wetlands, and avoid direct or indirect support of floodplain and wetland development whenever there is a practicable alternative. The subject is more fully discussed in Executive Order 11988, Executive Order 11990, and Water Resources Council's Floodplain Management Guidelines (43 FR 6030) which is available in all Rural Development offices. Facilities located in special flood and mudslide

prone areas must comply with Rural Development's eligibility and insurance requirements in Subpart B of Part 1806 of this chapter (RD Instruction 426.2).

(ii) Coastal Zone Management. Facilities shall be designed and constructed in a manner consistent with approved State management programs, under the Coastal Zone Management Act of 1972 (P.L. 92-583 Section 307 (c) (1) and (2)) as supplemented by the Department of Commerce regulations 15 CFR 930.

(iii) Wild and Scenic Rivers. Facilities shall be designed and constructed in order that designated wild and scenic rivers be preserved in free-flowing condition and that they and their immediate environments be protected for the benefit and enjoyment of present and future generations under the Wild and Scenic Rivers Act of 1978 (P.L. 95-625).

(iv) Endangered species. Facilities shall be designed and constructed in a manner to conserve, to the extent practicable, the various endangered and threatened species of fish and wildlife and plants, and will not jeopardize their continued existence and will not result in destruction or modification of the habitat of species in the Endangered Species Act of 1973 (P.L. 93-205).

(2) Historic preservation. Facilities should be designed and constructed in a manner which will contribute to the preservation and enhancement of sites, structures, and objects of historical architectural, and archaeological significance. All facilities must comply with the National Historic Preservation Act of 1966 (16 U.S.C. 470) as supplemented by 36 CFR 800 and Executive Order 11593, "Protection and Enhancement of the Cultural Environment." Subpart F of Part 1901 of this chapter sets forth procedures for the protection of Historic and Archaeological Properties.

(3) Architectural barriers. All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (P.L. 90-480) as implemented by the General Services Administration regulations 41 CFR 101-19.6 and Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) as implemented by 7 CFR, Parts 15 and 15b.

(4) Health Care Facilities. The proposed facility must meet the minimum standards for design and construction contained in the American Institute of Architects Press Publication No. ISBN 0913962-96-1, "Guidelines for Construction and Equipment of

Hospital and Medical Facilities," 1987 Edition. The facility must also meet the life/safety aspects of the 1985 edition of the National Fire Protection Association (NFPA) 101 Life Safety Code, or any subsequent code that may be designated by the Secretary of HHS. All publications referenced in this section are available in all Agency State Offices. Under §1942.17(j)(8)(ii) of this subpart, a statement by the responsible regulatory agency that the facility meets the above standards will be required. Any exceptions must have prior National Office concurrence. (Revised 05-03-89, SPECIAL PN)

(5) Energy conservation. Facility design should consider cost effective energy saving measures or devices.

(6) Lead base paints. Lead base paints shall not be used in facilities designed for human habitation. Owners must comply with the Lead Base Paints Poisoning and Prevention Act of 1971 (42 U.S.C. 4801) and the National Consumer Health Information and Health Promotion Act of 1976 (Pub. L. 94-317) with reference to paint specifications used according to Exhibit H of Subpart A of Part 1924 of this chapter.

(7) Fire protection. Water facilities must have sufficient capacity to provide reasonable fire protection to the extent practicable.

(8) Growth capacity. Facilities must have sufficient capacity to provide for reasonable growth to the extent practicable.

(9) Water conservation. Owners are encouraged, when economically feasible, to incorporate water conservation practices into a facility's design. For existing water systems, evidence must be provided showing that the distribution system water losses do not exceed reasonable levels.

(10) Water quality. All water facilities must meet the requirements of the Safe Drinking Water Act (Pub. L. 93-523) and provide water of a quality that meets the current Interim Primary Drinking Water Regulations (40 CFR 141).

(11) Combined sewers. New combined sanitary and storm water sewer facilities will not be financed by the Agency. Extensions to existing combined systems can only be financed when separate systems are impractical.

§1942.18(d) (Con.)

(12) Compliance. All facilities must meet the requirements of Federal, State, and local agencies having the appropriate jurisdiction.

(13) Dam safety. Projects involving any artificial barrier which impounds or diverts water, or the rehabilitation or improvement of such a barrier, should comply with the provisions for dam safety as discussed in the Federal Guidelines for Dam Safety (Government Printing Office stock No. 041-001-00187-5) as prepared by the Federal Coordinating Council for Science, Engineering and Technology.

(14) Pipe. All pipe used shall meet current American Society for Testing Materials (ASTM) or American Water Works Association (AWWA) standards.

(15) Water system testing. For new water systems or extensions to existing water systems, leakage shall not exceed 10 gallons per inch of pipe diameter per mile of pipe per 24 hours when tested at 1 1/2 times the working pressure or rated pressure of the pipe, whichever is greater.

(16) Metering devices. Water facilities financed by RUS will have metering devices for each connection. An exception to this requirement may be granted by the Agency's State Director when the owner demonstrates that installation of metering devices would be a significant economic detriment and that environmental consideration would not be adversely affected by not installing such devices.

(17) Seismic safety. (Added 01-10-97, SPECIAL PN.)

(i) All new building construction shall be designed and constructed in accordance with the seismic provisions of one of the following model building codes or the latest edition of that code providing an equivalent level of safety to that contained in the latest edition of the National Earthquake Hazard Reduction Program's (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions):

(A) 1991 International Conference of Building Officials (ICBO) Uniform Building Code;

(B) 1993 Building Officials and Code Administrators International, Inc. (BOCA) National Building Code; or

§1942.18(d)(17)(i) (Con.)

(C) 1992 Amendments to the Southern Building Code  
Congress International (SBCCI) Standard Building Code.

(ii) The date, signature, and seal of a registered architect or engineer and the identification and date of the model building code on the plans and specifications will be evidence of compliance with the seismic requirements of the appropriate building code.

(e) Construction contracts. Contract documents must be sufficiently descriptive and legally binding in order to accomplish the work as economically and expeditiously as possible.

(1) Standard construction contract documents are available from the Agency. When the Agency's standard construction contract documents are used, it will normally not be necessary for the Office of the General Counsel (OGC) to perform a detailed legal review. If the construction contract documents utilized are not in the format of guide forms previously approved by the Agency, OGC's review of the construction contract documents will be obtained prior to their use.

(2) Contract review and approval. The owner's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are adequate, and that the persons executing these documents have been properly authorized to do so. The contract documents, bid bonds, and bid tabulation sheets will be forwarded to the Agency for approval prior to awarding. All contracts will contain a provision that they are not in full force and effect until they have been approved by the Agency. The Agency State Director or designee is responsible for approving construction contracts with the legal advice and guidance of the OGC when necessary.

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(Added 01-10-97, SPECIAL PN)

(3) Separate contracts. Arrangements which split responsibility of contractors (separate contracts for labor and material, extensive subcontracting and multiplicity of small contracts on the same job), should be avoided whenever it is practical to do so. Contracts may be awarded to suppliers or manufacturers for furnishing and installing certain items which have been designed by the manufacturer and delivered to the job site in a finished or semifinished state such as prefabricated buildings and lift stations. Contracts may also be awarded for material delivered to the job site and installed by a patented process or method.

(f) Utility purchase contracts. Applicants proposing to purchase water or other utility service from private or public sources shall have written contracts for supply or service which are reviewed and approved by the Rural Development State Director or designee. To the extent practical, Rural Development review and approval of such contracts should take place prior to their execution by the owner. Form RD 442-30, "Water Purchase Contract," may be used when appropriate. If the Rural Development loan will be repaid from system revenues, the contract will be pledged to Rural Development as part of the security for the loan. Such contracts will:

(1) Include a commitment by the supplier to furnish, at a specified point, an adequate quantity of water or other service and provide that, in case of shortages, all of the supplier's users will proportionately share shortages. If it is impossible to obtain a firm commitment for either an adequate quantity or sharing shortages proportionately, a contract may be executed and approved provided adequate evidence is furnished to enable Rural Development to make a determination that the supplier has adequate supply and/or treatment facilities to furnish its other users and the applicant for the foreseeable future; and

(i) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(ii) A suitable alternative supply could be arranged within the repayment ability of the borrower if it should become necessary; or

(iii) Prior approval is obtained from the National Office. The following information should be submitted to the National Office:

(A) Transmittal memorandum including:

(1) Alternative supplies considered; and

- (2) Recommendations and comments; and
- (3) Any other necessary supporting information.

(B) Copies of the following:

- (1) Proposed letter of conditions; and
- (2) Form RD 442-7, "Operating Budget"; and
- (3) Form RD 442-3, "Balance Sheet"; and
- (4) Preliminary Engineering Report; and
- (5) Proposed Contract.

(C) Owner and Rural Development engineer's comments and recommendations.

(D) Documentation and statement from the supplier that it has an adequate supply and treatment facilities available to meet the needs of its users and the owner for the foreseeable future.

(2) Set out the ownership and maintenance responsibilities of the respective parties including the master meter if a meter is installed at the point of delivery.

(3) Specify the initial rates and provide some kind of escalator clause which will permit rates for the association to be raised or lowered proportionately as certain specified rates for the supplier's regular customers are raised or lowered. Provisions may be made for altering rates in accordance with the decisions of the appropriate State agency which may have regulatory authority.

(4) Run for a period of time which is at least equal to the repayment period of the loan. State Directors may approve contracts for shorter periods of time if the supplier cannot legally contract for such period, or if the owner and supplier find it impossible or impractical to negotiate a contract for the maximum period permissible under State law, provided:

- (i) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(ii) The contract contains adequate provisions for renewal; or

(iii) A determination is made that in the event the contract is terminated, there are or will be other adequate sources available to the owner that can feasibly be developed or purchased.

(5) Set out in detail the amount of connection or demand charges, if any, to be made by the supplier as a condition to making the service available to the owner. However, the payment of such charges from loan funds shall not be approved unless Rural Development determines that it is more feasible and economical for the owner to pay such a connection charge than it is for the owner to provide the necessary supply by other means.

(6) Provide for a pledge of the contract to Rural Development as part of the security for the loan.

(7) Not contain provisions for:

(i) Construction of facilities which will be owned by the supplier. This does not preclude the use of money paid as a connection charge for construction to be done by the supplier.

(ii) Options for the future sale or transfer. This does not preclude an agreement recognizing that the supplier and owner may at some future date agree to a sale of all or a portion of the facility.

(g) Sewage treatment and bulk water sales contracts. Owners entering into agreements with private or public parties to treat sewage or supply bulk water shall have written contracts for such service and all such contracts shall be subject to Rural Development concurrence. Paragraph (f) of this section should be used as a guide to prepare such contracts. (Revised 3-1-88, SPECIAL PN.)

(h) Performing construction. Owners are encouraged to accomplish construction through contracts with recognized contractors. Owners may accomplish construction by using their own personal and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer or architect prepares design drawings and specifications and inspects construction and furnishes inspection reports as required by paragraph (o) of this section. For other than utility-type facilities, inspection services may be provided by individuals as approved by the Rural Development State Director. In either case, the requirements of paragraph (j) of this section apply. Payments for construction will be handled under §1942.17(p) (5) of this part.

(i) Owner's contractual responsibility. This subpart does not relieve the owner of any contractual responsibilities under its contract. The owner is responsible for the settlement of all contractual and administrative issues arising out of procurements entered into in support of a loan or grant. These include, but are not limited to: source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the local, State, or Federal authority as may have jurisdiction.

(j) Owner's procurement regulations. Owner's procurement regulations must comply with the following standards: (Revised 3-1-88, SPECIAL PN.)

(1) Code of conduct. Owners shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Rural Development funds. No employee, officer or agent of the owner shall participate in the selection, award, or administration of a contract supported by Rural Development funds if a conflict of interest, real or apparent, would be involved. Examples of such conflicts would arise when: the employee, officer or agent or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above; has a financial or other interest in the firm selected for the award.

(i) The owner's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

(ii) To the extent permitted by State or local law or regulations, the owner's standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the owner's officers, employees, agents, or by contractors or their agents.

(2) Maximum open and free competition. All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to: placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying material(s), the

owner and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. For a water or waste disposal facility, Rural Development shall consider fully any recommendation made by the loan applicant or borrower concerning the technical design and choice of materials to be used for such a facility. If Rural Development determines that a design or material, other than those that were recommended should be considered by including them in the procurement process as an acceptable design or material in the water or waste disposal facility, Rural Development shall provide such applicant or borrower with a comprehensive justification for such a determination. The justification will be documented in writing. (Revised 3-1-88, SPECIAL PN.)

(3) Owner's review. Proposed procurement actions shall be reviewed by the owner's officials to avoid the purchase of unnecessary or duplicate items. Consideration should be given to consolidation or separation of procurement items to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, owners are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(4) Solicitation of offers, whether by competitive sealed bids or competitive negotiation, shall:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brands which must be met by offerors shall be clearly stated.

(ii) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(5) Small, minority, and women's businesses and labor surplus area firms.

(i) Affirmative steps should be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(A) Include qualified small and minority businesses on solicitation lists.

(B) Assure that small and minority businesses are solicited whenever they are potential sources.

(C) When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(D) Where the requirement permits, establish delivery schedules which will encourage participation by small and minority businesses.

(E) Use the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the Department of Commerce.

(F) If any subcontracts are to be let, require the prime contractor to take the affirmative steps in paragraphs (j)(5)(i)(A) through (E) of this section.

(ii) Owners shall take similar appropriate affirmative action in support of women's businesses.

(iii) Owners are encouraged to procure goods and services from labor surplus areas.

(iv) Owners shall submit a written statement or other evidence to Rural Development of the steps taken to comply with paragraphs (j) (5) (i) (A) through (F), (j) (5) (ii), and (j) (5) (iii) of this section.

(6) Contract pricing. Cost plus a percentage of cost method of contracting shall not be used.

(7) Unacceptable bidders. The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(i) An engineer or architect as an individual or firm who has prepared plans and specifications or who will be responsible for monitoring the construction;

- (ii) Any firm or corporation in which the owner's architect or engineer is an officer, employee, or holds or controls a substantial interest;
- (iii) The governing body's officers, employees, or agents;
- (iv) Any member of the immediate family or partners in paragraphs (j) (7) (i), (j) (7) (ii) or (j) (7) (iii) of this section; or
- (v) An organization which employs, or is about to employ, any person in paragraph (j) (7) (i), (j) (7) (ii), (j) (7) (iii) or (j) (7) (iv) of this section.

(8) Contract award. Contracts shall be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall include but not be limited to matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts shall not be made with parties who are suspended or debarred. (Revised 4-11-89, SPECIAL PN)

(k) Procurement methods. Procurement shall be made by one of the following methods: small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) is the preferred procurement method for construction contracts.

(1) Small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than \$10,000. If small purchase procedures are used for a procurement, written price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Competitive sealed bids. In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method the following shall apply:

- (i) At a sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of qualified sources. In addition, the invitation shall be publicly advertised.

(ii) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation under paragraph (j)(4) of this section.

(iii) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs shall be considered in determining which bid is lowest.

(v) Any or all bids may be rejected by the owner when it is in their best interest.

(3) Competitive negotiation. In competitive negotiations, proposals are requested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications may be necessary. If competitive negotiation is used for a procurement, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the Procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required, and their relative importance.

(iii) The owner shall provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the owner, price and other factors considered. Unsuccessful offerors should be promptly notified.

(v) Owners may utilize competitive negotiation procedures for procurement of architectural/engineering and other professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation.

(4) Noncompetitive negotiation. Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase, competitive sealed bids (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following: (Revised 3-1-88, SPECIAL PN.)

- (i) The item is available only from a single source; or
- (ii) There exists a public exigency or emergency and the urgency for the requirement will not permit a delay incident to competitive solicitation; or
- (iii) After solicitation of a number of sources, competition is determined inadequate; or
- (iv) No acceptable bids have been received after formal advertising; or
- (v) The procurement of architectural/engineering and other professional services; or
- (vi) The aggregate amount does not exceed \$50,000. (Added 3-1-88, SPECIAL PN.)

(5) Additional procurement methods. Additional innovative procurement methods may be used by the owner with prior written approval of the Rural Development National Office.

(1) Contracting methods. The services of the consulting engineer or architect and the general construction contractor shall normally be procured from unrelated sources in accordance with paragraph (j)(7) of this section. Procurement methods which combine or rearrange design, inspection or construction services (such as design/build or construction management) may be used with Rural Development written approval. If the contract amount exceeds \$100,000, National Office prior concurrence must be obtained under section 1942.9(b) of this subpart. This method cannot be used when an Rural Development grant is involved. The owner should request Rural Development approval by providing at least the following information to Rural Development:

- (1) The owner's written request to use an unconventional contracting method with a description of the proposed method.
  - (2) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It should include items such as:
    - (i) A nontechnical statement summarizing the work to be performed by the contractor and the results expected.
    - (ii) The sequence in which the work is to be performed and a proposed construction schedule.
  - (3) A proposed firm-fixed-price contract for the entire project which provides that the contractor shall be responsible for:
    - (i) Any extra cost which may result from errors or omissions in the services provided under the contract.
    - (ii) Compliance with all Federal, State, and local requirements effective on the contract execution date.
  - (4) Where noncompetitive negotiation is proposed, an evaluation of the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.
  - (5) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility.
  - (6) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.
  - (7) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by Rural Development prior to the start of construction.
  - (8) The owner's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the owner has the legal authority to enter into and fulfill the contract.
- (m) Contracts awarded prior to preapplications. Owners awarding construction or other procurement contracts prior to filing a preapplication with Rural Development must comply with the following:
- (1) Evidence. Provide conclusive evidence that the contract was entered into without intent to circumvent the requirements of Rural Development regulations. The evidence will consist of at least the following:

- (i) The lapse of a reasonable period of time between the date of contract award and the date of filing the preapplication which clearly indicates an irreconcilable failure of previous financial arrangements; or
  - (ii) A written statement explaining initial plans for financing the project and reasons for failure to obtain the planned credit.
- (2) Modifications. Modify the outstanding contract to conform with the provisions of the subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Rural Development financing. When all construction is complete and it is impracticable to modify the contracts, the owner must provide the certification required by paragraph (m) (4) of this section.
- (3) Consultant's certification. Provide a certification by an engineer or architect that any construction performed complies fully with the plans and specifications.
- (4) Owner's certification. Provide a certification by the owner that the contractor has complied with all statutory and executive requirements related to Rural Development financing for construction already performed even though the requirements may not have been included in the contract documents.
- (n) Contract provisions. In addition to provisions defining a sound and complete contract, any recipient of Rural Development funds shall include the following contract provisions or conditions in all contracts.
- (1) Remedies. Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A realistic liquidated damage provision should also be included.
  - (2) Termination. All contracts exceeding \$10,000, shall contain suitable provisions for termination by the owner including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) Surety. In all contracts for construction or facility improvements exceeding \$100,000, the owner shall require bonds, a bank letter of credit or cash deposit in escrow assuring performance and payment each in the amount of 100 percent of the contract cost. The surety will normally be in the form of performance bonds and payment bonds; however, when other methods of surety may be necessary, bid documents must contain provisions for such alternative types of surety. The use of surety other than performance bonds and payment bonds requires concurrence by the National Office after submission of a justification by the State Director together with the proposed form of escrow agreement or letter of credit. For contracts of lesser amounts, the owner may require surety. When a surety is not provided, contractors will furnish evidence of payment in full for all materials, labor, and any other items procured under the contract. Form RD 1924-10, "Release by Claimants," and Form RD 1924-9, "Certificate of Contractor's Release," may be obtained at the local Rural Development office and used for this purpose. The United States, acting through Rural Development, will be named as co-obligee on all surety unless prohibited by State law. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and be legally doing business in the State where the facility is located. (Revised 5-3-89, SPECIAL PN)

(4) Equal Employment Opportunity. All contracts awarded in excess of \$10,000 by owners shall contain a provision requiring compliance with Executive Order 11246, entitled, "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by Department of Labor regulations 41 CFR Part 60. (Revised 5-3-89, SPECIAL PN)

(5) Anti-kickback. All contracts for construction shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874). This Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The owner shall report suspected or reported violations to Rural Development.

(6) Records. All negotiated contracts (except those of \$2,500 or less) awarded by owners shall include a provision to the effect that the owner, Rural Development, 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 audits, examinations, excerpts, and transcriptions. Owners shall require contractors to maintain all required records for 3 years after owners make final payments and all other pending matters are closed.

(7) State Energy Conservation Plan. Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

(8) Change orders. The construction contract shall require that all contract change orders be approved by Rural Development.

(9) Rural Development concurrence. All contracts must contain a provision that they shall not be effective unless and until the Rural Development State Director or designee concurs in writing.

(10) Retainage. All construction contracts shall contain adequate provisions for retainage. No payments will be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the contractor. The retainage shall not be less than an amount equal to 10 percent of an approved partial payment estimate until 50 percent of the work has been completed. If the job is proceeding satisfactorily at 50 percent completion, further partial payments shall be made in full, however, previously retained amounts shall not be paid until construction is substantially complete. Additional amounts may be retained if the job is not proceeding satisfactorily, but in no event shall the total retainage be more than 10 Percent of the value of the work completed.

(11) Other compliance requirements. Contracts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations 40 CFR Part 15, which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to Rural Development and to the U.S. Environmental Protection Agency, Assistant Administrator for Enforcement. Solicitations and contract provisions shall include the requirements of 4 CFR Part 15.4 (c) as set forth in Guide 18 of this subpart which is available in all Rural Development offices.

(o) Contract administration. Owners shall be responsible for maintaining s contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(1) Preconstruction conference. Prior to beginning construction, the owner will schedule a preconstruction conference where Rural Development will review the planned development with the owner, its architect or

engineer, resident inspector, attorney, contractor(s), and other interested parties. The conference will thoroughly cover applicable items included in Form RD 1924-16, "Record of Pre-construction Conference," and the discussions and agreements will be documented. Form RD 1924-16 may be used for this purpose. (Revised 5-12-87, SPECIAL PN.)

(2) Monitoring reports. Each owner will be required to monitor and provide reports to Rural Development on actual performance during construction for each project financed, or to be financed, in whole or in part with Rural Development funds to include:

- (i) A comparison of actual accomplishments with the construction schedule established for the period. The partial payment estimate may be used for this purpose.
- (ii) A narrative statement giving full explanation of the following:
  - (A) Reasons why established goals were not met.
  - (B) Analysis and explanation of cost overruns or high unit costs and how payment is to be made for the same.
- (iii) If events occur between reports which have a significant impact upon the project, the owner will notify Rural Development as soon as any of the following conditions are known:

- (A) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives or prevent the meeting of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.
- (B) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected or which will result in cost underruns or lower unit costs than originally planned and which may result in less Rural Development assistance.

(3) Inspection. Full-time resident inspection is required for all construction unless a written exception is made by Rural Development upon written request of the owner. Unless otherwise agreed, the resident inspector will be provided by the consulting architect/engineer. Prior to the preconstruction conference, the architect/engineer will submit a resume of qualifications of the resident inspector to the owner and to Rural Development for acceptance in writing. If the owner provides the resident inspector, it must submit a resume of the inspector's qualifications to the project architect/engineer and Rural Development

for acceptance in writing prior to the preconstruction conference. The resident inspector will work under the general supervision of the project architect/engineer. A guide format for preparing daily inspection reports (Guide 11 of this subpart) and Form RD 1924-18 "Partial Payment Estimate," are available on request from Rural Development. (Revised 5-12-87, SPECIAL PN.)

(4) Inspector's daily diary. The resident inspector will maintain a record of the daily construction progress in the form of a daily diary and daily inspection reports as follows:

- (i) A complete set of all daily construction records will be maintained and the original set furnished to the owner upon completion of construction.
- (ii) All entries shall be legible and shall be made in ink.
- (iii) Daily entries shall include but not be limited to the date, weather conditions, number and classification of personnel working on the site, equipment being used to perform the work, persons visiting the site, accounts of substantive discussions, instructions given to the contractors, directions received, all significant or unusual happenings involving the work, any delays, and daily work accomplished.
- (iv) The daily entries shall be made available to Rural Development personnel and will be reviewed during project inspections.

(5) Prefinal inspections. A prefinal inspection will be made by the owner, resident inspector, project architect or engineer, representatives of other agencies involved, the District Director and a Rural Development State Office staff representative, preferably the State staff architect or engineer. Prefinal inspections may be made without Rural Development State Office staff participation if the State Director or a designee determines that the facility does not utilize complicated construction techniques, materials or equipment for (facilities such as small fire stations, storage buildings or minor utility extensions, and that an experienced District Office staff representative will be present. The inspection results will be recorded on Form RD 1924-12, "Inspection Report," and a copy provided to all interested parties. (Revised 5-12-87, SPECIAL PN.)

(6) Final inspection. A final inspection will be made by Rural Development before final payment is made.

(7) Changes in development plans.

- (i) Changes in development plans may be approved by Rural Development when requested by owners, provided:

(A) Funds are available to cover any additional costs;  
and

(B) The change is for an authorized loan purpose; and

(C) It will not adversely affect the soundness of the  
facility operation or Rural Development's security; and

(D) The change is within the scope of the contract,

(ii) Changes will be recorded on Form RD 1924-7, "Contract  
Change Order," or, other similar forms may be used with the  
prior approval of the State Director or designee. Regardless  
of the form, change orders must be approved by the Rural  
Development State Director or a designated representative.  
(Revised 5-12-87, SPECIAL PN.)

(iii) Changes should be accomplished only after Rural  
Development approval on all changes which affect the work and  
shall be authorized only by means of contract change order.  
The change order will include items such as:

(A) Any changes in labor and material and their  
respective cost.

(B) Changes in facility design.

(C) Any decrease or increase in quantities based on final  
measurements that are different from those shown in the  
bidding schedule.

(D) Any increase or decrease in the time to complete the  
project.

(iv) All changes shall be recorded on chronologically numbered  
contract change orders as they occur. Change orders will not  
be included in payment estimates until approved by all parties.

# **SECTION 3**

## **Preliminary Architectural Report (PAR) Guide**

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PRELIMINARY ARCHITECTURAL FEASIBILITY REPORT

I GENERAL. The following may be used as a guide for preparation of the Preliminary Architectural Feasibility Report as required for Rural Development financed facilities.

A Need for the facility.

B Existing facilities. Describe - include condition, adequacy, suitability for continued use and other pertinent information.

C Proposed facility. General description of proposed facility including design criteria adopted for continued use and other pertinent information.

D Building sites.

- 1 Amount of land required.
- 2 Location - Alternate locations.
- 3 Site plan.
- 4 Site suitability.

E Cost estimate.

- 1 Development and construction.
- 2 Land and rights.
- 3 Legal.
- 4 Architect fees.
- 5 Interest.
- 6 Equipment.
- 7 Contingencies.
- 8 Refinancing.
- 9 Other (described).

F Annual operating budget.

1 Income - Include rate schedule. Project income realistically.

2 Operation and maintenance costs - Project costs realistically. In the absence of other data, base on actual costs of other existing facilities of similar size and complexity. Include facts in the report to substantiate operation and maintenance cost estimates.

G Maps, drawings, sketches, and photographs.

1 Maps - Show locations, boundaries, elevations, population distribution, existing and proposed facility, right-of-way, and land ownership.

2 Drawings and sketches - Show preliminary design and layout elevations.

3 Photographs - As needed.

H Construction problems. Discuss in detail - Include information on items which may affect the cost of construction.

I Conclusions and recommendations. Discuss possible alternatives to proposed plans.

# **SECTION 4**

## **Owner & Architect Agreement Documents**

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## Owner-Architect Agreement Document List

USDA Rural Development Idaho has adopted the AIA Contract Documents for use on Rural Development partially or wholly funded projects. A combination of AIA documents and corresponding Rural Development attachments constitutes an acceptable set of contract documents for use on community facility projects. The group of acceptable documents are listed in the table below. The Rural Development attachments referenced here were specifically drafted to be used with the corresponding AIA document and should not be mixed with AIA documents of a different edition, series or AIA number.

When making a modification in one document you should ensure that appropriate modifications are made in all affected documents. It is Rural Development’s policy that the applicants use the AIA documents with minimal modification. However, Rural Development recognizes each project is unique and that modifications may be required to satisfy project requirements.

Before the applicant or Architect proceeds with the development of an agreement, they should contact the Rural Development Area Office to verify they have the most current information specific to the type of project and State where the project is located.

**Idaho Rural Development does not publish guidance on Architectural fees, but architectural fees must be reasonable. If lump sum is used, Rural Development will not approve changes involving increased fees for items within the scope of the project simply because the architect’s project budget is exceeded. The Architect’s lump sum fee shall cover the work specified and should anticipate unforeseen tasks. If tasks outside the scope of the project become necessary, then an addition may be considered. Conversely, if the scope of the project is reduced, a reduction in fees shall be made. A draft owner-architect agreement must be sent to Rural Development for review prior to the owner or architect signing the document.**

This table provides a list of the component parts of a complete Owner-Architect Agreement and notes on their use. **Documents listed under the “Use Form” column must be used to develop the contract documents, unless a formal request is made by the Architect and approved by Rural Development State Office.**

Title	Use Form	RD Notes: Necessary actions, important points
Standard Form of Agreement Between Owner and Architect with Standard Form of Architect’s Services	AIA B141-1997 (Including Paragraphs 1.x and 2.x)	<ul style="list-style-type: none"> <li>• Before an “Effective Date” is entered the Owner should consult with a Rural Development representative regarding funding requirements, appropriate services, and reasonable fees.</li> <li>• Using the “Codes &amp; Standards Matrix” on the following page specify applicable ones in 1.1.2.8.</li> <li>• Any additional Federal funding agency requirements should be outlined in 1.4.2.</li> <li>• Any State funding agency requirements not in conflict with Federal requirements should be outlined in 1.4.2.</li> <li>• RD funding can be used for payment of architectural services only after RD has concurred in the agreement and construction contracts are approved.</li> <li>• In addition to copies customarily provided for Owner, Architect, and others, two executed copies with any Exhibits will be provided for Rural Development use.</li> </ul>
Modifications to AIA Document B141-1997	RD Instruction 1924-A, Guide 1, Attachment 9 <b>**IDAHO VERSION**</b>	<ul style="list-style-type: none"> <li>• Fill out 1.5.4 with the estimated reimbursable expenses.</li> <li>• Signature page must be executed and an original included in each copy of the agreement.</li> </ul>

\*\*END\*\*

# CODES & STANDARDS MATRIX

## For Community Facilities Projects

List all codes that apply in 1.1.2.8 of the Architectural Agreement

	Direct Loan New	Direct Loan Rehab	Guaranteed Loan New	Guaranteed Loan Rehab	Health Care Facility Loan Direct New	Health Care Facility Loan Guaranteed
International Building Code (2000)	X	X	X	X	X	X
International Plumbing Code (2000)	X	X	X	X	X	X
International Mechanical Code (2000)	X	X	X	X	X	X
National Electrical Code (2002)	X	X	X	X	X	X
AADAAG (those places of public accommodation)	X	X	X	X	X	X
Fair Housing Amendments Act	I		I		I	I
Uniform Federal Accessibility Standards (UFAS)	X	E			X	
Life Safety Code, NFPA 101 (1985)					X	
Guidelines for Construction and Equipment of Hospital and Medical Facilities, AIA (1987)					X	

**X=** Law Applies

**E=** Law Applies to the extent Possible, some leniency is allowed for those cases/items that can not be made accessible.

**I=** Law applies IF the project includes housing where people are expected to reside for more than a brief period of time. For example, nursing homes, group homes, college dormitories, or assisted living units.

# AIA DOCUMENT B141-1997

## Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_  
in the year \_\_\_\_\_  
(In words, indicate day, month and year)

**BETWEEN** the Architect's client identified as the Owner:  
(Name, address and other information)

and the Architect:  
(Name, address and other information)

For the following Project:  
(Include detailed description of Project)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

### TABLE OF ARTICLES

- 1.1 INITIAL INFORMATION
- 1.2 RESPONSIBILITIES OF THE PARTIES
- 1.3 TERMS AND CONDITIONS
- 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS
- 1.5 COMPENSATION

The Owner and Architect agree as follows.



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STANDARD FORM  
AGREEMENT

The American Institute  
of Architects  
1735 New York Avenue, N.W.  
Washington, D.C. 20006-5292

**ARTICLE 1.1 INITIAL INFORMATION**

**1.1.1** This Agreement is based on the following information and assumptions.  
*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

**1.1.2 PROJECT PARAMETERS**

**1.1.2.1** The objective or use is:  
*(Identify or describe, if appropriate, proposed use or goals.)*

**1.1.2.2** The physical parameters are:  
*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports about the site.)*

**1.1.2.3** The Owner's Program is:  
*(Identify documentation or state the manner in which the program will be developed.)*

**1.1.2.4** The legal parameters are:  
*(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site.)*

**1.1.2.5** The financial parameters are as follows.  
1. Amount of the Owner's overall budget for the Project, including the Architect's compensation, is:  
2. Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is:

**1.1.2.6** The time parameters are:  
*(Identify, if appropriate, milestone date, durations or fast track scheduling.)*

**1.1.2.7** The proposed procurement or delivery method for the Project is:  
*(Identify method such as competitive bid, negotiated contract, or construction management.)*

**1.1.2.8** Other parameters are:  
*(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)*

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Washington, D.C. 20006-5292

**1.1.3 PROJECT TEAM**

**1.1.3.1** The Owner's Designated Representative is:  
*(List name, address and other information.)*

**1.1.3.2** The persons or entities, in addition to the Owner's Designated Representative, who are required to review the Architect's submittals to the Owner are:  
*(List name, address and other information.)*

**1.1.3.3** The Owner's other consultants and contractors are:  
*(List discipline and, if known, identify them by name and address.)*

**1.1.3.4** The Architect's Designated Representative is:  
*(List name, address and other information.)*

**1.1.3.5** The consultants retained at the Architect's expense are:  
*(List discipline and, if known, identify them by name and address.)*

**1.1.4** Other important initial information is:

**1.1.5** When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201 current as of the date of this Agreement, or as follows:

**1.1.6** The information contained in this Article 1.1 may be reasonably relied upon by the Owner and Architect in determining the Architect's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in schedule, compensation and Change in Services in accordance with Paragraph 1.3.3.



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## ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES

1.2.1 The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

### 1.2.2 OWNER

1.2.2.1 Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

1.2.2.2 The Owner shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of the Architect to a corresponding change in the Project scope and quality.

1.2.2.3 The Owner's Designated Representative identified in Paragraph 1.1.3 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

1.2.2.4 The Owner shall furnish the services of consultants other than those designated in Paragraph 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

1.2.2.5 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

1.2.2.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

1.2.2.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

### 1.2.3 ARCHITECT

1.2.3.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Article 1.4.

1.2.3.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Subparagraph 1.1.2.6 and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.



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1.2.3.3 The Architect's Designated Representative identified in Paragraph 1.1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

1.2.3.4 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

1.2.3.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

1.2.3.6 The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

1.2.3.7 The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

#### ARTICLE 1.3 TERMS AND CONDITIONS

##### 1.3.1 COST OF THE WORK

1.3.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

1.3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

1.3.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

##### 1.3.2 INSTRUMENTS OF SERVICE

1.3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

1.3.2.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall



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obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

**1.3.2.3** Except for the licenses granted in Subparagraph 1.3.2.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Subparagraph 1.3.2.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

**1.3.2.4** Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

### **1.3.3 CHANGE IN SERVICES**

**1.3.3.1** Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Subparagraph 1.3.3.2. In the absence of mutual agreement in writing, the Architect shall notify the Owner prior to providing such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Paragraph 1.5.2, and to any Reimbursable Expenses described in Subparagraph 1.3.9.2 and Paragraph 1.5.5.

**1.3.3.2** If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

1. change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
2. enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;



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- 3 decisions of the Owner not rendered in a timely manner;
- 4 significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- 5 failure of performance on the part of the Owner or the Owner's consultants or contractors;
- 6 preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto;
- 7 change in the information contained in Article 1.1.

#### 1.3.4 MEDIATION

1.3.4.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

1.3.4.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

1.3.4.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### 1.3.5 ARBITRATION

1.3.5.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Paragraph 1.3.4.

1.3.5.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

1.3.5.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

1.3.5.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim,



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dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**1.3.5.5** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### **1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Paragraph 1.3.8.

### **1.3.7 MISCELLANEOUS PROVISIONS**

**1.3.7.1** This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Paragraph 1.4.2.

**1.3.7.2** Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

**1.3.7.3** Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

**1.3.7.4** To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other to damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**1.3.7.5** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

**1.3.7.6** Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

**1.3.7.7** The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.



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**1.3.7.8** If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

**1.3.7.9** The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

**1.3.8 TERMINATION OR SUSPENSION**

**1.3.8.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**1.3.8.2** If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**1.3.8.3** If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

**1.3.8.4** This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**1.3.8.5** This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

**1.3.8.6** In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Subparagraph 1.3.8.7.

**1.3.8.7** Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.



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### 1.3.9 PAYMENTS TO THE ARCHITECT

1.3.9.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

1.3.9.2 Reimbursable Expenses are in addition to compensation for the Architect's services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

1. transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
2. fees paid for securing approval of authorities having jurisdiction over the Project;
3. reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
4. expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
5. renderings, models and mock-ups requested by the Owner;
6. expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
7. reimbursable expenses as designated in Paragraph 1.5.5;
8. other similar direct Project-related expenditures.

1.3.9.3 Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

1.3.9.4 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

### ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

1.4.1 Enumeration of Parts of the Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect. This Agreement comprises the documents listed below.

1.4.1.1 Standard Form of Agreement Between Owner and Architect, AIA Document B141-1997.

1.4.1.2 Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997, or as follows:  
(List other documents, if any, delineating Architect's scope of services.)

1.4.1.3 Other documents as follows:  
(List other documents, if any, forming part of the Agreement.)



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1.4.2 Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

#### ARTICLE 1.5 COMPENSATION

1.5.1 For the Architect's services as described under Article 1.4, compensation shall be computed as follows:

1.5.2 If the services of the Architect are changed as described in Subparagraph 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Paragraph 1.5.2, in an equitable manner.

*(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)*

1.5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of \_\_\_\_\_ times the amounts billed to the Architect for such services.

1.5.4 For Reimbursable Expenses as described in Subparagraph 1.3.3.2, and any other items included in Paragraph 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of \_\_\_\_\_ times the expenses incurred by the Architect and the Architect's employees and consultants.

1.5.5 Other Reimbursable Expenses, if any, are as follows:



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1.5.6 The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

1.5.7 An initial payment of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

1.5.8 Payments are due and payable \_\_\_\_\_ (\_\_\_\_\_) days from the date of the Architect's invoice. Amounts unpaid \_\_\_\_\_ (\_\_\_\_\_) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
*(Insert rate of interest agreed upon.)*

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

1.5.9 If the services covered by this Agreement have not been completed within \_\_\_\_\_ (\_\_\_\_\_) months of the date hereof through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Paragraph 15.2.

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER (signature)

\_\_\_\_\_  
ARCHITECT (signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

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**AIA DOCUMENT B141-1997****Standard Form of Architect's Services:  
Design and Contract Administration****TABLE OF ARTICLES**

2.1 PROJECT ADMINISTRATION SERVICES

2.2 SUPPORTING SERVICES

2.3 EVALUATION AND PLANNING SERVICES

2.4 DESIGN SERVICES

2.5 CONSTRUCTION PROCUREMENT SERVICES

2.6 CONTRACT ADMINISTRATION SERVICES

2.7 FACILITY OPERATION SERVICES

2.8 SCHEDULE OF SERVICES

2.9 MODIFICATIONS

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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## ARTICLE 2.1 PROJECT ADMINISTRATION SERVICES

2.1.1 The Architect shall manage the Architect's services and administer the Project. The Architect shall consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and issue progress reports. The Architect shall coordinate the services provided by the Architect and the Architect's consultants with those services provided by the Owner and the Owner's consultants.

2.1.2 When Project requirements have been sufficiently identified, the Architect shall prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the Owner, design services furnished by the Architect, completion of documentation provided by the Architect, commencement of construction and Substantial Completion of the Work.

2.1.3 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

2.1.4 Upon request of the Owner the Architect shall make a presentation to explain the design of the Project to representatives of the Owner.

2.1.5 The Architect shall submit design documents to the Owner at intervals appropriate to the design process for purposes of evaluation and approval by the Owner. The Architect shall be entitled to rely on approvals received from the Owner in the further development of the design.

2.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### 2.1.7 EVALUATION OF BUDGET AND COST OF THE WORK

2.1.7.1 When the Project requirements have been sufficiently identified, the Architect shall prepare a preliminary estimate of the Cost of the Work. This estimate may be based on current area, volume or similar conceptual estimating techniques. As the design process progresses through the end of the preparation of the Construction Documents, the Architect shall update and refine the preliminary estimate of the Cost of the Work. The Architect shall advise the Owner of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

2.1.7.2 Evaluations of the Owner's budget for the Project, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.



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2.1.7.3 In preparing estimates of the Cost of the Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. If an increase in the Contract Sum occurring after execution of the Contract between the Owner and the Contractor causes the budget for the Cost of the Work to be exceeded, that budget shall be increased accordingly.

2.1.7.4 If bidding or negotiation has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry.

2.1.7.5 If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

1. give written approval of an increase in the budget for the Cost of the Work;
2. authorize rebidding or renegotiating of the Project within a reasonable time;
3. terminate in accordance with Subparagraph 1.3.8.5.0;
4. cooperate in revising the Project scope and quality as required to reduce the Cost of the Work.

2.1.7.6 If the Owner chooses to proceed under Clause 2.1.7.5.4, the Architect, without additional compensation, shall modify the documents for which the Architect is responsible under this Agreement as necessary to comply with the budget for the Cost of the Work. The modification of such documents shall be the fault of the Architect's responsibility under this Paragraph 2.1.7. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not construction is commenced.

## ARTICLE 2.2 SUPPORTING SERVICES

2.2.1 Unless specifically designated in Paragraph 2.8.3, the services in this Article 2.2 shall be provided by the Owner or the Owner's consultants and contractors.

2.2.1.1 The Owner shall furnish a program setting forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements.

2.2.1.2 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

2.2.1.3 The Owner shall furnish services of geotechnical engineers which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.



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## ARTICLE 2.3 EVALUATION AND PLANNING SERVICES

**2.3.1** The Architect shall provide a preliminary evaluation of the information furnished by the Owner under this Agreement, including the Owner's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of any other information or consultant services that may be reasonably needed for the Project.

**2.3.2** The Architect shall provide a preliminary evaluation of the Owner's site for the Project based on the information provided by the Owner of site conditions, and the Owner's program, schedule and budget for the Cost of the Work.

**2.3.3** The Architect shall review the Owner's proposed method of contracting for construction services and shall notify the Owner of anticipated impacts that such method may have on the Owner's program, financial and time requirements, and the scope of the Project.

## ARTICLE 2.4 DESIGN SERVICES

**2.4.1** The Architect's design services shall include normal structural, mechanical and electrical engineering services.

### 2.4.2 SCHEMATIC DESIGN DOCUMENTS

**2.4.2.1** The Architect shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the Architect's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

### 2.4.3 DESIGN DEVELOPMENT DOCUMENTS

**2.4.3.1** The Architect shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

### 2.4.4 CONSTRUCTION DOCUMENTS

**2.4.4.1** The Architect shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

**2.4.4.2** During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and the form of agreement between the Owner and the Contractor; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect also shall compile the Project Manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.



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## ARTICLE 2.5 CONSTRUCTION PROCUREMENT SERVICES

2.5.1 The Architect shall assist the Owner in obtaining either competitive bids or negotiated proposals and shall assist the Owner in awarding and preparing contracts for construction.

2.5.2 The Architect shall assist the Owner in establishing a list of prospective bidders or contractors.

2.5.3 The Architect shall assist the Owner in bid validation or proposal evaluation and determination of the successful bid or proposal, if any. If requested by the Owner, the Architect shall notify all prospective bidders or contractors of the bid or proposal results.

### 2.5.4 COMPETITIVE BIDDING

2.5.4.1 Bidding Documents shall consist of bidding requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

2.5.4.2 If requested by the Owner, the Architect shall arrange for procuring the reproduction of Bidding Documents for distribution to prospective bidders. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.

2.5.4.3 If requested by the Owner, the Architect shall distribute the Bidding Documents to prospective bidders and request their return upon completion of the bidding process. The Architect shall maintain a log of distribution and retrieval, and the amounts of deposits, if any, received from and returned to prospective bidders.

2.5.4.4 The Architect shall consider requests for substitutions if permitted by the Bidding Documents, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

2.5.4.5 The Architect shall participate in or, at the Owner's direction, shall organize and conduct a pre-bid conference for prospective bidders.

2.5.4.6 The Architect shall prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.

2.5.4.7 The Architect shall participate in or, at the Owner's direction, shall organize and conduct the opening of the bids. The Architect shall subsequently document and distribute the bidding results, as directed by the Owner.

### 2.5.5 NEGOTIATED PROPOSALS

2.5.5.1 Proposal Documents shall consist of proposal requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

2.5.5.2 If requested by the Owner, the Architect shall arrange for procuring the reproduction of Proposal Documents for distribution to prospective contractors. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.

2.5.5.3 If requested by the Owner, the Architect shall organize and participate in selection interviews with prospective contractors.

2.5.5.4 The Architect shall consider requests for substitutions, if permitted by the Proposal Documents, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.



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2.5.5.5 If requested by the Owner, the Architect shall assist the Owner during negotiations with prospective contractors. The Architect shall subsequently prepare a summary report of the negotiation results, as directed by the Owner.

## ARTICLE 2.6 CONTRACT ADMINISTRATION SERVICES

### 2.6.1 GENERAL ADMINISTRATION

2.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

2.6.1.2 The Architect's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment. However, the Architect shall be entitled to a Change in Services in accordance with Paragraph 2.8.2 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work.

2.6.1.3 The Architect shall be a representative of and shall advise and consult with the Owner during the provision of the Contract Administration Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

2.6.1.4 Duties, responsibilities and limitations of authority of the Architect under this Article 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

2.6.1.5 The Architect shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

2.6.1.6 If deemed appropriate by the Architect, the Architect shall on the Owner's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

2.6.1.7 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

2.6.1.8 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions so rendered in good faith.

2.6.1.9 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.



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## 2.6.2 EVALUATIONS OF THE WORK

2.6.2.1 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 2.8, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

2.6.2.2 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors or their agents or employees, or of any other persons or entities performing portions of the Work.

2.6.2.3 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.2.4 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

2.6.2.5 The Architect shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

## 2.6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

2.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Paragraph 2.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.



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**2.6.3.2** The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**2.6.3.3** The Architect shall maintain a record of the Contractor's Applications for Payment.

#### **2.6.4 SUBMITTALS**

**2.6.4.1** The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**2.6.4.2** The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

**2.6.4.3** If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

#### **2.6.5 CHANGES IN THE WORK**

**2.6.5.1** The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Paragraph 2.8.2.

**2.6.5.2** The Architect shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect



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determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

**2.6.5.3** If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

**2.6.5.4** The Architect shall maintain records relative to changes in the Work.

#### **2.6.6 PROJECT COMPLETION**

**2.6.6.1** The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a Final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

**2.6.6.2** The Architect's inspection shall be conducted with the Owner's Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

**2.6.6.3** When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

**2.6.6.4** The Architect shall receive from the Contractor and forward to the Owner, (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens.

#### **ARTICLE 2.7 FACILITY OPERATION SERVICES**

**2.7.1** The Architect shall meet with the Owner or the Owner's Designated Representative promptly after Substantial Completion to review the need for facility operation services.

**2.7.2** Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall conduct a meeting with the Owner and the Owner's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the Owner.



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## ARTICLE 2.8 SCHEDULE OF SERVICES

2.8.1 Design and Contract Administration Services beyond the following limits shall be provided by the Architect as a Change in Services in accordance with Paragraph 1.3.3:

1. up to ( ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.
2. up to ( ) visits to the site by the Architect over the duration of the Project during construction.
3. up to ( ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.
4. up to ( ) inspections for any portion of the Work to determine final completion.

2.8.2 The following Design and Contract Administration Services shall be provided by the Architect as a Change in Services in accordance with Paragraph 1.3.3:

1. review of a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
2. responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
3. Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Service;
4. providing consultation concerning replacement of Work resulting from fire or other cause during construction;
5. evaluation of an extensive number of claims submitted by the Owner's consultants, the Contractor or others in connection with the Work;
6. evaluation of substitutions proposed by the Owner's consultants or contractors and making subsequent revisions to Instruments of Service resulting therefrom;
7. preparation of design and documentation for alternate bid or proposal requests proposed by the Owner; or
8. Contract Administration Services provided 60 days after the date of Substantial Completion of the Work.



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2.8.3 The Architect shall furnish or provide the following services only if specifically designated:

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description
.1 Programming		
.2 Land Survey Services		
.3 Geotechnical Services		
.4 Space Schematics/Flow Diagrams		
.5 Existing Facilities Surveys		
.6 Economic Feasibility Studies		
.7 Site Analysis and Selection		
.8 Environmental Studies and Reports		
.9 Owner-Supplied Data Coordination		
.10 Schedule Development and Monitoring		
.11 Civil Design		
.12 Landscape Design		
.13 Interior Design		
.14 Special Bidding or Negotiation		
.15 Value Analysis		
.16 Detailed Cost Estimating		
.17 On-Site Project Representation		
.18 Construction Management		
.19 Start-Up Assistance		
.20 Record Drawings		
.21 Post-Contract Evaluation		
.22 Tenant-Related Services		
.23		
.24		
.25		

Description of Services.  
(Insert descriptions of the services designated.)

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**ARTICLE 2.9 MODIFICATIONS**

**2.9.1** Modifications to this Standard Form of Architect's Services: Design and Contract Administration, if any, are as follows:

By its execution, this Standard Form of Architect's Services: Design and Contract Administration and modifications hereto are incorporated into the Standard Form of Agreement Between the Owner and Architect AIA Document B141-1997, that was entered into by the parties as of the date:

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
ARCHITECT (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

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MODIFICATIONS TO AIA DOCUMENT B141-1997, *Standard Form of Agreement Between Owner and Architect With Standard Form of Architect's Services*

The provisions of these Modifications shall delete, replace and supplement the provisions contained in the "*Standard Form of Agreement Between Owner and Architect With Standard Form of Architect's Services*", AIA Document B141-1997 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 1.2, RESPONSIBILITIES OF THE PARTIES

1.2.2 Add the following subparagraph to paragraph 1.2.2:

1.2.2.8 The Owner shall provide the Architect with Agency standard Construction Contract Document Guides.

ARTICLE 1.3, TERMS AND CONDITIONS

1.3.5.2 Delete the words "unless the parties mutually agree otherwise" and substitute the words "if the parties mutually agree" in the first sentence of subparagraph 1.3.5.2.

1.3.7.1 Delete subparagraph 1.3.7.1 and substitute the following:

1.3.7.1 This Agreement shall be governed by the law of the Project location.

1.3.7.4 Delete subparagraph 1.3.7.4.

1.3.7 Add the following subparagraphs to paragraph 1.3.7:

1.3.7.10 This Agreement shall not become effective until concurred with in writing by the Agency. Such concurrence shall be evidenced by the signature of a duly authorized representative of the Agency in the space provided at the end of the Agency Attachment to this Agreement.

1.3.7.11 If applicable, the Architect shall comply with section 319 of Public Law 101-121, as supplemented by the Department of Agriculture regulations (7 C.F.R. part 3018). This law pertains to restrictions on lobbying and 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 Architect 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.

1.3.7.12 The Architect agrees to abide by 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. If the total compensation described in Article 1.5 exceeds \$25,000, the Architect shall complete the relevant certification form provided by the Owner.

1.3.8.2 Delete the second sentence in subparagraph 1.3.8.2 and substitute the following:

When the Project is resumed, the Architect's compensation may be equitably adjusted, as mutually agreed, to provide for expenses incurred in the interruption and resumption of the Architect's services.

1.3.8.7 Insert the words "as mutually agreed" after "Termination Expenses" in subparagraph 1.3.8.7.

1.3.9.3 Add the words "and the Agency" after the words "Owner's authorized representative" in subparagraph 1.3.9.3.

ARTICLE 1.4, SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

1.4.1 Delete the word "both" from the end of the second sentence and conclude the sentence with "Owner, Architect and Agency."

1.4.2 Add the following subparagraph:

1.4.2.1 This Agreement is modified and supplemented by RD Instruction 1924-A, Guide 1, Attachment 9.

ARTICLE 1.5, COMPENSATION

1.5.3 Insert a multiplier not to exceed "one point one (1.1)".

1.5.4 Insert a multiplier not to exceed "one point one (1.1)".  
Add the sentence: For the Owner's budgeting purposes, the estimated total cost of reimbursable expenses for this project is:

ARTICLE 2.1, PROJECT ADMINISTRATION SERVICES

2.1.5 Add the words "and concurrence by the Agency" after approval by the Owner" in paragraph 2.1.5.

2.1 Add the following Paragraph to ARTICLE 2.1:

2.1.8 The Architect shall consult with the Agency Architect or Engineer about the Agency's requirements and procedures.

ARTICLE 2.4, DESIGN SERVICES

2.4.2 Add the following subaragraph to 2.4.2:

2.4.2.2 The Architect shall prepare a Preliminary Architectural Report (PAR) as outlined in RD Instruction 1942-A Guide 6 "PRELIMINARY ARCHITECTURAL FEASIBILITY REPORT".

2.4.4 Add the following subparagraphs to paragraph 2.4.4:

2.4.4.4 Upon award of the construction contract, the Architect shall furnish the Owner six (6) sets of Construction Contract Documents for execution.

ARTICLE 2.6, CONTRACT ADMINISTRATION SERVICES

- 2.6.1.3 Delete the first sentence of subparagraph 2.6.1.3 and substitute as follows.

The Architect shall be a representative of and shall advise and consult with the Owner during construction until final payment is due to the Contractor, and at the Owner's direction during the period of correction of the Work described in the Contract for Construction. The Architect shall be available to furnish architectural services and consultations necessary to correct unforeseen construction defects normally encountered during this period. The Architect shall assist the Owner in performing a review of the Project during the 11th month after the date of Substantial Completion.

- 2.6.1.8 Delete the words, "and shall not be liable for results of interpretations or decisions so rendered in good faith" in the last sentence of subparagraph 2.6.1.8.

- 2.6.1 Add the following subparagraphs to paragraph 2.6.1:

2.6.1.10 The Architect shall conduct on-site progress meetings no less than once a month during the periods of active construction. These meetings should be held with the Contractor, affected Sub-contractors, Project Representative, Owner, representatives of the Owner, and other interested parties as appropriate, to review and discuss the Contractor's application for payment, work progress schedule, construction problems or disputes, and other appropriate matters.

2.6.1.11 The Architect shall chair the Preconstruction Conference prior to Owner issuing the Notice to Proceed.

- 2.6.2.1 Add the following sentences to subparagraph 2.6.2.1:

Such visits to the site shall be documented in writing on standard inspection report forms with copies furnished to the Owner, Contractor and Agency. Visits to the site shall be in accordance with Agency requirements and procedures.

- 2.6.2 Add the following subparagraph to paragraph 2.6.2:

2.6.2.6 The Architect shall advise the Owner of required tests, inspections and reports, shall furnish coordination of such tests and inspections, and shall advise the Owner and Agency of the results of same. Copies of test results shall be furnished to the Owner, Contractor, and Agency, as appropriate.

- 2.6.3 Add the following subparagraph to paragraph 2.6.3:

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

- 2.6.5.1 Add the following sentences to subparagraph 2.6.5.1:

Preparation of Change Orders which do not substantially affect the project shall be included in the compensation computed in paragraph 1.5.1. The Architect shall obtain Agency concurrence in writing for Change Orders prior to the performance of the Work.

- 2.6.6.1 Delete subparagraph 2.6.6.1 and substitute the following:

2.6.6.1 The Architect shall conduct an inspection prior to the issuance of the Certificate of Substantial Completion and shall submit a written report to the Owner, Agency and the Contractor about Work to be completed prior to final acceptance. Said inspection and Certificate of Substantial Completion shall be provided by the Architect for each Prime Contractor as appropriate. Such services shall be coordinated with the Agency. Prior to submitting the final Certificate for Payment, the Architect shall conduct an inspection, submit a Statement of Completion, receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor.

ARTICLE 2.8, SCHEDULE OF SERVICES

2.8.3 Insert the word "Architect" under the heading "Responsibility" for line items .16, .17, and .20 in the chart.

2.8.3 Add the following subparagraphs to paragraph 2.8.3 under the heading "Description of Services." below the chart:

2.8.3.a The Architect shall provide a detailed cost estimate based on Construction Contract Documents.

2.8.3.b If full time representation at the site is required, the Architect shall provide one or more Resident Inspectors to assist in carrying out such additional on-site responsibilities.

2.8.3.c Two (2) sets of Record Drawings shall be provided to the Owner.

SIGNATURE BLOCK:

The following signature block shall replace the signature blocks following paragraphs 1.5.9 and 2.9.1:

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed  
by their duly authorized officials, this Agreement in duplicate on the  
respective dates indicated below:

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

OWNER:  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ARCHITECT:  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

AGENCY CONCURRENCE:

By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

The concurrence so evidenced by the Agency shall in no way commit the Agency to render financial assistance to the Owner and is without liability to the Agency for any payment hereunder, but in the event such assistance is provided, the concurrence shall signify the provisions of this Agreement are consistent with the requirements of the Agency.

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# **SECTION 5**

## **Construction Contract Documents**

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## Construction Project Document List

USDA Rural Development Idaho has adopted the AIA Contract Documents for use on Rural Development partially or wholly funded projects. A combination of AIA documents and corresponding Rural Development attachments constitutes an acceptable set of contract documents for use on community facility projects. The group of acceptable documents are listed in the table below. The Rural Development attachments referenced here were specifically drafted to be used with the corresponding AIA document and should not be mixed with AIA documents of a different edition, series or AIA number.

When making a modification in one document you should ensure that appropriate modifications are made in all effected documents. It is Rural Development’s policy that the applicants use the AIA documents with minimal modification. However, Rural Development recognizes each project is unique and that modifications may be required to satisfy project requirements.

Before applicants or architect’s proceed with the development of a set of contract documents, they should contact the Rural Development Area office to verify they have the most current information specific to the type of project and State where the project is located.

It is customary that a project sign identifying the Owner and Funding Agencies be displayed during project construction. The sign requirements are not included in the Supplementary Conditions, but should be a part of the specifications prepared by the Architect. Example sign formats have been provided for projects funded by Rural Development and for projects funded by a combination of agencies. If the examples do not cover your project, contact the Rural Development State Office for guidance.

To eliminate unnecessary delays after Bid Opening, the full set of Construction Contract Documents must be submitted to Rural Development for review and acceptance before start of the Bidding or Negotiation process.

This table lists guidance documents and forms required to constitute a complete set of contract documents. Notes are also provided on each documents use. **Documents listed under the “Use Form” column must be used to develop the contract documents, unless a formal request is made by the Architect and approved by Rural Development State Office.**

Title	Use Document/Form	RD Notes: Necessary actions, important points
Advertisement for Bids	Generic Form provided	<ul style="list-style-type: none"> <li>Use the generic form or similar form containing the same information.</li> </ul>
Instructions to Bidders	AIA A701-1997	<ul style="list-style-type: none"> <li>One critical area that requires attention is 5.3 – Acceptance of Bid (Award). This information will vary whether bid is Lump Sum or Unit Price. If the Evaluation of Bids involves anything other than checking the contractor’s qualifications and calculation of unit prices, such as additive alternates, life-cycle costs, etc., the evaluation process must be clearly stated (given the bid documents, a third party would identify the same Successful Bidder as the Architect) in the Instructions to Bidders.</li> </ul>
Modifications to AIA Document A701-1997	RD Instruction 1924-A, Guide 1, Attch 8	<ul style="list-style-type: none"> <li>5.3.2, Ensure this section clearly identifies how the bids will be evaluated and the criteria for determining the lowest responsible bidder.</li> </ul>

Title	Use Document/Form	RD Notes: Necessary actions, important points
Bid Form	Community Facilities Bid Form (**Idaho Version)	<ul style="list-style-type: none"> <li>• Use Idaho's bid form developed for community facility projects.</li> <li>• All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to: placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; specifying only a brand name product instead of either allowing an equal product to be offered, or describing the performance of the relevant requirements of the procurement; and unnecessary experience and bonding requirements</li> </ul>
Bid Bond	AIA A-310-1970	<ul style="list-style-type: none"> <li>• Must be at least 5% of Bid amount.</li> </ul>
Notice of Award	Generic Form provided	<ul style="list-style-type: none"> <li>• Owner will not announce award of contract without written concurrence from the Agency.</li> </ul>
Standard Form of Agreement Between Owner and Contractor  **Include Certificate of Owner's Attorney as last page of the agreement**	AIA A101-1997	<ul style="list-style-type: none"> <li>• 7.2, Interest rate comparable to current short term lending rate for financially sound contractors.</li> <li>• In addition to copies customarily provided for Owner, Contractor, Architect, and others, two executed copies will be provided for Rural Development use.</li> <li>• Certificate of Owner's Attorney – General Conditions Exhibit GC-A, to be completed by Owner's attorney prior to submittal to Rural Development for concurrence in Agreement.</li> </ul>
Modifications to AIA Document A101-1997	RD Instruction 1924-A, Guide 1, Atch 1	<ul style="list-style-type: none"> <li>• 3.3, The amount entered for liquidated damages should cover all the Owner's additional costs for the project not being operational: daily interest, professional fees, administrative costs, etc, but shall not include any punitive damages.</li> <li>• Signature page must be executed and an original included in each copy of the agreement.</li> </ul>
General Conditions of the Contract for Construction	AIA A201-1997	<ul style="list-style-type: none"> <li>• Use in conjunction with AIA A201/SC and RD Attachments.</li> </ul>
Modifications to AIA Document A201-1997	RD Instruction 1924-A, Guide 1, Atch 5	
Federal Supplementary Conditions of the Contract for Construction	AIA A201/SC-1997	<ul style="list-style-type: none"> <li>• Special attention should be focused on the types and amounts of insurance. RD does not support unfair allocation of risk or the burden of excessive insurance coverage.</li> </ul>
Modifications to AIA Document A201/SC-1997	RD Instruction 1924-A, Guide 1, Atch 6	
Performance & Payment Bond	AIA A312-1984	<ul style="list-style-type: none"> <li>• Each bond must be for the full amount of the Contract.</li> <li>• Surety must be listed in TC-570, have adequate bonding capacity, and be licensed in the State of Idaho.</li> </ul>

Title	Use Document/Form	RD Notes: Necessary actions, important points
Contractor's Application for Payment	USDA RD Form 1924-18	<ul style="list-style-type: none"> <li>• RD must concur with all payment applications.</li> <li>• It is anticipated that an attachment to the Application for Payment for the detailed tracking of quantities, materials stored, etc. will be developed by the Architect and Contractor.</li> <li>• Work added by Change Order will not be considered for payment until Change Order has Agency Concurrence.</li> <li>• Quantity Completed on Final Application for Payment must equal final adjusted contract quantities on unit price contracts.</li> <li>• In addition to copies customarily provided for Owner, Contractor, Architect, others, an executed copy with all attachments will be provided for Rural Development use.</li> </ul>
Change Order	USDA RD Form 1924-7	<ul style="list-style-type: none"> <li>• RD must concur with all change orders.</li> <li>• In addition to copies customarily provided for Owner, Contractor, Architect, others, two executed copies will be provided for Rural Development use.</li> </ul>
Record of Preconstruction Conference	USDA Form RD 1924-16	<ul style="list-style-type: none"> <li>• At a minimum, the conference must cover applicable items on this form.</li> </ul>
Notice to Proceed	Generic Form provided	<ul style="list-style-type: none"> <li>• Executed copy will be provided to Rural Development.</li> </ul>
Project Sign		<ul style="list-style-type: none"> <li>• Every Rural Development project requires a project sign. Cost for project sign should be included in the contract price. An example of the project sign should be included in the contract documents. Several project sign formats have been provided in this manual.</li> </ul>
Certificate of Substantial Completion	AIA G704-2000	<ul style="list-style-type: none"> <li>• Executed copy will be provided to Rural Development.</li> </ul>
Plans and Specifications		<ul style="list-style-type: none"> <li>• Submit to Rural Development, with Project Manual, for approval prior to advertising for bids.</li> </ul>

**\*All AIA documents submitted and used must be valid licensed copies.**

Any additions to the RUS Bulletins or AIA documents should follow the same format as the model document and each addition or deletion must be clearly identified.

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## Advertisement for Bids

*Owner:*

*Address:*

*Separate sealed Bids for the construction of (briefly describe nature, scope, and major elements of the Work):*

*will be received by:*

*at the office of:*

*until \_\_\_\_\_, (Local Time) \_\_\_\_\_ (Date), and then at said office publicly opened and read aloud. The Contract Documents may be examined at the following locations:*

*Copies of the Contract Documents may be obtained at the Issuing Office, located at:*

*upon payment of \$ \_\_\_\_\_ for each set.*

---

*Date*

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**AIA DOCUMENT A701-1997****Instructions to Bidders****TABLE OF ARTICLES**

1. DEFINITIONS
2. BIDDER'S REPRESENTATIONS
3. BIDDING DOCUMENTS
4. BIDDING PROCEDURES
5. CONSIDERATION OF BIDS
6. POST-BID INFORMATION
7. PERFORMANCE BOND AND PAYMENT BOND
8. FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.



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**INSTRUCTIONS TO BIDDERS**

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1735 New York Avenue, N.W.  
Washington, D.C. 20006-5292

## ARTICLE 1 DEFINITIONS

- 1.1 Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, Supplementary Instructions to Bidders, the bid form, and other sample bidding and contract forms. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Addenda issued prior to execution of the Contract.
- 1.2 Definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201, or in other Contract Documents are applicable to the Bidding Documents.
- 1.3 Addenda are written or graphic instruments issued by the Architect prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.
- 1.4 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.
- 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.
- 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.
- 1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services of a portion of the Work as described in the Bidding Documents.
- 1.8 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.
- 1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment or labor for a portion of the Work.

## ARTICLE 2 BIDDER'S REPRESENTATIONS

2. The Bidder by making a Bid represents that:
- 2.1 The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.
- 2.1.1 The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.
- 2.1.2 The Bid is made in compliance with the Bidding Documents.
- 2.1.3 The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.
- 2.1.4 The Bid is based upon the materials, equipment and systems required by the Bidding Documents without exception.



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## ARTICLE 3 BIDDING DOCUMENTS

### 3.1 COPIES

3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement or Invitation to Bid in the number and for the deposit sum, if any, stated therein. The deposit will be refunded to Bidders who submit a bona fide Bid and return the Bidding Documents in good condition within ten days after receipt of Bids. The cost of replacement of missing or damaged documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the Bidding Documents and the Bidder's deposit will be refunded.

3.1.2 Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the Advertisement or Invitation to Bid, or in supplementary instructions to bidders.

3.1.3 Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

3.1.4 The Owner and Architect may make copies of the Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work. No license or grant of use is conferred by issuance of copies of the Bidding Documents.

### 3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

3.2.1 The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Architect errors, inconsistencies or ambiguities discovered.

3.2.2 Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Architect at least seven days prior to the date for receipt of Bids.

3.2.3 Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and bidders shall not rely upon them.

### 3.3 SUBSTITUTIONS

3.3.1 The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

3.3.2 No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Architect at least ten days prior to the date for receipt of Bids. Such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of the Work, including changes in the work of other contracts that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

3.3.3 If the Architect approves a proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.



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3.3.4 No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

### 3.4 ADDENDA

3.4.1 Addenda will be transmitted to all who are known by the issuing office to have received a complete set of Bidding Documents.

3.4.2 Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

3.4.3 Addenda will be issued no later than four days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

3.4.4 Each Bidder shall ascertain prior to submitting a Bid that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

## ARTICLE 4 BIDDING PROCEDURES

### 4.1 PREPARATION OF BIDS

4.1.1 Bids shall be submitted on the forms included with the Bidding Documents.

4.1.2 All blanks on the bid form shall be legibly executed in a non-erasable fashion.

4.1.3 Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

4.1.4 Interlineations, alterations and erasures must be initialed by the signer of the Bid.

4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change."

4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall make no additional stipulations on the bid form nor qualify the Bid in any other manner.

4.1.7 Each copy of the Bid shall state the legal name of the Bidder and the nature of legal form of the Bidder. The Bidder shall provide evidence of legal authority to perform within the jurisdiction of the Work. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

### 4.2 BID SECURITY

4.2.1 Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the Instructions to Bidders. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. The amount of the bid security shall not be forfeited to the Owner in the event the Owner fails to comply with Paragraph 6.2.



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4.2.2 If a surety bond is required, it shall be written on AIA Document A310, Bid Bond, unless otherwise provided in the Bidding Documents, and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney.

4.2.3 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.

#### 4.3 SUBMISSION OF BIDS

4.3.1 All copies of the Bid, the bid security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

4.3.2 Bids shall be deposited at the designated location prior to the time and date for receipt of Bids. Bids received after the time and date for receipt of Bids will be returned unopened.

4.3.3 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

4.3.4 Oral, telephonic, telegraphic, facsimile or other electronically transmitted bids will not be considered.

#### 4.4 MODIFICATION OR WITHDRAWAL OF BID

4.4.1 A Bid may not be modified, withdrawn or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.

4.4.2 Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. Written confirmation over the signature of the Bidder shall be received and date- and time-stamped by the receiving party on or before the date and time set for receipt of Bids. A change shall be so worded as not to reveal the amount of the original Bid.

4.4.3 Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

4.4.4 Bid security, if required, shall be in an amount sufficient for the Bid as resubmitted.

### ARTICLE 5 - CONSIDERATION OF BIDS

#### 5.1 OPENING OF BIDS

At the discretion of the Owner, if stipulated in the Advertisement or Invitation to Bid, the properly identified Bids received on time will be publicly opened and will be read aloud. An abstract of the Bids may be made available to Bidders.

#### 5.2 REJECTION OF BIDS

The Owner shall have the right to reject any or all Bids. A Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.



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### 5.3 ACCEPTANCE OF BID (AWARD)

5.3.1 It is the intent of the Owner to award a Contract to the lowest qualified Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

5.3.2 The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted.

## ARTICLE 6 POST-BID INFORMATION

### 6.1 CONTRACTOR'S QUALIFICATION STATEMENT

Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request, a properly executed AIA Document A305, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted as a prerequisite to the issuance of Bidding Documents.

### 6.2 OWNER'S FINANCIAL CAPABILITY

The Owner shall, at the request of the Bidder to whom award of a Contract is under consideration and no later than seven days prior to the expiration of the time for withdrawal of Bids, furnish to the Bidder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Unless such reasonable evidence is furnished, the Bidder will not be required to execute the Agreement between the Owner and Contractor.

### 6.3 SUBMITTALS

6.3.1 The Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, after notification of selection for the award of a Contract, furnish to the Owner through the Architect in writing:

1. a designation of the Work to be performed with the Bidder's own forces;
2. names of the manufacturers, products, and the suppliers of principal items or systems of materials and equipment proposed for the Work; and
3. names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.

6.3.2 The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

6.3.3 Prior to the execution of the Contract, the Architect will notify the Bidder in writing if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, Bid security will not be forfeited.

6.3.4 Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.



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## ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

### 7.1 BOND REQUIREMENTS

7.1.1 If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Bonds may be secured through the Bidder's usual sources.

7.1.2 If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

7.1.3 If the Owner requires that bonds be secured from other than the Bidder's usual sources, changes in cost will be adjusted as provided in the Contract Documents.

### 7.2 TIME OF DELIVERY AND FORM OF BONDS

7.2.1 The Bidder shall deliver the required bonds to the Owner not later than three days following the date of execution of the Contract. If the Work is to be commenced prior thereto in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Subparagraph 7.2.1.

7.2.2 Unless otherwise provided, the bonds shall be written on AIA Document A312, Performance Bond and Payment Bond. Both bonds shall be written in the amount of the Contract Sum.

7.2.3 The bonds shall be dated on or after the date of the Contract.

7.2.4 The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

## ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

Unless otherwise required in the Bidding Documents, the Agreement for the Work will be written on AIA Document A101, Standard Form of Agreement Between Owner and Contractor Where the Basis of Payment Is a Stipulated Sum.



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B



MODIFICATIONS TO AIA DOCUMENT A701-1997, *Instructions to Bidders*

The provisions of these Modifications shall delete, replace and supplement the provisions contained in the "*Instructions to Bidders*", AIA Document A701-1997 Edition. The provisions contained in these Modifications will supersede any conflicting provisions of the AIA Document. The term "Agency", as used in this Attachment, shall mean the United States of America, acting through the United States Department of Agriculture.

ARTICLE 2, BIDDER'S REPRESENTATIONS

2.1 Add the following subparagraph to paragraph 2.1:

2.1.5 This Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid, with any other Bidder or with any competitor.

ARTICLE 4, BIDDING PROCEDURES

4.1.1 Add the following sentence to subparagraph 4.1.1:

Only one copy of the Bid is to be submitted.

4.2.1 Delete subparagraph 4.2.1 and substitute the following:

4.2.1 Each Bid must be accompanied by a Bid Bond payable to the Owner for five percent of the total amount of the Bid.

4.2.2 Delete Subparagraph 4.2.2 and substitute the following:

4.2.2 The Bid Bond shall be written on a form identical to that included in the Bidding Documents, and the attorney-in-fact who executes the Bid Bond on behalf of the surety shall affix to the Bid Bond a certified and current copy of the power of attorney.

4.2.3 Add the words "payment and performance" before the word "bonds"; and add the following to subparagraph 4.2.3:

As soon as the Bid prices have been compared, the Owner will return the Bid Bonds of all except the three lowest responsible Bidders. When the Agreement is executed, the Bid Bonds of the two remaining unsuccessful Bidders will be returned.

4.2 Add the following subparagraph to paragraph 4.2:

4.2.4 If a Bidder refuses to execute the Agreement or obtain the Performance and Payment Bonds, if required, within the agreed time, the Owner may consider the Bidder in default, in which case the Bid Bond accompanying the Bid shall become the property of the Owner.

4.3 Add the following subparagraphs to paragraph 4.3:

4.3.5 All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project, shall apply to the Contract throughout.

4.3.6 The Bidder agrees to abide by the requirements of Executive Order 11246, specifically including the provisions of the Equal Opportunity Clause and the Standard Federal Equal Employment Construction Contract Specifications set forth in the Supplementary Conditions.

4.3.7 The Bidder agrees to abide by the requirements of section 319 of Public Law 101-121, which pertains to lobbying activities and applies to recipients of contracts or subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. Each Bid shall be accompanied by a completed lobbying certification form identical to that included in the Bidding Documents.

4.3.8 The Bidder agrees to abide by the requirements under 7 C.F.R. part 3017, which pertains to the debarment or suspension of a person from participating in a Federal program or activity. Each Bid exceeding \$25,000 shall be accompanied by a relevant completed certification form identical to that included in the Bidding Documents.

4.4.1 Delete subparagraph 4.4.1 and substitute the following subparagraphs 4.4.1 and .1:

4.4.1 No Bidder may withdraw, modify or cancel a Bid within calendar days after the actual date of the opening thereof. Should there be reasons why the Contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the Owner and the Bidder, and the concurrence of the Agency.

.1 In the event the lowest responsive bidder requests to withdraw its bid after a bid opening due to an unintentional error in its contents, the Owner may waive informalities, accept the request, and keep the bid security provided by the Bidder.

4.4.4 Delete the words ", if required," from Subparagraph 4.4.4.

#### ARTICLE 5, CONSIDERATION OF BIDS

5.3.2 Delete subparagraph 5.3.2 and substitute the following:

5.3.2 The Owner shall determine the low Bidder based on the following method:

#### ARTICLE 7, PERFORMANCE BOND AND PAYMENT BOND

7.1.1 Delete the last sentence from subparagraph 7.1.1 and substitute "Both Bonds shall be separately written, each in the amount of the Contract Sum."

7.1.3 Delete subparagraph 7.1.3 and substitute the following:

7.1.3 Surety companies executing Bonds must hold a certificate of authority as a 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.

7.2.1 Delete subparagraph 7.2.1 and substitute the following:

7.2.1 The Bidder to whom the Contract is awarded will be required to execute the Agreement and obtain Performance and Payment Bonds, if required, within calendar days from the date when the Notice of Award is delivered to the Bidder. The Notice shall be accompanied by the necessary Agreement and Bond forms.

7.2.2 Delete subparagraph 7.2.2 and substitute the following:

7.2.2 The Bonds shall be written on forms identical to those included in the Bidding Documents.

oOo

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## Bid Form

Project Identification: \_\_\_\_\_

Contract Identification and Number: \_\_\_\_\_

### TABLE OF ARTICLES

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#### ARTICLE 1 - BID RECIPIENT

1.01 This Bid Is Submitted To: \_\_\_\_\_

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

#### ARTICLE 2 - BIDDER'S ACKNOWLEDGMENTS

2.01 Bidder accepts all of the terms and conditions of the Advertisement and Instructions to Bidders, including without limitations those dealing with the dispositions of Bid security. The Bid will remain subject to acceptance for \_\_\_\_\_ days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

#### ARTICLE 3 - BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged.

Addendum No.	Addendum Date
_____	_____
_____	_____
_____	_____

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all Federal, State, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has obtained and carefully studied (or accepts the consequences for not doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by the Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- E. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- F. Bidder is aware of the general nature of the Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- G. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
- H. Bidder has given Architect written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Architect is acceptable to Bidder.
- J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- K. Bidder will submit written evidence of its authority to do business in the State of Idaho not later than the date of its execution of the Agreement.

#### **ARTICLE 4 - FURTHER REPRESENTATIONS**

4.01 Bidder further represents that:

- A. This Bid is genuine and not made in the interest of or on the behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

**ARTICLE 5 - BASIS OF BID**

5.01 Bidder will complete the Work in accordance with the Contract Documents for the price(s) shown on the attached bid sheet. (Engineer will determine and select the method below and insert bid schedule after this page, numbering it 3a, 3b, 3c.....):

Lump Sum bid sheet is attached.

Unit price bid sheet is attached and the following applies:

A. Unit Prices have been computed in accordance with paragraph 11.03.A of the General Conditions.

B. Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities, determined as provided in the contract Documents.

**ARTICLE 6 - TIME OF COMPLETION**

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with article 9 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the work within the Contract Times.

**ARTICLE 7 - ATTACHEMENTS TO THIS BID**

- 7.01 The following documents are attached to and made a condition of the Bid:
  - A. Required Bid security in the form of a  Bid Bond (AIA A310) or  Certified Check (Check one)
  - B.
  - C.
  - D.
- 7.02 For convenience the "Compliance Statement & Certification of Non-Segregated Facilities" (Form RD 400-6), "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions" (Form AD-1048), and RD Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants, and Loans" are included as part of this bid form (Note: Lower tier, means lower tier to the owner). By signing the bid form the bidder represents that (s)he is also signing the below documents as necessitated depending on the bid amount of the contract. If the base bid plus any additive alternates exceeds \$10,000, then Compliance Statement (RD 400-6) applies, section 7.02.A. If the base bid plus any additive alternates exceeds \$25,000, then Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions (AD-1048) also applies, section 7.02.B. If the base bid plus any additive alternates exceeds \$100,000, then RD Instruction 1940-Q, Exhibit A-1, Certification for Contracts, Grants, and Loans also applies, section 7.02.C.

A. Compliance Statement

USDA Form Approved  
(Rev. 4-00)

COMPLIANCE STATEMENT

Form RD 400-6  
OMB No. 0575-0018

This statement relates to a proposed contract with \_\_\_\_\_

\_\_\_\_\_  
*(Name of borrower or grantee)*

who expects to finance the contract with assistance from either the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), or the Rural Utilities Service (RUS) or their successor agencies, United States Department of Agriculture (whether by a loan, grant, loan insurance, guarantee, or other form of financial assistance). I am the undersigned bidder or prospective contractor, I represent that:

- 1. I  have,  have not, participated in a previous contract or subcontract subject to Executive 11246 (regarding equal employment opportunity) or a preceding similar Executive Order.

2. If I have participated in such a contract or subcontract, I  have,  have not, filed all compliance reports that have been required to file in connection with the contract or subcontract.

If the proposed contract is for \$50,000 or more and I have 50 or more employees, I also represent that:

3. I  have,  have not previously had contracts subject to the written affirmative action programs requirements of the Secretary of Labor.

4. If I have participated in such a contract or subcontract, I  have,  have not developed and placed on file at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor.

I understand that if I have failed to file any compliance reports that have been required of me, I am not eligible and will not be eligible to have my bid considered or to enter into the proposed contract unless and until I make an arrangement regarding such reports that is satisfactory to either the RHS, RBS or RUS, or to the office where the reports are required to be filed.

I also certify that I do not maintain or provide for my employees any segregated facilities at any of my establishments, and that I do not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I certify further that I will not maintain or provide for my employees any segregated facilities at any of my establishments, and that I will not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I agree that a breach of this certification is a violation of the Equal Opportunity clause in my contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and wash rooms, restaurants and other eating areas time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. I further agree that (except where I have obtained identical certifications for proposed subcontractors for specific time periods) I will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that I will retain such certifications in my files; and that I will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods): (See Reverse).

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

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

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

B. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

U.S. DEPARTMENT OF AGRICULTURE

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY  
AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

**Before signing the bid form, read instructions for Form AD-1048, available for download at:**  
<http://www.usda.gov/rus/water/ees/englib/pdf/usda1048.pdf>

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

C. Certification for Contracts, Grants and Loans

RD Instruction 1940-Q

Exhibit A-1

CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

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

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

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

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

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

7.03 Naming of Subcontractors

The sub-contractors to whom sub-contracts will be awarded if the bidder is awarded a contract are: (Insert "self" if properly licensed and so intended. Insert "Not required" if such specialty work is not required)

Plumbing Contractor

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contractor License Number: \_\_\_\_\_

Heating and Air Conditioning Contractor

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contractor License Number: \_\_\_\_\_

Electrical Contractor

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contractor License Number: \_\_\_\_\_

Other

Classification: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contractor License Number: \_\_\_\_\_

Classification: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contractor License Number: \_\_\_\_\_

(Note: If the owner is a City, County or School District, failure to name the plumbing, HVAC and electrical subcontractors may render the bid "non-responsive" under State Law IC 67-2310)

\*If additional subcontractors or suppliers need to be listed, provide the information on a separate sheet.

**ARTICLE 8 - DEFINED TERMS**

8.01 The terms used in this Bid with the initial capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

**ARTICLE 9 - BID SUBMITTAL**

9.01 This Bid submitted by:

If Bidder is:

**An Individual**

Name (typed or printed): \_\_\_\_\_

By: \_\_\_\_\_  
*(Individual's signature)*

SEAL,  
if required  
by State

Doing business as: \_\_\_\_\_

**A Partnership**

Partnership Name: \_\_\_\_\_

By: \_\_\_\_\_  
*(Signature of general partner -- attach evidence of authority to sign)*

SEAL,  
if required  
by State

Name (typed or printed): \_\_\_\_\_

**A Corporation**

Corporation Name: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

Type (General Business, Profession, Service, Limited Liability): \_\_\_\_\_

By: \_\_\_\_\_  
*(Signature -- attach evidence of authority to sign)*

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

Attest \_\_\_\_\_  
*(Signature of Corporate Secretary)*

CORPORATE  
SEAL,  
if required by State

Date of Qualification to do business in \_\_\_\_\_ [State where Project is located] is \_\_\_/\_\_\_/\_\_\_\_\_

**A Joint Venture**

Name of Joint Venture: \_\_\_\_\_

First Joint Venture Name: \_\_\_\_\_

SEAL,  
if required  
by State

By: \_\_\_\_\_

*(Signature of joint venture partner -- attach evidence of authority to sign)*

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

Second Joint Venture Name: \_\_\_\_\_

SEAL,  
if required  
by State

By: \_\_\_\_\_

*(Signature of joint venture partner -- attach evidence of authority to sign)*

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

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

---

Bidder's Business address: \_\_\_\_\_

\_\_\_\_\_

Business Phone No. (\_\_\_\_) \_\_\_\_\_

Business FAX No. (\_\_\_\_) \_\_\_\_\_

Business E-Mail Address \_\_\_\_\_

State of Idaho Contractor License No. (If Applicable) \_\_\_\_\_

Employer's Tax ID No. \_\_\_\_\_

Phone and FAX Numbers, and Address for receipt of official communications, if different from Business contact information:

9.02 Bid submitted on \_\_\_\_\_, 20\_\_.

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# THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A310

## Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_  
(Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called the Principal, and \_\_\_\_\_  
(Here insert full name and address or legal title of Surety)

a corporation duly organized under the laws of the State of \_\_\_\_\_  
as Surety, hereinafter called the Surety, are held and firmly bound unto \_\_\_\_\_  
(Here insert full name and address or legal title of Owner)

as Oblige, hereinafter called the Oblige, in the sum of \_\_\_\_\_  
Dollars (\$ \_\_\_\_\_),

for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for \_\_\_\_\_  
(Here insert full name, address and description of project)

NOW, THEREFORE, if the Oblige shall accept the bid of the Principal and the Principal shall enter into a Contract with the Oblige in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Oblige the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Oblige may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

\_\_\_\_\_  
(Witness) \_\_\_\_\_ (Principal) \_\_\_\_\_ (Seal)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Witness) \_\_\_\_\_ (Surety) \_\_\_\_\_ (Seal)

\_\_\_\_\_  
(Title)

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# NOTICE OF AWARD

---

TO:

PROJECT DESCRIPTION:

The OWNER has considered the BID submitted by you for the above described WORK in response to its Advertisement for Bids dated \_\_\_\_\_, and Information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of \_\_\_\_\_.

You are required by the Instructions for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance BOND, Payment BOND and certificates of insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said BONDS within ten (10) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER's acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
*Owner Signature*

by \_\_\_\_\_

Title \_\_\_\_\_

---

## ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged

by \_\_\_\_\_.

this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signed \_\_\_\_\_

Title \_\_\_\_\_

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# AIA DOCUMENT A101-1997

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is a STIPULATED SUM

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_  
in the year \_\_\_\_\_  
*(In words, indicate day, month and year)*

**BETWEEN** the Owner:  
*(Name, address and other information)*

and the Contractor:  
*(Name, address and other information)*

The Project is:  
*(Name and location)*

The Architects:  
*(Name, address and other information)*

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

WARNING - COPYRIGHTED  
Rural Development - CP Training Use Only  
CAN NOT BE REPRODUCED  
OR EXCERPTED FROM



© 1997 AIA®  
**AIA DOCUMENT A101-1997**  
OWNER-CONTRACTOR  
AGREEMENT

The American Institute  
of Architects  
1735 New York Avenue, N.W.  
Washington, D.C. 20006-5292

The Owner and Contractor agree as follows.

**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

**ARTICLE 2 THE WORK OF THIS CONTRACT**

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

3.1 The date of commencement of the Work shall be the date of this Agreement, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

3.2 The Contract Time shall be measured from the date of commencement.

3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than \_\_\_\_\_ days from the date of commencement, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)*

, subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)*



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**AIA DOCUMENT A101-1997**  
OWNER-CONTRACTOR  
AGREEMENT

The American Institute  
of Architects  
1735 New York Avenue, N.W.  
Washington, D.C. 20006-5292

**ARTICLE 4 CONTRACT SUM**

4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), subject to additions and deductions as provided in the Contract Documents.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

4.3 Unit prices, if any, are as follows:

**ARTICLE 5 PAYMENTS**

**5.1 PROGRESS PAYMENTS**

5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

5.1.3 Provided that an Application for Payment is received by the Architect not later than the \_\_\_\_\_ day of a month, the Owner shall make payment to the Contractor not later than the \_\_\_\_\_ day of the \_\_\_\_\_ month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than \_\_\_\_\_ days after the Architect receives the Application for Payment.

5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- 1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of \_\_\_\_\_ percent ( \_\_\_\_\_ %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Subparagraph 7.3.8 of AIA Document A201-1997.
- 2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of \_\_\_\_\_ percent ( \_\_\_\_\_ %);
- 3 Subtract the aggregate of previous payments made by the Owner; and
- 4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201-1997.

5.1.7 The progress payment amount determined in accordance with Subparagraph 5.1.6 shall be further modified under the following circumstances:

- 1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and (Subparagraph 9.8.5 of AIA Document A201-1997 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- 2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of AIA Document A201-1997.

5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Clauses 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## 5.2 FINAL PAYMENT

5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- 1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Subparagraph 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- 2 a final Certificate for Payment has been issued by the Architect.



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5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

**ARTICLE 6 TERMINATION OR SUSPENSION**

6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-1997.

6.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997.

**ARTICLE 7 MISCELLANEOUS PROVISIONS**

7.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

7.3 The Owner's representative is:  
*(Name, address and other information)*

7.4 The Contractor's representative is:  
*(Name, address and other information)*

7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

7.6 Other provisions:



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**ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS**

8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A101-1997.

8.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated \_\_\_\_\_, and are as follows:

Document	Title	Pages
----------	-------	-------

8.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 8.1.3, and are as follows:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
---------	-------	-------

8.1.5 The Drawings are as follows, and are dated \_\_\_\_\_ unless a different date is shown below:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
--------	-------	------

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8.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:  
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

\_\_\_\_\_  
**OWNER** (Signature)

\_\_\_\_\_  
**CONTRACTOR** (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

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**EXHIBIT GC-A**  
Certificate of Owner's Attorney

I, the undersigned, \_\_\_\_\_, the duly authorized and acting legal representative of \_\_\_\_\_, do hereby certify as follows:

I have examined the attached Contract(s) and performance and payment bond(s) and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements is adequate and has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with the terms, conditions, and provisions thereof.

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

MODIFICATIONS TO AIA DOCUMENT A101-1997, *Standard Form of Agreement Between Owner and Contractor*

The provisions of these Modifications shall delete, replace and supplement the provisions contained in the "*Standard Form of Agreement Between Owner and Contractor*", AIA Document A101-1997 Edition. The provisions contained in these Modifications shall 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 3, DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 Delete paragraph 3.1 and substitute the following:

3.1 The date of commencement shall be contained in the Notice to Proceed.

3.3 Add the following sentences to paragraph 3.3

If the Work is not substantially complete on or before this date, or within this period of time, or extension thereof granted by the Owner, the Contractor shall pay to the Owner liquidated damages in the sum of

for each calendar day of delay. Any sums that may be due the Owner as liquidated damages may be deducted from any monies due or to become due the Contractor under the Contract or may be collected from the Contractor's surety.

ARTICLE 5, PAYMENTS

5.1.6 Insert "5%" and "5%" in the appropriate spaces in subparagraphs 5.1.6.1 and 5.1.6.2.

5.1.8 Insert the following sentences in subparagraph 5.1.8:

The amount retained shall be 5% of the value of the work, materials and equipment. Upon substantial completion owner shall pay an amount sufficient to increase total payments to Contractor to 95% of the work completed, less such amounts equivalent to the value of the work, materials and equipment determined incomplete by the Engineer in excess of the 5% retainage.

5.2 Add the following subparagraph to article 5.2:

5.2.3 Amounts withheld from the final payment to cover any incomplete work are not considered retainage and shall not be paid to the contractor until the work is actually completed and accepted by the owner. Such withholdings shall not be less than 150% of the estimated cost to complete the work.

ARTICLE 7, MISCELLANEOUS PROVISIONS

7.6 Add the following subparagraphs to article 7.6:

7.6.1 This Agreement shall not become effective until concurred in writing by the Agency. Such concurrence shall be evidenced by the signature of a duly authorized representative of the Agency in the space provided at the end of the Agency Attachment to this Agreement.

7.6.2 The Contractor shall attend on-site progress meetings no less than once a month during the periods of active construction.

ARTICLE 8, ENUMERATION OF CONTRACT DOCUMENTS

Add the following to Subparagraph 8.1.3:

Modifications to the Standard Form of Agreement Between Owner and Contractor (RD Instruction 1924-A, Guide 1, Attachment 1, IDAHO VERSION)

General Conditions of the Contract for Construction, AIA A201-1997  
Modifications to the General Conditions of the Contract for Construction (RD Instruction 1924-A, Guide 1, Attachment 5, IDAHO VERSION)

Federal Supplementary Conditions of the Contract for Construction (AIA) Document A201/SC)

Modifications to the Federal Supplementary Conditions of the Contract For Construction (RD Instruction 1924-A, Guide 1, Attachment 6, IDAHO VERSION)

Other Special Conditions:  Are attached.  Are not attached.

Subparagraph 8.1.7:

Invitation for Bids

Instructions to Bidders (AIA Document A701)

Modifications to the Instructions to Bidders (RD Instruction 1924-A, Guide 1, Attachment 8, IDAHO VERSION)

Bid Form (CF Bid Form, IDAHO VERSION)

Bid Bond (AIA A310-1970)

Performance & Payment Bonds (AIA A312-1984)

SIGNATURE BLOCK:

The following signature block shall replace the signature block following paragraph 9.1.7:

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below:

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

OWNER:  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

CONTRACTOR:  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

AGENCY CONCURRENCE:

By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

The concurrence so evidenced by the Agency shall in no way commit the Agency to render financial assistance to the Owner and is without liability to the Agency for any payment hereunder, but in the event such assistance is provided, the concurrence shall signify the provisions of this Agreement are consistent with Agency requirements.

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5. SUBCONTRACTORS
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13. MISCELLANEOUS PROVISIONS
14. TERMINATION OR SUSPENSION OF THE CONTRACT

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document has been approved and endorsed by The Associated General Contractors of America.



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## ARTICLE 1 GENERAL PROVISIONS

### 1.1 BASIC DEFINITIONS

#### 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

#### 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect, or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

#### 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

### 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are



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complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**1.2.3** Unless otherwise stated in the Contract Documents, words which have well known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **1.3 CAPITALIZATION**

**1.3.1** Terms capitalized in these General Conditions include those which (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

### **1.4 INTERPRETATION**

**1.4.1** In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### **1.5 EXECUTION OF CONTRACT DOCUMENTS**

**1.5.1** The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

**1.5.2** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

### **1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

**1.6.1** The Drawings, Specifications and other documents, including those in electronic form prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in



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the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.

## ARTICLE 2 OWNER

### 2.1 GENERAL

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Subparagraph 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

2.2.2 Except for permits and fees, including those required under Subparagraph 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

### 2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in



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accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

#### 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### ARTICLE 3 CONTRACTOR

#### 3.1 GENERAL

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

#### 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require.

3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.



**3.2.3** If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

### **3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

**3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its subcontractors.

**3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **3.4 LABOR AND MATERIALS**

**3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**3.4.2** The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

**3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

### **3.5 WARRANTY**

**3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract



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Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### 3.6 TAXES

3.6.1 The Contractor shall pay sales, consumer use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### 3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### 3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

1. allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
2. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
3. whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.1 and (2) changes in Contractor's costs under Clause 3.8.2.2.

3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.



### 3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

### 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### 3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

### 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by



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the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

**3.12.6** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

**3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval hereof.

**3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

**3.12.10** The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Subparagraph 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.



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### 3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### 3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### 3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

### 3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for management of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### 3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Paragraph 11.3, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be



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construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

**3.18.2** In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### ARTICLE 4 ADMINISTRATION OF THE CONTRACT

##### 4.1 ARCHITECT

**4.1.1** The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

**4.1.2** Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

**4.1.3** If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

##### 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

**4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Paragraph 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**4.2.2** The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1.

**4.2.3** The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.



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**4.2.4 Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

**4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.**

**4.2.6 The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.**

**4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.**

**4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.**

**4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.**

**4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.**

**4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor.**



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The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

**4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

**4.2.13** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

### **4.3 CLAIMS AND DISPUTES**

**4.3.1** Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**4.3.2** Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

**4.3.3** Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Subparagraph 9.7.1 and Article 24, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**4.3.4** Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.



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**4.3.5 Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.6.

**4.3.6** If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3.

**4.3.7 CLAIMS FOR ADDITIONAL TIME**

**4.3.7.1** If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**4.3.7.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

**4.3.8 Injury or Damage to Person or Property.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**4.3.9** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

**4.3.10 Claims for Consequential Damages.** The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Subparagraph 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

**4.4 RESOLUTION OF CLAIMS AND DISPUTES**

**4.4.1 Decision of Architect.** Claims, including those alleging an error or omission by the Architect but excluding those arising under Paragraphs 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a



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condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

**4.4.2** The Architect will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

**4.4.3** In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

**4.4.4** If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

**4.4.5** The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.

**4.4.6** When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

**4.4.7** Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**4.4.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by arbitration.

#### **4.5 MEDIATION**

**4.5.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be



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subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

**4.5.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**4.5.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### **4.6 ARBITRATION**

**4.6.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in subparagraphs 4.3.10, 9.10.4 and 10.3, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 4.5.

**4.6.2** Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

**4.6.3** A demand for arbitration shall be made within the time limits specified in subparagraphs 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.

**4.6.4 Limitation on Consolidation or Joinder.** No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor or a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.



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**4.6.5 Claims and Timely Assertion of Claims.** The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**4.6.6 Judgment on Final Award.** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

## ARTICLE 5 SUBCONTRACTORS

### 5.1 DEFINITIONS

**5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

**5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

**5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

**5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**5.2.4** The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitute.

### 5.3 SUBCONTRACTUAL RELATIONS

**5.3.1** By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the



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Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

1. assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
2. assignment is subject to the prior rights of the surety, if any obligated under bond relating to the Contract.

5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

### ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

#### 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Paragraph 4.3.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the



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Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

## 6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Subparagraph 3.14.

## 6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### 7.1 GENERAL

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.



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## 7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

1. change in the Work;
2. the amount of the adjustment, if any, in the Contract Sum; and
3. the extent of the adjustment, if any, in the Contract Time.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

## 7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum, and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. unit prices stated in the Contract Documents or subsequently agreed upon;
3. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
4. as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time by the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

1. costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
2. costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
3. rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;



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- 4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- 5 additional costs of supervision and field office personnel directly attributable to the change.

7.3.7. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

#### 7.4 MINOR CHANGES IN THE WORK

7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

### ARTICLE 8 TIME

#### 8.1 DEFINITIONS

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement.

8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.8.

8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### 8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given



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by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

**8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

**8.3 DELAYS AND EXTENSIONS OF TIME**

**8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

**8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

**8.3.3** This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

**ARTICLE 9 PAYMENTS AND COMPLETION**

**9.1 CONTRACT SUM**

**9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**9.2 SCHEDULE OF VALUES**

**9.2.1** Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

**9.3 APPLICATIONS FOR PAYMENT**

**9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

**9.3.1.1** As provided in Subparagraph 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**9.3.1.2** Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.



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**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. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site 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, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **9.4 CERTIFICATES FOR PAYMENT**

**9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

**9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon substantial completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's



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opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.2, because of:

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. damage to the Owner or another contractor;
6. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. persistent failure to carry out the Work in accordance with the Contract Documents.

**9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

## **9.6 PROGRESS PAYMENTS**

**9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**9.6.2** The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**9.6.4** Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

**9.6.5** Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

**9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.



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## 9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

## 9.8 SUBSTANTIAL COMPLETION

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## 9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Clause 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and



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have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### **9.10 FINAL COMPLETION AND FINAL PAYMENT**

**9.10.1** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5) if required by the Owner, other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that



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portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

1. liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
2. failure of the Work to comply with the requirements of the Contract Documents; or
3. terms of special warranties required by the Contract Documents.

**9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material Supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### 10.1 SAFETY PRECAUTIONS AND PROGRAMS

**10.1.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### 10.2 SAFETY OF PERSONS AND PROPERTY

**10.2.1** The Contractor shall take reasonable precautions for safety of and shall provide reasonable protection to prevent damage, injury or loss to:

1. employees on the Work and other persons who may be affected thereby;
2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**10.2.2** The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

**10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.



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**10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**10.2.7** The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

### **10.3 HAZARDOUS MATERIALS**

**10.3.1** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

**10.3.2** The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut down, delay and start-up which adjustments shall be accomplished as provided in Article 7.

**10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Subparagraph 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

**10.4** The Owner shall not be responsible under Paragraph 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

**10.5** If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

### **10.6 EMERGENCIES**

**10.6.1** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or



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extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

### 11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. claims for damages insured by usual personal injury liability coverage;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
7. claims for bodily injury or property damage arising out of completed operations; and
8. claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

### 11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

### 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner



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shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Clauses 11.1.1.2 through 11.1.1.5.

**11.3.2** To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

**11.3.3** The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Paragraph 11.1.

#### **11.4 PROPERTY INSURANCE**

**11.4.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

**11.4.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

**11.4.1.2** If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

**11.4.1.3** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

**11.4.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**11.4.1.5** Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial



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occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**11.4.2 Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

**11.4.3 Loss of Use Insurance.** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

**11.4.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

**11.4.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**11.4.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Paragraph 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

**11.4.7 Waivers of Subrogation.** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Paragraph 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.



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11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Paragraph 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Paragraphs 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

#### 11.5 PERFORMANCE BOND AND PAYMENT BOND

11.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### 12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the Architect's request, or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.



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## 12.2 CORRECTION OF WORK

### 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

### 12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 In addition to the Contractor's obligations under Paragraph 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Paragraph 2.4.

12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Paragraph 12.2.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.5 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Subparagraph 12.2.1 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### 12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.



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## ARTICLE 13 MISCELLANEOUS PROVISIONS

### 13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the law of the place where the Project is located.

### 13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Subparagraph 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### 13.3 WRITTEN NOTICE

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

### 13.4 RIGHTS AND REMEDIES

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### 13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Subparagraph 13.5.3, shall be at the Owner's expense.



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**13.5.3** If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

**13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**13.5.5** If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**13.5.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### **13.6 INTEREST**

**13.6.1** Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### **13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

**13.7.1** As between the Owner and Contractor:

- 1 Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- 2 Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- 3 After Final Certificate for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **14.1 TERMINATION BY THE CONTRACTOR**

**14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- 1** issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- 2** an act of government, such as a declaration of national emergency which requires all Work to be stopped;



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- 3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- 4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Subparagraph 2.2.1.

**14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**14.1.3** If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

**14.1.4** If the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.3.

#### **14.2 TERMINATION BY THE OWNER FOR CAUSE**

**14.2.1** The Owner may terminate the Contract if the Contractor:

- 1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- 2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- 3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- 4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**14.2.2** When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety,

- 1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- 2 accept assignment of subcontracts pursuant to Paragraph 5.4; and
- 3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**14.2.3** When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.



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**14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

**14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Subparagraph 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. that an equitable adjustment is made or denied under another provision of the Contract.

**14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

1. cease operations as directed by the Owner in the notice;
2. take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.



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GENERAL CONDITIONS  
OF THE CONTRACT FOR  
CONSTRUCTION

The American Institute  
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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.

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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document should be used only with the AIA Document A201-1997, General Conditions of the Contract for Construction. Do not use with other general conditions unless this document is modified.



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 CONDITIONS OF  
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## MODIFICATIONS TO THE GENERAL CONDITIONS

1.5.1 Delete Subparagraph 1.5.1 and substitute the following:

1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or the Contractor or both do not sign all the Contract Documents, the Architect will identify such unsigned Documents. Such unsigned Documents shall be enumerated in the Owner-Contractor Agreement.

3.8.1 Delete Subparagraph 3.8.1 and substitute the following:

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts as the Owner may direct and by such persons as the Owner shall have determined by competitive bidding through public advertising. The Contractor shall purchase the items covered by these allowances by the award of subcontracts to the lowest responsive and responsible bidders.

5.2.2 Delete Subparagraph 5.2.2 and substitute the following:

5.2.2 The Contractor shall not contract with any person or entity declared ineligible under federal laws or regulations from participating in federally assisted construction projects or to whom the Owner or the Architect has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom the Contractor has a reasonable objection. Consent is required for subcontractors for critical systems, subsystems or components, or other subcontracts selected by the Owner as needing special surveillance.

10.2 Add the following Subparagraphs 10.2.8 through 10.2.11:

10.2.8 The Contractor shall:

- 1 Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
- 2 Ensure that any additional measures the Owner determines to be reasonably necessary for the purposes are taken.

10.2.9 If this Contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

10.2.10 Whenever the Owner becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Owner's personnel, the Owner shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action, the Owner may issue an order promptly stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the Contract Sum or extension of the Contract Time on any stop work order issued under this Subparagraph 10.2.10.

10.2.11 If the Contract will involve (a) Work of a long duration or hazardous nature, or (b) performance on an Owner's facility that, on the advice of technical representatives, involves hazardous materials or operations that might endanger the safety of the public or Owner's personnel or property, before commencing the Work the Contractor shall:

- 1 Submit a written proposed plan for implementing Subparagraphs 10.2.8-10.2.11. The plan shall include an analysis of the significant hazards to life, limb and property inherent in Work performance and a plan for controlling these hazards; and



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- 2 Meet with representatives of the Owner to discuss and develop a mutual understanding relative to administration of the overall safety program.

11.1 Add the following Subparagraph 11.1.4 to 11.1:

11.1.4.1 The limits for workers' compensation and Employers' Liability insurance shall meet statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

- (a) State: \$ \_\_\_\_\_ Statutory \$ \_\_\_\_\_
- (b) Applicable Federal: \$ \_\_\_\_\_ Statutory \$ \_\_\_\_\_  
(e.g., Longshoremen's)
- (c) Employer's Liability: \$100,000 per Accident, at least.  
\$ \_\_\_\_\_ Disease, Policy Limit  
\$ \_\_\_\_\_ Disease, Each Employee

11.1.4.2 The limits for Commercial General Liability insurance including coverage for Premises-Operations, Independent Contractors Protective, Products-Completed Operations Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards) shall be as follows:

- \$500,000 Each Occurrence, at least
- \$ \_\_\_\_\_ General Aggregate
- \$ \_\_\_\_\_ Personal and Advertising Injury
- \$ \_\_\_\_\_ Products-Completed Operations
- \$ \_\_\_\_\_ Aggregate

- 1 The policy shall be endorsed to have the General Aggregate apply to this Project only.
- 2 The Contractual Liability insurance shall include coverage sufficient to meet the obligations of AIA Document A201-1997 under Paragraph 3.18.
- 3 Products and Completed Operations insurance shall be maintained for a minimum period of at least \_\_\_\_\_ year(s) after either 90 days following Substantial Completion or final payment, whichever is earlier.

11.1.4.3 Automobile Liability Insurance (owned, non-owned and hired vehicles) for bodily injury and property damage:

- (a) Bodily Injury: \$ \_\_\_\_\_  
\$200,000 Each Person, at least  
\$500,000 Each Occurrence, at least
- (b) Property Damage: \$ \_\_\_\_\_  
\$25,000 Each Occurrence, at least

11.1.4.4 If the General Liability Coverages are provided by a Commercial Liability policy, the:

- (a) General Aggregate shall be not less than \$ \_\_\_\_\_ and it shall apply, in total, to this Project only.
- (b) Fire Damage Limit shall be not less than \$ \_\_\_\_\_ on any one Fire.
- (c) Medical Expense Limit shall be not less than \$ \_\_\_\_\_ on any one person.



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**11.1.4.5 Umbrella Excess Liability:**

\$ \_\_\_\_\_ over primary insurance  
\$ \_\_\_\_\_ retention for self-insured hazards each occurrence.

**11.1.4.6** If an exposure exists, Aircraft Liability (owned and non-owned) and Watercraft Liability (owned and non-owned) with limits approved by the Owner shall be provided.

**11.1.4.7** The Contractor shall carry insurance in addition to that specifically named above as follows:

Coverage	Amount
_____	\$ _____

**11.4** Paragraph 11.4.1.1 Property Insurance, shall be modified as described below. (Indicate either Option A [Owner carries] or Option B [Contractor carries]. Fill in the blanks in Option A only if that is the selected option.)

**OPTION A**

**11.4.1.3** Add the following sentence to Clause 11.4.1.3:  
This property insurance is written with a deductible of  
\$ \_\_\_\_\_ per occurrence with a deductible aggregate of  
\$ \_\_\_\_\_

**END OF OPTION A, PARAGRAPH 11.4**

**OPTION B**

**11.4.1** Modify the first sentence of Subparagraph 11.4.1 as follows: delete "Unless otherwise provided, the Owner" and substitute "The Contractor". Add the following sentence: "If the Owner is damaged by the failure of the Contractor to purchase and maintain such insurance without so notifying the Owner in writing, then the Contractor shall bear all reasonable costs attributable thereto."

**11.4.1.2** Delete Clause 11.4.1.2.

**11.4.1.3** Modify Clause 11.4.1.3. by substituting "Contractor" for "Owner".

**11.4.4** Delete Subparagraph 11.4.4.

**11.4.6** Modify Subparagraph 11.4.6 by making the following substitutions:

**11.4.6 (1)** In the first sentence, substitute "Contractor" for "Owner" and "Owner" for "Contractor," and (2) Substitute "Owner" for "Contractor" at the end of the last sentence.

**11.4.7** Modify Subparagraph 11.4.7 by substituting "Contractor" for "Owner" at the end of the first sentence.

**11.4.8** Modify Subparagraph 11.4.8 by substituting "Contractor" for "Owner" as fiduciary; except that at the first reference to "Owner" in the first sentence, the word "this" should be substituted for "Owner's".



11.4.9 Modify Subparagraph 11.4.9 by substituting "Contractor" for "Owner" each time the latter word appears except in the last sentence.

11.4.10 Modify Subparagraph 11.4.10 by substituting "Contractor" for "Owner" each time the latter word appears.

**END OF OPTION B, PARAGRAPH 11.4**

11.5.1 Delete Subparagraph 11.5.1 and substitute the following:

11.5.1 If the Contract Sum is more than \$100,000, the Contractor shall furnish a Performance Bond on Standard Form 25 in an amount equal to one hundred percent (100%) of the Contract Sum as security for the faithful performance of this Contract. If the Contract amount is increased, the Owner may require a corresponding increase in the amount of the bond. The Owner may also secure additional protection by directing the Contractor to add a penal amount to the existing bond or to obtain an additional bond. The Contractor shall furnish a Payment Bond on Standard Form 25-A in an amount equal to:

1. 50 percent (50%) of the Contract Sum if the Contract Sum is not more than \$1 million; or
2. 40 percent (40%) of the Contract Sum if the Contract Sum is more than \$1 million but not more than \$5 million; or
3. \$2.5 million if the Contract Sum is more than \$5 million.

If the original Contract Sum is \$5 million or less, the Owner may require additional protection if the Contract Sum is increased. The penal amount of the total protection shall meet the requirements of this Subparagraph 11.5.1. The Owner may also secure additional protection by directing the Contractor to increase the penal sum of the existing bond or to obtain an additional bond.

11.5.2 Delete Subparagraph 11.5.2 and substitute the following:

11.5.2 The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Owner, within the time period specified in the bidding requirements or otherwise specified by the Owner but, in any event, before commencement of the Work.

11.5.3 Add the following Subparagraph 11.5.3 to 11.5:

11.5.3 The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570.

**ARTICLE 15 MISCELLANEOUS SUPPLEMENTARY CONDITIONS**

**15.1 MATERIALS AND WORKMANSHIP**

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

15.1.2 The Contractor shall obtain the Owner's approval of the machinery and mechanical and other equipment to be incorporated into the Work. When requesting approval, the Contractor shall furnish to the Owner the name of the manufacturer, the model number and other information concerning the performance, capacity, nature and rating of the machinery and mechanical and other equipment. When required by the Contract Documents or by the Owner,



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the Contractor shall also obtain the Owner's approval of the material or articles which the Contractor contemplates incorporating into the Work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

## 15.2 FEDERAL INSPECTION

15.2.1 The authorized representatives and agents of the federal government shall, at all reasonable times, have access to the premises where any of the Work is located.

15.2.2 The Contractor shall make available records, which include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data or in any other form, and other supporting evidence to satisfy contract negotiation, administration and audit requirements of the contracting agencies and the Comptroller General for three years after final payment or as specified below, whichever period expires first.

1. Accounts receivable invoices, adjustments to the accounts, invoice registers, carrier freight bills, shipping orders and other documents which detail the materials or services billed on the related invoices: Retain four years.
2. Material, work order or service order files, consisting of purchase requisitions or purchase orders for materials or services, or orders for transfer of material or supplies: Retain four years.
3. Cash advance recapitulations, prepared as posting entries to accounts receivable ledgers for amounts of expense vouchers prepared for employees' travel and related expenses: Retain four years.
4. Paid, canceled and voided checks, other than those issued for the payment of salary and wages: Retain four years.
5. Accounts payable records to support disbursements of funds for materials, equipment, supplies and services, containing originals or copies of the following and related documents: remittance advices and statements, vendors' invoices, invoice audits and distribution slips, receiving and inspection reports or comparable certifications of receipt and inspection of materials or services, and debit and credit memoranda: Retain four years.
6. Labor cost distribution cards or equivalent documents: Retain two years.
7. Petty cash records showing description of expenditures, to whom paid, name of person authorizing payment and date, including copies of vouchers and other supporting documents: Retain two years.
8. Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements: Retain four years.
9. Clock cards or other time and attendance cards: Retain two years.
10. Paid checks, receipts for wages paid in cash or other evidence of payments for services rendered by employees: Retain two years.
11. Store requisitions for materials, supplies, equipment and services: Retain two years.
12. Work orders for maintenance and other services: Retain four years.
13. Equipment records, consisting of equipment usage and status reports and equipment repair orders: Retain four years.
14. Expendable property records, reflecting accountability for the receipt and use of materials in the performance of a contract: Retain four years.
15. Receiving and inspection report records, consisting of reports reflecting receipt and inspection of supplies, equipment and materials: Retain four years.



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- 16 Purchase order files for supplies, equipment, materials or services used in the performance of the Contract; supporting documentation and backup files including, but not limited to, invoices and memoranda; e.g., memoranda of negotiations showing the principal elements of subcontract price negotiations: Retain four years.
- 17 Production records of quality control, reliability and inspection: Retain four years.

15.2.3 The Contractor shall make available the foregoing records and supporting evidence for a longer period of time than is required in Subparagraph 15.2.2 if:

- 1 A longer retention period is specified in the Contract; or
- 2 The Contractor, for its own purposes, retains the foregoing records and supporting evidence for a longer period. Under this circumstance, the retention period shall be the period of the Contractor's retention or three years after final payment, whichever period expires first.

### 15.3 LANDS AND RIGHTS-OF-WAY

15.3.1 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 and shall deliver such Owner-furnished property and any other Owner-furnished property described in the Contract Documents to the Contractor, for use in connection with and under the terms of this Contract, together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Owner-furnished property").

15.3.2 The delivery or performance dates for this Contract are based upon the expectation that Owner-furnished property suitable for use (except for property furnished "as is") will be delivered to the Contractor at the times stated in the Contract Documents or, if not so stated, in sufficient time to enable the Contractor to meet the Contract's delivery or performance dates.

15.3.3 If Owner-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Owner detailing the facts and, as directed by the Owner and at Owner's expense, either repair, modify, return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Owner shall make an equitable adjustment in the Contract Sum.

15.3.4 If Owner-furnished property is not delivered to the Contractor by the required time, the Owner shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused by the Contractor and shall make an equitable adjustment in the Contract Sum.

### 15.4 EQUAL OPPORTUNITY

15.4.1 If, during any 12-month period (including the 12 months preceding the award of this Contract), the Contractor has been or is awarded nonexempt federal contracts or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with Subparagraphs 15.4.2 and 15.4.3 below. Upon request, the Contractor shall provide information necessary to determine the applicability of this Paragraph 15.4.

15.4.2 During performance of this Contract, the Contractor shall:

- 1 not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.



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2. take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. This shall include, but not be limited to:
  - (i) Employment;
  - (ii) Upgrading;
  - (iii) Demotion;
  - (iv) Transfer;
  - (v) Recruitment or recruitment advertising;
  - (vi) Layoff or termination;
  - (vii) Rates of pay or other forms of compensation; and
  - (viii) Selection for training, including apprenticeship.
3. post in conspicuous places available to employees and applicants for employment the notices to be provided by the Owner that explain this Paragraph 15.4.
4. in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
5. send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Owner advising the labor union or worker representative of the Contractor's commitments under this Paragraph 15.4, and post copies of the notice in conspicuous places available to employees and applicants for employment.
6. comply with Executive Order 11246, as amended, and the rules, regulations and orders of the Secretary of Labor.
7. furnish to the Owner all information required by Executive Order 11246, as amended, and by the rules, regulations and orders of the Secretary of Labor, Standard Form 100 (BEO-1), or any successor form, in the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.
8. permit access to its books, records and accounts by the Owner or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations and orders.
9. include the terms and conditions of Subparagraphs 15.4.2 and 15.4.3 in every subcontract or purchase order that is not exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
10. take such action with respect to any subcontract or purchase order as the Owner may direct as a means of enforcing this Paragraph 15.4, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into litigation to protect the interest of the United States.

**15.4.3** If the OFCCP determines that the Contractor is not in compliance with Paragraphs 15.4 or any rule, regulation or order of the Secretary of Labor, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations and orders of the Secretary of Labor, or as otherwise provided by law.

#### **15.5 CERTIFICATION OF NONSEGREGATED FACILITIES**

(Applicable to Contracts and Subcontracts exceeding \$10,000 which are not exempt from the provisions of Paragraph 15.4, "Equal Opportunity," of this Article 15.)



15.5.1 As used in this Paragraph 15.5, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin because of habit, local custom or otherwise.

15.5.2 By entering into the Agreement to perform the Work required under the Contract Documents, the Contractor certifies that the Contractor does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of Paragraph 15.4. The Contractor further agrees that (except where it has obtained identical certifications from proposed Subcontractors for specific time periods) the Contractor will obtain identical certifications from proposed Subcontractors before the award of subcontracts under which the Subcontractor will be subject to the Equal Opportunity clause; will retain the certifications in the Contractor's files; and will forward the following notice to such proposed Subcontractors (except if the proposed Subcontractors have submitted identical certifications for specific time periods).

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OR REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES**

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the Subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semi-annually, or annually).

15.5.3 The Contractor agrees that a breach of this certification or a breach of a Subcontractor's identical certification is a violation of Paragraph 15.4. The penalty for making false statements in certifications required by this Paragraph 15.5 is prescribed in 18 U.S.C. 1001.

**15.6. MINIMUM WAGES**

15.6.1 Unless this Contract has been administratively exempted by the Secretary of Labor or exempted by 41 USC 356 (as interpreted in Subpart C of 29 CFR Part 4), this Contract is subject to Subparagraphs 15.6.2 through 15.6.4 and to all other applicable provisions of the Service Contract Act of 1965 and regulations of the Secretary of Labor (29 CFR Part 4).

15.6.2 Each service employee employed in the performance of this Contract by the Contractor or any Subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this Contract.

15.6.3 If a wage determination is attached to this Contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the Contract (i.e., the Work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in Subparagraph 15.6.2 through Subparagraph 15.6.4.



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**15.6.3.1** This conforming procedure shall be initiated by the Contractor prior to the performance of Work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Owner no later than 30 days after the unlisted class of employee performs any Work. The Owner shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Owner within 30 days of receipt that additional time is necessary.

**15.6.3.2** The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Owner who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

**15.6.3.3** In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to Subparagraphs 15.6.2 through 15.6.4, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the Contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with Subparagraphs 15.6.2 through 15.6.4 prior to the performance of Work by the unlisted class of employees, the Contractor shall advise the Owner of the action taken but the other procedures in Clause 15.6.3.1 need not be followed. No employee engaged in performing Work shall in any event be paid less than the currently applicable minimum wage specified under section (6)(a)(1) of the Fair Labor Standards Act of 1938, as amended.

**15.6.3.4** The wage rate and fringe benefits finally determined under this Subparagraph 15.6.3 shall be paid to all employees performing in the classification from the first day on which Work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced Work shall be a violation of the Service Contract Act of 1965 and this Contract.

**15.6.4** If the term of this Contract is more than one year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this Contract shall be subject to adjustment after one year and not less often than once every two years, under wage determinations issued by the Wage and Hour Division.

**15.6.5** The Contractor or Subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under Subparagraph 15.6.3 by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

**15.6.6** In the absence of a minimum wage attachment for this Contract, neither the Contractor nor any Subcontractor shall pay any person performing Work under this Contract (regardless of whether the person is a service employee) less than the minimum wage specified by section



(6)(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this Paragraph 15.6 shall relieve the Contractor or any Subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

**15.6.7** If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### **15.7 WITHHOLDING**

**15.7.1** The Owner shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this Contract or any other federal contract with the same Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the Work, all or part of the wages required by the Contract, the Owner may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased.

#### **15.8 PAYROLLS AND BASIC RECORDS**

**15.8.1** Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work. Such records shall contain the name, address and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under Subparagraph 15.6.7, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. If the Contractor employs apprentices or trainees under an approved program, the Contractor shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

**15.8.2** The Contractor shall submit weekly for each week in which any Work is performed a copy of all payrolls to the Owner. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Subparagraph 15.8.1 (This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents U.S. Government Printing Office, Washington, D.C. 20402). The Contractor is responsible for the submission of copies of payrolls by Subcontractors.



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**15.8.3** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract, which shall certify the following:

- 1 That the payroll for the payroll period contains the information required to be maintained under Subparagraph 15.8.1 and such information is correct and complete;
- 2 That each laborer or mechanic (including each helper, apprentice and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and
- 3 That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of Work performed as specified in the applicable wage determination incorporated in the Contract.

**15.8.4** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by Subparagraph 15.8.3.

**15.8.5** The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

**15.8.6** The Contractor or Subcontractor shall make the records required under Subparagraph 15.8.1 available for inspection, copying or transcription by the Owner or authorized representatives of the Owner or the Department of Labor. The Contractor or Subcontractor shall permit the Owner or representatives of the Owner or the Department of Labor to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Owner may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.2.

**15.8.7** The Contractor or Subcontractor shall maintain payrolls and basic payroll records during the course of the Work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing contained in this Subparagraph 15.8.7 shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act. The records to be maintained under this Subparagraph 15.8.7 shall be made available by the Contractor or Subcontractor for inspection, copying or transcription by the authorized representatives of the Owner and the Department of Labor, and the Contractor or Subcontractor shall permit such representatives to interview employees during working hours on the job.

#### **15.9 APPRENTICES AND TRAINEES**

**15.9.1** Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the Work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program who is not



individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. Where the Contractor is performing construction on a Project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a state apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

**15.9.2 Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman's wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of Work actually performed. In addition, any trainee performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the Work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.



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### 15.9.3 EQUAL EMPLOYMENT OPPORTUNITY

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

### 15.10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS

15.10.1 The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

### 15.11 SUBCONTRACTS

15.11.1 The Contractor shall insert in any subcontracts the provisions contained in Paragraphs 15.7 through 15.16 and such other provisions as the Owner may by appropriate instructions require, and also a provision requiring Subcontractors to include these provisions in any sub-subcontracts. The Contractor shall be responsible for compliance by any Subcontractor or Sub-subcontractor with Paragraphs 15.7 through 15.16.

15.11.2 Within 14 days after award of the Contract, the Contractor shall deliver to the Owner a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the Subcontractor's signed and dated acknowledgment that the provisions required by Subparagraph 15.11.1 have been included in the subcontract.

15.11.3 Within 14 days after the award of any subsequently awarded subcontract, the Contractor shall deliver to the Owner an updated and completed SF 1413 for such additional subcontract.

### 15.12 CONTRACT TERMINATION: DEBARMENT

15.12.1 A breach of the contract provisions contained in Paragraphs 15.8 through 15.11, 15.13 and 15.15 through 15.16 may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

### 15.13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REQUIREMENTS

15.13.1 All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3 and 5 are incorporated by reference in this Contract.

### 15.14 DISPUTES CONCERNING LABOR STANDARDS

15.14.1 Disputes concerning labor standards requirements shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7 and not the dispute-resolution provisions of this Contract. Disputes within the meaning of this Subparagraph 15.14.1 include disputes between the Contractor (or any of its Subcontractors) and the Owner, the U.S. Department of Labor, or the employees or their representatives.

### 15.15 CERTIFICATION OF ELIGIBILITY

15.15.1 By entering into this Contract, the Contractor certifies that neither the Contractor nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

15.15.2 No part of this Contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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



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**15.16 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

**15.16.1** Subparagraphs 15.16.2 through 15.16.5 apply only if this Contract is subject to the Contract Work Hours and Safety Standards Act. As used in this Paragraph 15.16, the terms "laborers" and "mechanics" include watchmen and guards.

**15.16.2 Overtime Requirements.** No Contractor or Subcontractor contracting for any part of the Work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such Work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**15.16.3 Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of Subparagraph 15.16.2, the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of Work done under contract for the District of Columbia or a territory, to such District or such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, employed in violation of Subparagraph 15.16.2 in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by Subparagraph 15.16.2.

**15.16.4 Withholding for Unpaid Wages and Liquidated Damages.** The Owner shall upon the Owner's own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any money payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other federal contract with the same Contractor or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in Subparagraph 15.16.3.

**15.16.5 Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts exceeding \$100,000 the provisions set forth in Subparagraphs 15.16.2 through 15.16.4 and also a provision requiring the Subcontractors to include these provisions in any sub-subcontracts. The Contractor shall be responsible for compliance by any Subcontractor or Sub-subcontractor with the provisions set forth in Subparagraphs 15.16.2 through 15.16.4.

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Washington, D.C. 20006-5292



MODIFICATIONS TO AIA DOCUMENT A201/SC-1999, *FEDERAL SUPPLEMENTARY CONDITIONS OF THE CONTRACT FOR CONSTRUCTION*

The provisions of these Modifications shall delete, replace and supplement the provisions contained in the "*FEDERAL SUPPLEMENTARY CONDITIONS OF THE CONTRACT FOR CONSTRUCTION*", AIA Document A201/SC-1999 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 11, INSURANCE AND BONDS

11.4 Paragraph 11.4, Property Insurance, shall be modified as described in "Option B" of AIA Document A201/SC.

11.5.1 Replace the words "If the Contract Sum is more than \$100,000," with the words "If required,"; and delete the words "on Standard Form 25" in the first sentence. Replace the fourth sentence in its entirety with "If required, the Contractor shall furnish a Payment Bond in an amount equal to one hundred percent (100%) of the Contract Sum."

ARTICLE 15, MISCELLANEOUS SUPPLEMENTARY CONDITIONS

15.4 Delete paragraph 15.4.

15.6 Delete paragraph 15.6.

15.7 Delete paragraph 15.7.

15.8 Delete paragraph 15.8.

15.9 Delete paragraph 15.9.

15.11.1 Add the words "as applicable," after the words "through 15.16," in the first sentence; and add the words ", as applicable" at the end of the last sentence of subparagraph 15.11.1.

15.12 Delete paragraph 15.12

15.13 Delete paragraph 15.13

15.14 Delete paragraph 15.14

15.15 Delete paragraph 15.15

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AIA Document A312

Performance Bond

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

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond:

None

See Page 3

CONTRACTOR AS PRINCIPAL  
Company:

(Corporate Seal)

SURETY  
Company:

(Corporate Seal)

Signature:  
Name and Title:

Signature:  
Name and Title:

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or  
other party):

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1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for

which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

7 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

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able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed defeted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms hereof.

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CONTRACTOR AS PRINCIPAL  
Company:

(Corporate Seal)

SURETY  
Company:

(Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title:  
Address:

Signature: \_\_\_\_\_  
Name and Title:  
Address:

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AIA Document A312

Payment Bond

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

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this bond:

None

See Page 6

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature:

Name and Title:

Signature:

Name and Title:

(Any additional signatures appear on page 6)

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

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- 1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
- 2 With respect to the Owner, this obligation shall be null and void if the Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
- 3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
- 4 The Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - 4.2 Claimants who do not have a direct contract with the Contractor:
    - 1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
    - 2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
- 5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

- 6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
  - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - 6.2 Pay or arrange for payment of any undisputed amounts.
- 7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
- 8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
- 9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
- 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
- 11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
- 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
- 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this

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Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the

Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

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CONTRACTOR AS PRINCIPAL  
Company:

(Corporate Seal)

SURETY  
Company:

(Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title:  
Address:

Signature: \_\_\_\_\_  
Name and Title:  
Address:

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Form RD 1924-18 (Rev. 6-97)	UNITED STATES DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT FARM SERVICE AGENCY  <b>PARTIAL PAYMENT ESTIMATE</b>	CONTRACT NO.  PARTIAL PAYMENT ESTIMATE NO.  PAGE _____
--------------------------------	--	--

OWNER: _____	CONTRACTOR: _____	PERIOD OF ESTIMATE FROM _____ TO _____
--------------	-------------------	---

**CONTRACT CHANGE ORDER SUMMARY** **ESTIMATE**

No.	Agency Approval Date	Amount		
		Additions	Deductions	
				1. Original Contract . . . . . _____
				2. Change Orders . . . . . _____
				3. Revised Contract (1 + 2) . . . . . _____
				4. Work Completed* . . . . . _____
				5. Stored Materials* . . . . . _____
				6. Subtotal (4 + 5) . . . . . _____
				7. Retainage* . . . . . _____
				8. Previous Payments . . . . . _____
				9. Amount Due (6-7-8) . . . . . _____
TOTALS				
NET CHANGE				

*\* Detailed breakdown attached*

**CONTRACT TIME**

Original (days) _____ Revised _____ Remaining _____	On Schedule <input type="checkbox"/> Yes <input type="checkbox"/> No	Starting Date _____ Projected Completion _____
---	---	---

<p><b>CONTRACTOR'S CERTIFICATION:</b>                  The undersigned Contractor certifies that to the best of their knowledge, information and belief the work covered by this payment estimate has been completed in accordance with the contract documents, that all amounts have been paid by the contractor for work for which previous payment estimates was issued and payments received from the owner, and that current payment shown herein is now due.</p> <p>Contractor _____</p> <p>By _____</p> <p>Date _____</p> <p>APPROVED BY OWNER:</p> <p>Owner _____</p> <p>By _____</p> <p>Date _____</p>	<p><b>ARCHITECT OR ENGINEER'S CERTIFICATION:</b>                  The undersigned certifies that the work has been carefully inspected and to the best of their knowledge and belief, the quantities shown in this estimate are correct and the work has been performed in accordance with the contract documents.</p> <p>Architect or Engineer _____</p> <p>By _____</p> <p>Date _____</p> <p>ACCEPTED BY AGENCY:</p> <p>The review and acceptance of this estimate does not attest to the correctness of the quantities shown or that the work has been performed in accordance with the contract documents.</p> <p>By _____</p> <p>Title _____</p> <p>Date _____</p>
---	---

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0042. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

TYPICAL UNIT PRICE BREAKDOWN \*

ITEM	DESCRIPTION	CONTRACT (revised)			THIS PERIOD		TOTAL TO DATE		% COM- PLETE
		QUANTITY	UNIT PRICE	AMOUNT	QUANTITY	AMOUNT	QUANTITY	AMOUNT	
			\$	\$		\$		\$	
	TOTALS								

TYPICAL LUMP SUM PRICE BREAKDOWN \*

ITEM	DESCRIPTION	SCHEDULED VALUE	WORK COMPLETED		% COM- PLETE	TYPICAL STORED MATERIALS AND RETAINAGE BREAKDOWN *			
			THIS PERIOD	TO DATE		DESCRIPTION	QUANTITY	UNIT VALUE	AMOUNT
		\$	\$	\$			\$	\$	
	TOTALS								

RETAINAGE			
THIS ESTIMATE	PERCENT	RETAINED	
\$	%	\$	
WORK COMPLETED:			
STORED MATERIALS:			
OTHER (explain)			
TOTAL			

\* As a minimum, detailed breakdowns should contain this information.

Form RD 1924-7  
(Rev. 2-97)

UNITED STATES DEPARTMENT OF AGRICULTURE  
RURAL DEVELOPMENT AND  
FARM SERVICE AGENCY

**CONTRACT CHANGE ORDER**

ORDER NO.
DATE
STATE
COUNTY

CONTRACT FOR \_\_\_\_\_

OWNER \_\_\_\_\_

To \_\_\_\_\_  
(Contractor)

You are hereby requested to comply with the following changes from the contract plans and specifications:

Description of Changes (Supplemental Plans and Specifications Attached)	DECREASE in Contract Price	INCREASE in Contract Price
	\$ _____	\$ _____
TOTALS	\$ _____	_____
NET CHANGE IN CONTRACT PRICE	\$ _____	_____

JUSTIFICATION:

The amount of the Contract will be (Decreased) (Increased) By The Sum Of: \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

The Contract Total Including this and previous Change Orders Will Be: \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

The Contract Period Provided for Completion Will Be (Increased) (Decreased) (Unchanged): \_\_\_\_\_ Days.

This document will become a supplement to the contract and all provisions will apply hereto.

Requested \_\_\_\_\_ (Owner) \_\_\_\_\_ (Date)

Recommended \_\_\_\_\_ (Owner's Architect/Engineer) \_\_\_\_\_ (Date)

Accepted \_\_\_\_\_ (Contractor) \_\_\_\_\_ (Date)

Approved by Agency \_\_\_\_\_ (Name and Title) \_\_\_\_\_ (Date)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to U.S. Department of Agriculture, Clearance Officer, STOP 7602, 1400 Independence Avenue, S.W., Washington, D.C. 20250-7602. Please DO NOT RETURN this form to this address. Forward to the local USDA office only. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

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**RECORD OF PRE-CONSTRUCTION CONFERENCE**

DATE:

NAME OF ASSOCIATION	ADDRESS <i>(Including Zip Code and Telephone)</i>
NAME OF CONSULTING ENGINEER (FIRM)	ADDRESS <i>(Including Zip Code and Telephone)</i>
NAME OF CONTRACTOR (FIRM)	ADDRESS <i>(Including Zip Code and Telephone)</i>

LOCATION OF CONFERENCE

**SUBJECTS TO BE DISCUSSED**

1. Identification of Official Representatives of Association, Architect, Engineer, Contractor and Agency:

ASSOCIATION: \_\_\_\_\_ ARCHITECT/ENGINEER \_\_\_\_\_

HEADQUARTERS: \_\_\_\_\_ HEADQUARTERS: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_ AGENCY: \_\_\_\_\_

HEADQUARTERS: \_\_\_\_\_ HEADQUARTERS: \_\_\_\_\_

2. Responsibilities of Consulting Architect/Engineer: *(Does not "supervise" the contractor's employees, equipment or operations.)*

\_\_\_\_\_  
\_\_\_\_\_

3. Responsibilities of Association's: *(Actual contracting Organization.)*

\_\_\_\_\_  
\_\_\_\_\_

4. Responsibilities of Agency Representative: *(Must see that approval conditions are observed and represents the Government's interests.)*

\_\_\_\_\_  
\_\_\_\_\_

5. Responsibilities of Contractor: *(Review contract terms.)*

\_\_\_\_\_  
\_\_\_\_\_

6. Responsibilities of Any Other Agency Contributing to the Project:

\_\_\_\_\_  
\_\_\_\_\_

7. General Discussion of Contract:

A. Alternative Specifications: *(Does everyone understand the alternatives applicable to the contract as awarded?)*

\_\_\_\_\_  
\_\_\_\_\_

B. Initiative Construction: *(Notice to Proceed.)*

\_\_\_\_\_  
\_\_\_\_\_

---

C. Completion Time for Contract. *(Does everyone understand contract requirements and methods of Computing?)*

---

---

D. Liquidated Damages:

---

---

E. Requests for Extension of Contract Time:

---

---

F. Procedures for Making Partial Payments:

---

---

---

G. Guarantee on Completed Works: *(Materials, Installed Equipment, Workmanship, Etc.)*

---

---

H. Other Requirements of the Contract and Specifications which Deserve Special Discussions by All Parties.

---

---

---

8. Contractor's Schedule:

A. Analyze Work Schedule in Sufficient Detail to Enable Consulting Engineer to Plan His Operations: *(Consideration must be given to needs of Association and the planned operations of other contractors.)*

---

---

---

B. Equipment to be Used by Contractor:

---

---

---

c. Contractor's Plans for Delivering Materials to Project Site: *(Protection and Storage of Materials.)*

---

---

---

9. Sub-Contracts: *(Review and approval of proposed Sub-Contractors and their work schedules.)*

---

---

---

10. Status of Materials Furnished by Association:

A. Schedule for Future Deliveries:

---

---

B. Procedures to be Adopted by Contractor in Accounting for and Storing Such Materials:

---

---

11. Change Orders: *(Detailed explanation of procedure to be followed and clearance which must be obtained before changes are implemented.)*

---

---

---

12. Staking of Work: *(Clearly Define responsibilities of Architect/Engineer and Contractor. Line and Grade must be furnished by Architect.)*

---

---

13. Project Inspection:

A. Functions of Consulting Architect/Engineer. Including Records and Reports:

---

---

B. Responsibilities of Owner:

---

C. Responsibilities of Agency:

---

---

D. Safety and Sanitary Regulations:

---

---

14. Final Acceptance of Work: *(Include requirements for tests and cleanup of project site.)*

---

---

15. Labor Requirements:

A. Equal Employment Opportunity Requirements:

---

---

B. Davis-Bacon Act:

---

---

C. Other Federal Requirements:

---

---

D. State and Local Requirements:

---

---

E. Union Agreements:

---

---

F. Repts Required:

---

16 Equal Employment Provisions of Contract:

---

---

17. Rights-of-Way and Easements:

A. Explain any Portion of Project Not Available to Contractor:

---

---

B. Contractors Responsibilities During Work Covered by Contract:

---

---

C. Coordination With Railroads, Highway Departments and Other Organizations:

---

---

18. Placement of Project Signs and Posters:

---

---

19. Handling Disputes:

---

---

NOTED AND CONCURRED WITH, *But understood not to be a modification of any existing contracts or agreements:*

*(Signatures of Members of Governing  
Board of Association)*

\_\_\_\_\_  
*(Contractor Representative)*

\_\_\_\_\_  
*(Chairman)*

\_\_\_\_\_  
*(Contractor Representative)*

\_\_\_\_\_  
*(Board Member)*

\_\_\_\_\_  
*(Contractor Representative)*

\_\_\_\_\_  
*(Board Member)*

\_\_\_\_\_  
*(Consulting Architect/Engineer Representative)*

\_\_\_\_\_  
*(Agency Representative)*

# NOTICE TO PROCEED

---

TO:

DATE:

PROJECT:

You are hereby notified to commence WORK in accordance with the Agreement Dated \_\_\_\_\_, \_\_\_\_\_, on or before \_\_\_\_\_, \_\_\_\_\_, and you are to complete the WORK within \_\_\_\_\_ consecutive calendar days thereafter. The date of completion of all WORK is therefore \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
*Owner Signature*

By \_\_\_\_\_

Title \_\_\_\_\_

---

## ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by:

\_\_\_\_\_  
*Company*

this \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
*Signature*

Title \_\_\_\_\_

Employer  
Identification Number \_\_\_\_\_

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**A project financed by:**



Committed to the future of rural communities.

**George W. Bush**  
**President of the United States**

**Ann M. Veneman**  
**Secretary of Agriculture**

**Michael A. Field**  
**State Director**

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FUNDED BY:



Committed to the future of rural communities.



**U.S. Department  
of Housing  
and Urban  
Development**

**George W. Bush, President**



**DIRK KEMPTHORNE, Governor**

**Idaho  
Department  
of Commerce**

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FUNDED BY:



Committed to the future of rural communities.



# United States Environmental Protection Agency

George W. Bush, President

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# Certificate of Substantial Completion

(Instructions on reverse side)

**PROJECT:**  
*(Name and address)*

**PROJECT NUMBER:**

OWNER

**CONTRACT FOR:**

ARCHITECT

**CONTRACT DATE:**

CONTRACTOR

**TO OWNER:**  
*(Name and address)*

**TO CONTRACTOR:**  
*(Name and address)*

FIELD

OTHER

**PROJECT OR PORTION OF THE PROJECT DESIGNATED FOR PARTIAL OCCUPANCY OR USE SHALL INCLUDE:**

The Work performed under this Contract has been reviewed and found, to the Architect's best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated above is the date of issuance established by this Certificate, which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

ARCHITECT \_\_\_\_\_ BY \_\_\_\_\_ DATE OF ISSUANCE \_\_\_\_\_

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment.

Cost estimate of Work that is incomplete or defective:

The Contractor will complete or correct the Work on the list of items attached hereto within \_\_\_\_\_ ( ) days from the above date of Substantial Completion.

CONTRACTOR \_\_\_\_\_ BY \_\_\_\_\_ DATE \_\_\_\_\_

The Owner accepts the Work or designated portion as substantially complete and will assume full possession at \_\_\_\_\_ (time) on \_\_\_\_\_ (date).

OWNER \_\_\_\_\_ BY \_\_\_\_\_ DATE \_\_\_\_\_

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance shall be as follows:

*(Note: Owner's and Contractor's legal and insurance counsel should determine and review insurance requirements and coverage.)*



© 2000 AIA®  
**AIA DOCUMENT G704-2000**  
CERTIFICATE OF  
SUBSTANTIAL COMPLETION

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# **SECTION 6**

## **SMALL PROJECTS**

### **Owner & Architect Agreement Documents**

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**Owner-Architect Agreement Document List  
SMALL PROJECTS  
(Construction Cost < \$100,000)**

USDA Rural Development Idaho has adopted the AIA Contract Documents for use on Rural Development partially or wholly funded projects. A combination of AIA documents and corresponding Rural Development attachments constitutes an acceptable set of contract documents for use on community facility projects. The group of acceptable documents are listed in the table below. The Rural Development attachments referenced here were specifically drafted to be used with the corresponding AIA document and should not be mixed with AIA documents of a different edition, series or AIA number.

When making a modification in one document you should ensure that appropriate modifications are made in all effected documents. It is Rural Development’s policy that the applicants use the AIA documents with minimal modification. However, Rural Development recognizes each project is unique and that modifications may be required to satisfy project requirements.

Before the applicant or Architect proceeds with the development of an agreement, they should contact the Rural Development Area Office to verify they have the most current information specific to the type of project and State where the project is located.

**Idaho Rural Development does not publish guidance on Architectural fees, but architectural fees must be reasonable. If lump sum is used, Rural Development will not approve changes involving increased fees for items within the scope of the project simply because the architect’s project budget is exceeded. The Architect’s lump sum bid shall cover the work specified and should anticipate unforeseen tasks. If tasks outside the scope of the project become necessary, then an addition may be considered. Conversely, if the scope of the project is reduced, a reduction in fees shall be made. A draft owner-architect agreement must be sent to Rural Development for review prior to the owner or architect signing the document.**

This table provides a list of the component parts of a complete Owner-Architect Agreement and notes on their use. **Documents listed under the “Use Form” column must be used to develop the contract documents, unless a formal request is made by the Architect and approved by Rural Development State Office.**

Title	Use Form	RD Notes: Necessary actions, important points
Standard Form of Agreement Between Owner and Architect, 1993 Small Projects Edition	AIA B155-1993	<ul style="list-style-type: none"> <li>• Before an “Effective Date” is entered the Owner should consult with a Rural Development representative regarding funding requirements, appropriate services, and reasonable fees.</li> <li>• Any additional Federal funding agency requirements should be outlined in Article 7.</li> <li>• Any State funding agency requirements not in conflict with Federal requirements should be outlined in Article 7.</li> <li>• RD funding can be used for payment of architectural services only after RD has concurred in the agreement and construction contracts are approved.</li> <li>• In addition to copies customarily provided for Owner, Architect, and others, two executed copies with any Exhibits will be provided for Rural Development use.</li> </ul>
Modifications to AIA Document B155-1993	RD Instruction 1924-A, Guide 1, Attachment 10	<ul style="list-style-type: none"> <li>• Fill out 6.1.1 with the estimated reimbursable expenses.</li> <li>• Signature page must be executed and an original included in each copy of the agreement.</li> </ul>

\*All copies of the Owner and Architect Agreement contain the AIA document, Rural Development attachment and any exhibits.

\*\*END\*\*

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# Standard Form of Agreement Between Owner and Architect for a Small Project

1993 SMALL PROJECTS EDITION

*Because this document has important legal consequences, we encourage you to consult with an attorney before signing it. Some states mandate a cancellation period or require other specific disclosures, including warnings for home improvement contracts. When a document such as this will be used for Work on the Owner's personal residence your attorney should insert all language required by state or local law to be included in this Agreement. Such statements may be entered in the space provided below, or if required by law, above the signatures of the parties.*

This **AGREEMENT** is made:  
*(Date)*

**BETWEEN** the Owner,

and the Architect,

for the following Project:

**WARNING - COPYRIGHTED**  
**Rural Development - Cp Training Use Only**  
**CAN NOT BE REPRODUCED**  
**OR EXCERPTED FROM**

The Owner and Architect agree as follows.

©Copyright 1993 by The American Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006-5292. Reproduction of the material herein or substantial quotation of its provisions without the written permission of the AIA violates the copyright laws of the United States and will subject the violator to legal prosecution.



## ARTICLE 1

### ARCHITECT'S RESPONSIBILITIES

The Architect shall provide architectural services for the project, including normal structural, mechanical and electrical design services. Services shall be performed in a manner consistent with professional skill and care.

**1.1** During the Design Phase, the Architect shall perform the following tasks:

- .1 describe the project requirements for the Owner's approval;
- .2 develop a design solution based on the approved project requirements;
- .3 upon the Owner's approval of the design solution, prepare Construction Documents indicating requirements for construction of the project;
- .4 assist the Owner in filing documents required for the approval of governmental authorities; and
- .5 assist the Owner in obtaining proposals and award contracts for construction.

**1.2** During the Construction Phase, the Architect shall act as the Owner's representative and provide administration of the Contract between the Owner and Contractor. The extent of the Architect's authority and responsibility during construction is described in this Agreement and in AIA Document A205, General Conditions of the Contract for Construction of a Small Project. Unless otherwise agreed, the Architect's services during construction include visiting the site, reviewing and certifying payments, reviewing the Contractor's submittals, rejecting nonconforming Work, and interpreting the Contract Documents.

## ARTICLE 2

### OWNER'S RESPONSIBILITIES

The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the project, and shall establish a budget with reasonable contingencies that meets the project requirements. The Owner shall furnish surveying, geotechnical engineering and environmental testing services upon request by the Architect. The Owner shall employ a contractor to perform the construction Work and to provide cost-estimating services. The Owner shall furnish for the benefit of the project all legal, accounting and insurance counseling services.

## ARTICLE 3

### USE OF ARCHITECT'S DOCUMENTS

Documents prepared by the Architect are instruments of service for use solely with respect to this project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall not reuse or permit the reuse of the Architect's documents except by mutual agreement in writing.

## ARTICLE 4

### TERMINATION, SUSPENSION OR ABANDONMENT

In the event of termination, suspension or abandonment of the project, the Architect shall be equitably compensated for services performed. Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and is sufficient cause for the Architect to either suspend or terminate services. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days' written notice if the other party substantially fails to perform in accordance with the terms of this Agreement.

## ARTICLE 5

### MISCELLANEOUS PROVISIONS

**5.1** This Agreement shall be governed by the law of the location of the project.

**5.2** Terms in this Agreement shall have the same meaning as those in AIA Document A205, General Conditions of the Contract for the Construction of a Small Project, current as of the date of this Agreement.

**5.3** The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to this Agreement. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

**5.4** The Architect and Architect's consultants shall have no responsibility for the identification, discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the project site.

**ARTICLE 6**

**PAYMENTS AND COMPENSATION TO THE ARCHITECT**

The Owner shall compensate the Architect as follows.

**6.1** The Architect's Compensation shall be:  
*(Indicate method of compensation.)*

of which an initial payment retainer of \_\_\_\_\_ dollars (\$ \_\_\_\_\_ ) shall be paid upon execution of this Agreement and shall be credited to the final payment.

**6.2** The Architect shall be reimbursed for expenses incurred in the interest of the project, plus an administrative fee of \_\_\_\_\_ percent ( \_\_\_\_\_ %).  
*(List reimbursable items.)*

**6.3** If through no fault of the Architect the services covered by this Agreement have not been completed within \_\_\_\_\_ months of the date hereof, compensation for the Architect's services beyond that time shall be appropriately adjusted.

**6.4** Payments are due and payable upon receipt of the Architect's invoice. Amounts unpaid ( \_\_\_\_\_ ) days after invoice date shall bear interest from the date payment is due at the rate of \_\_\_\_\_ ( \_\_\_\_\_ ), or in the absence thereof, at the legal rate prevailing at the principal place of business of the Architect.

*(A survey laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision.)*

**6.5** Architectural services not covered by this Agreement include, among others, revisions due to changes in the scope, quality or budget. The Architect shall be paid additional fees for these services based on the Architect's hourly rates when the services are performed.

ARTICLE 7

OTHER PROVISIONS

*(Insert descriptions of other services and modifications to the terms of this Agreement.)*

This Agreement entered into as of the day and year first written above  
*(If required by law, insert cancellation period, disclosures or other warning statements about the signatures.)*

OWNER

ARCHITECT

*(Signature)*

*(Signature)*

*(Printed name, title and address)*

*(Printed name, title and address)*



**CAUTION: You should sign an original AIA document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced. See Instruction Sheet for Limited License for Reproduction of this document.**

MODIFICATIONS TO AIA DOCUMENT B155, *Standard Form of Agreement Between Owner and Architect, 1993 Small Projects Edition*

The provisions of these Modifications shall delete, replace and supplement the provisions contained in the "*Standard Form of Agreement Between Owner and Architect, 1993 Small Projects Edition*", AIA Document B155. 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: ARCHITECT'S RESPONSIBILITIES

1.1.2 Delete subparagraph 1.1.2 and substitute the following:

1.1.2 develop a design solution, in consultation with the Agency Architect or Engineer about the Agency's requirements and procedures, based on the approved project requirements, and provide a detailed cost estimate;

1.1.3 Delete subparagraph 1.1.3 and substitute the following:

1.1.3 upon the Owner's approval of the design solution, prepare Construction Documents indicating requirements for construction of the project, submit the Construction Documents to the Owner for approval and to the Agency for concurrence;

1.1 Add the following subparagraphs to 1.1:

1.1.6 The Architect shall certify that the final plans and specifications comply with the planning requirements of RD Instruction 1924-A. Such certification will be made on Form RD 1924-xx, "Design Certification and Acceptance". Contract Documents shall be subject to Agency concurrence in writing prior to award of the contract.

1.1.7 The Architect shall chair the Preconstruction Conference prior to Owner issuing the Notice to Proceed.

1.2 Add the following subparagraphs to 1.2:

1.2.1 Such visits to the site shall be documented in writing on standard inspection report forms with copies furnished to the Owner, Contractor and Agency.

1.2.2 The Architect shall conduct on-site progress meetings no less than once a month during the periods of active construction.

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

1.2.4 The Architect shall prepare Change Orders for the Owner's approval and obtain concurrence by the Agency.

1.2.5 The Architect shall inspect prior to the issuance of the Certificate of Substantial Completion and shall submit a written report to the Owner, Agency and the Contractor. This inspection shall be coordinated with the Agency.

1.2.6 Prior to submitting the final Certificate for Payment, the Architect shall conduct an inspection, submit a Statement of Completion, receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor.

1 Add the following paragraphs to article 1:

1.3 The Architect shall assist the Owner in performing a review of the Project during the 11th month after the date of Substantial Completion.

ARTICLE 2: OWNER'S RESPONSIBILITIES

2 Add the sentence "The Owner shall provide the Architect with Agency standard Construction Contract Document Guides." to the end of this article.

ARTICLE 4: TERMINATION, SUSPENSION OR ABANDONMENT

4 Insert a new second sentence in Article 4 reading "When the Project is resumed, the Architect's compensation may be equitably adjusted, as mutually agreed, to provide for expenses incurred in the interruption and resumption of the Architect's services."

ARTICLE 5: MISCELLANEOUS PROVISIONS

5 Add the following paragraphs to Article 5:

5.5 This Agreement shall not become effective until concurred with in writing by the Agency. Such concurrence shall be evidenced by the signature of a duly authorized representative of the Agency in the space provided at the end of the Agency Attachment to this Agreement.

5.6 If applicable, the Architect shall comply with section 319 of Public Law 101-121, as supplemented by the Department of Agriculture regulations (7 C.F.R. part 3018). This law pertains to restrictions on lobbying and 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 Architect 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.

5.7 The Architect agrees to abide by 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. If the total compensation described in Article 1.5 exceeds \$25,000, the Architect shall complete the relevant certification form provided by the Owner.

ARTICLE 6: PAYMENTS AND COMPENSATION TO THE ARCHITECT

6.1 Add the following subparagraph 6.1.1 to paragraph 6.1:

6.1.1 For the Owner's budgeting purposes, the estimated cost of reimbursable expenses for this project is\_\_\_\_\_.

6.2 Delete paragraph 6.2.

ARTICLE 7: OTHER PROVISIONS

7 Add the following paragraph:

7.1 This Agreement is modified and supplemented by RD Instruction 1924-A, Guide 1, Attachment 10.

SIGNATURE BLOCK:

The following signature block shall replace the signature block following paragraph 7.1:

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below:

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

OWNER:  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ARCHITECT:  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

AGENCY CONCURRENCE:

By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

The concurrence so evidenced by the Agency shall in no way commit the Agency to render financial assistance to the Owner and is without liability to the Agency for any payment hereunder, but in the event such assistance is provided, the concurrence shall signify the provisions of this Agreement are consistent with the requirements of the Agency.

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# **SECTION 7**

## **SMALL PROJECTS**

### **Construction Contract Documents**

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**Construction Project Document List  
SMALL PROJECTS  
with Performance and Payment Bonds  
(Construction Cost < \$100,000)**

USDA Rural Development Idaho has adopted the AIA Contract Documents for use on Rural Development partially or wholly funded projects. A combination of AIA documents and corresponding Rural Development attachments constitutes an acceptable set of contract documents for use on community facility projects. The group of acceptable documents are listed in the table below. The Rural Development attachments referenced here were specifically drafted to be used with the corresponding AIA document and should not be mixed with AIA documents of a different edition, series or AIA number.

When making a modification in one document you should ensure that appropriate modifications are made in all effected documents. It is Rural Development’s policy that the applicants use the AIA documents with minimal modification. However, Rural Development recognizes each project is unique and that modifications may be required to satisfy project requirements.

Before applicants or architect’s proceed with the development of a set of contract documents, they should contact the Rural Development Area office to verify they have the most current information specific to the type of project and State where the project is located.

It is customary that a project sign identifying the Owner and Funding Agencies be displayed during project construction. The sign requirements are not included in the Supplementary Conditions, but should be a part of the specifications prepared by the Architect. Example sign formats have been provided for projects funded by Rural Development and for projects funded by a combination of agencies. If the examples do not cover your project, contact the Rural Development State Office for guidance.

To eliminate unnecessary delays after Bid Opening, the full set of Construction Contract Documents must be submitted to Rural Development for review and acceptance before start of the Bidding or Negotiation process.

This table lists guidance documents and forms required to constitute a complete set of contract documents. Notes are also provided on each documents use. **Documents listed under the “Use Form” column must be used to develop the contract documents, unless a formal request is made by the Architect and approved by Rural Development State Office.**

Title	Use Document/Form	RD Notes: Necessary actions, important points
Advertisement for Bids <i>** (Located in Section 5)</i>	Generic Form provided	<ul style="list-style-type: none"> <li>Use the generic form or similar form containing the same information.</li> </ul>
Instructions to Bidders <i>** (Located in Section 5)</i>	AIA A701-1997	<ul style="list-style-type: none"> <li>One critical area that requires attention is 5.3 – Acceptance of Bid (Award). This information will vary whether bid is Lump Sum or Unit Price. If the Evaluation of Bids involves anything other than checking the contractor’s qualifications and calculation of unit prices, such as additive alternates, life-cycle costs, etc., the evaluation process must be clearly stated (given the bid documents, a third party would identify the same Successful Bidder as the Architect) in the Instructions to Bidders.</li> </ul>
Modifications to AIA Document A701-1997 <i>** (Located in Section 5)</i>	RD Instruction 1924-A, Guide 1, Attch 8	<ul style="list-style-type: none"> <li>5.3.2, Ensure this section clearly identifies how the bids will be evaluated and the criteria for determining the lowest responsible bidder.</li> </ul>

Title	Use Document/Form	RD Notes: Necessary actions, important points
Bid Form **(Located in Section 5)	Community Facilities Bid Form (**Idaho Version)	<ul style="list-style-type: none"> <li>• Use Idaho's bid form developed for community facility projects.</li> <li>• All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to: placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; specifying only a brand name product instead of either allowing an equal product to be offered, or describing the performance of the relevant requirements of the procurement; and unnecessary experience and bonding requirements</li> </ul>
Bid Bond **(Located in Section 5)	AIA A-310-1970	<ul style="list-style-type: none"> <li>• Must be at least 5% of Bid amount.</li> </ul>
Notice of Award **(Located in Section 5)	Generic Form provided	<ul style="list-style-type: none"> <li>• Owner will not announce award of contract without written concurrence by the Agency.</li> </ul>
Standard Form of Agreement Between Owner and Contractor  **Include Certificate of Owner's Attorney as last page of the agreement**	AIA A105-1993	<ul style="list-style-type: none"> <li>• 4.2, Interest rate comparable to current short term lending rate for financially sound contractors.</li> <li>• In addition to copies customarily provided for Owner, Contractor, Architect, and others, two executed copies will be provided for Rural Development use.</li> <li>• Certificate of Owner's Attorney – General Conditions Exhibit GC-A, to be completed by Owner's attorney prior to submittal to Rural Development for concurrence in Agreement.</li> </ul>
Modifications to AIA Document A105-1993	RD Instruction 1924-A, Guide 1, Attch 2	<ul style="list-style-type: none"> <li>• 2.1, The amount entered for liquidated damages should cover all the Owner's additional costs for the project not being operational: daily interest, professional fees, administrative costs, etc, but shall not include any punitive damages.</li> <li>• Signature page must be executed and an original included in each copy of the agreement.</li> </ul>
General Conditions of the Contract for Construction of a Small Project	AIA A205-1993	<ul style="list-style-type: none"> <li>• Use in conjunction with RD Attachments.</li> </ul>
Modifications to AIA Document A205-1993	RD Instruction 1924-A, Guide 1, Attch 7	
Performance & Payment Bond **(Located in Section 5)	AIA A312-1984	<ul style="list-style-type: none"> <li>• Each bond must be for the full amount of the Contract.</li> <li>• Surety must be listed in TC-570, have adequate bonding capacity, and be licensed in the State of Idaho.</li> </ul>

Title	Use Document/Form	RD Notes: Necessary actions, important points
Contractor's Application for Payment <i>** (Located in Section 5)</i>	USDA RD Form 1924-18	<ul style="list-style-type: none"> <li>• RD must concur with all payment applications.</li> <li>• It is anticipated that an attachment to the Application for Payment for the detailed tracking of quantities, materials stored, etc. will be developed by the Architect and Contractor.</li> <li>• Work added by Change Order will not be considered for payment until Change Order has Agency Concurrence.</li> <li>• Quantity Completed on Final Application for Payment must equal final adjusted contract quantities on unit price contracts.</li> <li>• In addition to copies customarily provided for Owner, Contractor, Architect, others, an executed copy with all attachments will be provided for Rural Development use.</li> </ul>
Change Order <i>** (Located in Section 5)</i>	USDA RD Form 1924-7	<ul style="list-style-type: none"> <li>• RD must concur with all change orders.</li> <li>• In addition to copies customarily provided for Owner, Contractor, Architect, others, two executed copies will be provided for Rural Development use.</li> </ul>
Record of Preconstruction Conference <i>** (Located in Section 5)</i>	USDA Form RD 1924-16	<ul style="list-style-type: none"> <li>• At a minimum, the conference must cover applicable items on this form.</li> </ul>
Notice to Proceed <i>** (Located in Section 5)</i>	Generic Form provided	<ul style="list-style-type: none"> <li>• Executed copy will be provided to Rural Development.</li> </ul>
Project Sign <i>** (Located in Section 5)</i>		<ul style="list-style-type: none"> <li>• Every Rural Development project requires a project sign. Cost for project sign should be included in the contract price. An example of the project sign should be included in the contract documents. Several project sign formats have been provided in this manual.</li> </ul>
Certificate of Substantial Completion <i>** (Located in Section 5)</i>	AIA G704-2000	<ul style="list-style-type: none"> <li>• Executed copy will be provided to Rural Development.</li> </ul>
Plans and Specifications		<ul style="list-style-type: none"> <li>• Submit to Rural Development, with Project Manual, for approval prior to advertising for bids.</li> </ul>

**\*All AIA documents submitted and used must be valid licensed copies.**

Any additions to the RUS Bulletins or AIA documents should follow the same format as the model document and each addition or deletion must be clearly identified.

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# Standard Form of Agreement Between Owner and Contractor for a Small Project

where the Basis of Payment is a STIPULATED SUM

1993 SMALL PROJECTS EDITION

*Because this document has important legal consequences, we encourage you to consult with an attorney before signing it. Some states mandate a cancellation period or require other specific disclosures, including warnings for home improvement contracts, when a document such as this will be used for Work on the Owner's personal residence. Your attorney should insert all language required by state or local law to be included in this Agreement. Such statements may be entered in the space provided below, or if required by law, above the signatures of the parties.*

This **AGREEMENT** is made:  
(Date)

**BETWEEN** the Owner:

and the Contractor:

for the following Project:

The Architect is:

The Owner and Contractor agree as follows.

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**ARTICLE 1**

**THE CONTRACT DOCUMENTS**

The Contractor shall complete the Work described in the Contract Documents for the project. The Contract Documents consist of:

- .1 this Agreement signed by the Owner and Contractor;
- .2 AIA Document A205, General Conditions of the Contract for Construction of a Small Project, current edition;
- .3 the Drawings and Specifications prepared by the Architect, dated and enumerated as follows:

Drawings:

Specifications:

- .4 addenda prepared by the Architect as follows:

- .5 written change orders or orders for minor changes in the Work issued after execution of this Agreement; and
- .6 other documents, if any, identified as follows:

**ARTICLE 2**

**DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION DATE**

The date of commencement shall be the date of this Agreement unless otherwise indicated below. The Contractor shall substantially complete the Work not later than subject to adjustment by Change Order.

*(Insert the date or number of calendar days after the date of commencement.)*

**ARTICLE 3**

**CONTRACT SUM**

3.1 Subject to additions and deductions by Change Order, the Contract Sum is:

3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work:

Portion of Work

Value

**WARNING - COPYRIGHTED**  
**Rural Development - CP Training Use Only**  
**CAN NOT BE REPRODUCED**  
**OR EXCERPTED FROM**

3.3 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

**ARTICLE 4**

**PAYMENT**

**4.1** Based on Contractor's Applications for Payment certified by the Architect, the Owner shall pay the Contractor as follows:  
*(Here insert payment procedures and provisions for retainage, if any.)*

**4.2** Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate of \_\_\_\_\_, or in the absence thereof, at the legal rate prevailing at the place of the Project.  
*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision.)*

**ARTICLE 5**

**INSURANCE**

**5.1** The Contractor shall provide Contractor's Liability and other Insurance as follows:  
*(Insert specific insurance required by the Owner.)*

**5.2** The Owner shall provide Owner's Liability and Owner's Property Insurance as follows:  
*(Insert specific insurance furnished by the Owner.)*

**5.3** The Contractor shall obtain an endorsement to its general liability insurance policy to cover the Contractor's obligations under Paragraph 3.12 of AIA Document A205, General Conditions of the Contract for Construction of Small Projects.

**5.4** Certificates of insurance shall be provided by each party showing their respective coverages prior to commencement of the Work.

ARTICLE 6

OTHER TERMS AND CONDITIONS

*(Insert any other terms or conditions below.)*

This Agreement entered into as of the day and year first written above.  
*(If required by law, insert cancellation period, disclosures or other warning statements above the signature.)*

OWNER

CONTRACTOR

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name, title and address)*

\_\_\_\_\_  
*(Printed name, title and address)*

LICENSE NO. \_\_\_\_\_

JURISDICTION \_\_\_\_\_



**CAUTION:** You should sign an original AIA document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced. See Instruction Sheet for Limited License for Reproduction of this document.

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MODIFICATIONS TO AIA DOCUMENT A105, *Standard Form of Agreement Between Owner and Contractor for a Small Project*, 1993 *Small Projects Edition*

The provisions of these Modifications shall delete, replace and supplement the provisions contained in the "*Standard Form of Agreement Between Owner and Contractor, 1993 Small Projects Edition*", AIA Document A105. The provisions contained in these Modifications shall 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: THE CONTRACT DOCUMENTS

1.6 The following Documents should be referenced, if applicable:

Modifications to the "*Standard Form of Agreement Between Owner and Contractor for a Small Project*" (RD Instruction 1924-A, Guide 1, Attachment 2, IDAHO VERSION)  
Modifications to the "*General Conditions of the Contract for Construction of a Small Project*" (RD Instruction 1924-A, Guide 1, Attachment 7, IDAHO VERSION)  
Advertisement for Bids (Form RD 1924-5)  
Instructions to Bidders (AIA Document A701)  
Modifications to *Instructions to Bidders* (RD Instruction 1924-A, Guide 1, Attachment 8, IDAHO VERSION)  
Bid Form (IDAHO VERSION)  
Bid Bond (AIA A310 1970)  
Payment & Performance Bond (AIA A312 1984)

ARTICLE 2: DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

2 Delete "the date of this agreement unless otherwise indicated below" and substitute "the date identified by the Notice to Proceed" in the opening sentence for this article.

2 Add the following paragraph article 2:

2.1 If the Work is not substantially complete on or before this date, or within this period of time, or extension thereof granted by the Owner, the Contractor shall pay to the Owner liquidated damages in the sum of \$            for each calendar day of delay. Any sums that may be due the Owner as liquidated damages may be deducted from any monies due or to become due the Contractor under the Contract or may be collected from the Contractor's surety.

ARTICLE 4: PAYMENTS

4.1 Insert the following sentences in subparagraph 4.1:

The amount retained shall be 5% of the value of Work until 100% of the Work has been completed. At 100% completion, further partial payments shall be made in full to the Contractor and no additional amounts may be retained unless the Architect certifies that the Work is not proceeding

satisfactorily, but amounts previously retained shall not be paid to the Contractor. If the Owner and Architect determine at any time that the Work is not proceeding satisfactorily, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of Work completed.

4.3 Add the following paragraph to article 4:

4.3 Amounts withheld from the final payment to cover any incomplete work are not considered retainage and shall not be paid to the contractor until the work is actually completed and accepted by the owner. Such withholdings shall not be less than 150% of the estimated cost to complete the work.

ARTICLE 6: OTHER TERMS AND CONDITIONS

6 Add the following paragraph to article 6:

6.1 This Agreement shall not become effective until concurred in writing by the Agency. Such concurrence shall be evidenced by the signature of a duly authorized representative of the Agency in the space provided at the end of the Agency Attachment to this Agreement.

SIGNATURE BLOCK:

The following signature block shall replace the signature block following paragraph 6.1:

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed  
by their duly authorized officials, this Agreement in duplicate on the  
respective dates indicated below:

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

OWNER:  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

CONTRACTOR:  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

AGENCY CONCURRENCE:

By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

The concurrence so evidenced by the Agency shall in no way commit the Agency to render financial assistance to the Owner and is without liability to the Agency for any payment hereunder, but in the event such assistance is provided, the concurrence shall signify the provisions of this Agreement are consistent with Agency requirements.

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# General Conditions of the Contract for Construction of a Small Project

1993 SMALL PROJECTS EDITION

## ARTICLE 1

### GENERAL PROVISIONS

#### 1.1 THE CONTRACT

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification.

#### 1.2 THE WORK

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment and services provided by the Contractor to fulfill the Contractor's obligations.

#### 1.3 INTENT

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

#### 1.4 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

Documents prepared by the Architect are instruments of the Architect's service for use solely with respect to this project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. They are not to be used by the Contractor or any Subcontractor, sub-subcontractor or material or equipment supplier for other projects or for additions to this project outside the scope of the Work without the specific written consent of the Owner and Architect.

## ARTICLE 2

### OWNER

#### 2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.1.1 If requested by the Contractor, the Owner shall furnish and pay for a survey and a legal description of the site.

2.1.2 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall obtain and pay for other necessary approvals, easements, assessments and charges.

#### 2.2 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

#### 2.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to correct such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, a Change Order shall be issued deducting the cost of correction from payments due the Contractor.

#### 2.4 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

2.4.1 The Owner reserves the right to perform construction or operations related to the project with the Owner's own forces, and to award separate contracts in connection with other portions of the project.

2.4.2 The Contractor shall coordinate and cooperate with separate contractors employed by the Owner.

2.4.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

## ARTICLE 3

### CONTRACTOR

#### 3.1 EXECUTION OF THE CONTRACT

Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

#### 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall: (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to

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the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the Architect.

### 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

**3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

**3.3.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of subcontractors or suppliers for each portion of the Work. The Architect will promptly reply to the Contractor in writing if the Owner or the Architect, after due investigation, has reasonable objection to the subcontractors or suppliers listed.

### 3.4 LABOR AND MATERIALS

**3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

**3.4.2** The Contractor shall deliver, handle, store, and install materials in accordance with manufacturers' instructions.

### 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.

### 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes that are legally required when the Contractor is executed.

### 3.7 PERMITS, FEES AND NOTICES

**3.7.1** The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

**3.7.2** The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Architect in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

### 3.8 SUBMITTALS

The Contractor shall promptly review, approve in writing and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

### 3.9 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.

### 3.10 CUTTING AND PATCHING

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

### 3.11 CLEANING UP

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work.

### 3.12 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by neglect, acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

## ARTICLE 4

### ARCHITECT'S ADMINISTRATION OF THE CONTRACT

**4.1** The Architect will provide administration of the Contract as described in the Contract Documents. The Architect will have authority, on behalf of the Owner only to the extent provided in the Contract Documents.

**4.2** The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the work.

**4.3** The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

**4.4** Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor.

**4.5** The Architect will have authority to reject Work that does not conform to the Contract Documents.

**4.6** The Architect will promptly review and approve or take appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**4.7** The Architect will promptly interpret and decide matters concerning performance under and requirements of the

Contract Documents on written request of either the Owner or Contractor.

**4.8** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

**4.9** The Architect's duties, responsibilities and limits of authority as described in the Contract Documents will not be changed without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

## ARTICLE 5

### CHANGES IN THE WORK

**5.1** After execution of the Contract, changes in the Work may be accomplished by Change Order or by order for a minor change in the Work. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**5.2** A Change Order shall be a written order to the Contractor signed by the Owner and Architect to change the Work, Contract Sum or Contract Time.

**5.3** The Architect will have authority to order minor changes in the Work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be written orders and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

**5.4** If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

## ARTICLE 6

### TIME

**6.1** Time limits stated in the Contract Documents are of the essence of the Contract.

**6.2** If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

## ARTICLE 7

### PAYMENTS AND COMPLETION

#### 7.1 CONTRACT SUM

The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the Owner to

the Contractor for performance of the Work under the Contract Documents.

#### 7.2 APPLICATIONS FOR PAYMENT

**7.2.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the values stated in the Agreement. Such application shall be supported by such data substantiating the Contractor's right to payment as the Owner or Architect may reasonably require and reflecting retainage if provided for elsewhere in the Contract Documents.

**7.2.2** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submission of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

#### 7.3 CERTIFICATES FOR PAYMENT

The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part.

#### 7.4 PROGRESS PAYMENTS

**7.4.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Contract Documents.

**7.4.2** The Contractor shall promptly pay each Subcontractor and material supplier upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such entire portion of the Work.

**7.4.3** Neither the Owner nor the Architect shall have responsibility for the payment of money to a Subcontractor or material supplier.

**7.4.4** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the project by the Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

#### 7.5 SUBSTANTIAL COMPLETION

**7.5.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**7.5.2** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish the responsibilities of the Owner and Contractor, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

## 7.6 FINAL COMPLETION AND FINAL PAYMENT

**7.6.1** Upon receipt of a final Application for Payment, the Architect will inspect the Work. When the Architect finds the Work acceptable and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment.

**7.6.2** Final payment shall not become due until the Contractor submits to the Architect releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract.

**7.6.3** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 8

### PROTECTION OF PERSONS AND PROPERTY

#### 8.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

## ARTICLE 9

### CORRECTION OF WORK

**9.1** The Contractor shall promptly correct Work rejected by the Architect as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work.

**9.2** In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

**9.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it and the Contractor shall reimburse the Owner for the cost of correction.

## ARTICLE 10

### MISCELLANEOUS PROVISIONS

#### 10.1 ASSIGNMENT OF CONTRACT

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

#### 10.2 TESTS AND INSPECTIONS

**10.2.1** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordi-

nances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time.

**10.2.2** If the Architect requires additional testing, the Contractor shall perform these tests.

**10.2.3** The Owner shall pay for tests except for testing Work found to be defective for which the Contractor shall pay.

#### 10.3 GOVERNING LAW

The Contract shall be governed by the law of the place where the project is located.

## ARTICLE 11

### TERMINATION OF THE CONTRACT

#### 11.1 TERMINATION BY THE CONTRACTOR

If the Owner fails to make payment when due or substantially breaches any other obligation of this Contract, following seven days' written notice to the Owner, the Contractor may terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, construction equipment and machinery, including reasonable overhead, profit and damages.

#### 11.2 TERMINATION BY THE OWNER

**11.2.1** The Owner may terminate the Contract if the Contractor:

1. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
2. fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
3. persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
4. is otherwise guilty of substantial breach of a provision of the Contract Documents.

**11.2.2** When any of the above reasons exist, the Owner, after consultation with the Architect, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may:

1. take possession of the site and of all materials thereon owned by the Contractor;
2. finish the Work by whatever reasonable method the Owner may deem expedient.

**11.2.3** When the Owner terminates the Contract for one of the reasons stated in Subparagraph 11.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**11.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

MODIFICATIONS TO AIA DOCUMENT A205, *General Conditions of the Contract for Construction of a Small Project, 1993 Small Projects Edition*

The provisions of these Modifications shall delete, replace and supplement the provisions contained in the "*General Conditions of the Contract for Construction of a Small Project, 1993 Small Projects Edition*", AIA Document A205. 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

1.1 Add the following sentence to the end of paragraph 1.1:

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

ARTICLE 2: OWNER

2.4 Add a new subparagraph 2.4.1:

2.4.1 The Owner will identify to the Contractor and Architect such work and separate contracts in writing. The Owner will provide a schedule for such work to facilitate Contractor coordination. The Owner will be responsible for notifying other parties of the Contractor's schedule.

ARTICLE 4: ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.4 Add the following sentence to paragraph 4.4:

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

ARTICLE 5: CHANGES IN THE WORK

5.2 Add the following sentence to the end of paragraph 5.2:

The Agency must concur with Change Orders.

5 Add a new paragraph 5.5 reading:

5.5 A change order is a written order to the Contractor utilizing an industry standard form with Agency concurrence or Form RD 1924-7, "Contract Change Order," signed by the Owner, Architect, Contractor, and the Agency representative.

ARTICLE 7: PAYMENTS AND COMPLETION

7.2.1 Add the following sentence to subparagraph 7.2.1:

Work performed and materials supplied under a Change Order may be included for payment only after the Change Order has been approved.

7.3 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 paragraph 7.3.

7.5.2 Add the words ", in collaboration with the Agency" after "prepare" in the first sentence of subparagraph 7.5.2.

7.6.1 Add the following sentence to subparagraph 7.6.1:

The final Certificate for Payment shall be signed by the Owner and Architect and provided to the Agency for concurrence.

ARTICLE 10: MISCELLANEOUS PROVISIONS

10 Add the following paragraphs to article 10, if applicable:

10.4 SURETY

10.4.1 The Contractor shall furnish the Owner Performance and Payment Bonds 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.

10.5 EQUAL OPPORTUNITY REQUIREMENTS

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

10.5.1 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.

10.5.2 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.

10.5.3 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.

10.5.4 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.

10.5.4.1 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.

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

10.5.5 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.

10.5.6 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.

## 10.6 STATUTES

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

10.6.1.1 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.

10.6.1.2 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.

10.6.1.3 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.

## 10.7 RECORDS

10.7.1 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.

#### 10.8 ENVIRONMENTAL REQUIREMENTS

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

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

10.8.2.1 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.

10.8.2.2 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.

10.8.2.3 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.

#### 10.9 DEBARMENT AND SUSPENSION

10.9.1 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.