

(INSTRUCTION SHEET ONLY - NOT TO BE INCLUDED AS PART OF THE CONTRACT DOCUMENTS)

This Guide modifies selected documents published by the American Institute of Architects (AIA) to conform with USDA/Rural Development / Rural Housing Service (RHS) regulations and policy. The AIA documents, as modified by this Guide, may be used on RHS financed building construction projects such as those administered under this subpart. The AIA documents must be used in accordance with current copyright rules.

The need to witness the agreements will depend upon State and local requirements for validation of the document. Where appropriate, a copy of the resolution authorizing the individual to act on behalf of the firm or entity should be attached to the agreement.

Questions regarding the use of these documents should be referred to the RHS National Office Program Support Staff.

Attachments:

1. Attachment to AIA DOCUMENT B141-1997, *Standard Form of Agreement Between Owner and Architect With Standard Form of Architect's Services.* (See note below.)
2. Attachment to AIA DOCUMENT A701-1997, *Instructions to Bidders.*
3. Attachment to AIA DOCUMENT A101-1997, *Standard Form of Agreement Between Owner and Contractor.*
4. Attachment to AIA Document A201-1997, *General Conditions of the Contract for Construction.*
5. Attachment to AIA Document A201/SC-1990, *Federal Supplementary Conditions of the Contract for Construction.*

(NOTE: The AIA Document B141-1997 has two parts: the *Standard Form of Agreement Between Owner and Architect* and the *Standard Form of Architect's Services: Design and Contract Administration*. A contract for architectural services is not complete unless both parts of AIA Document B141 are included. Both portions of the document have signature areas that must be signed by the parties involved.)

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

The provisions of this Attachment shall delete, modify 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 this Attachment 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 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. 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.

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.

1.3.9.1 Delete the words "and for Reimbursable Expenses incurred," and add the following sentences to subparagraph 1.3.9.1:

Compensation computed in Paragraph 1.5.1 shall include all transportation, travel, communications, and fees that are required in connection with the Project. They shall also include the reproduction, postage and handling of Drawings, Specifications and other documents.

1.3.9.2 Delete subparagraph 1.3.9.2.

1.3.9.3 Delete the words "of Reimbursable Expenses," and 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 1942-A, Guide 27, Attachment 1.

ARTICLE 1.5, COMPENSATION

1.5.4 Delete paragraph 1.5.4.

1.5.5 Delete paragraph 1.5.5.

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 2.3, EVALUATION AND PLANNING SERVICES

2.3 Add the following paragraphs to article 2.3:

2.3.4 The Architect shall submit ____ copies of the Preliminary Architectural Feasibility Report following Agency Instructions and Guides.

2.3.5 When the Owner has accepted the Preliminary Architectural Feasibility Report in writing and the Agency has concurred, the Architect may be authorized to proceed with developing the design.

ARTICLE 2.4, DESIGN SERVICES

2.4.4 Add the following subparagraphs to paragraph 2.4.4:

2.4.4.3 Prior to advertisement for bids, the Architect shall provide a maximum of ____ sets of Construction Contract Documents for use by the Owner, Agency and the appropriate Federal, State and local agencies that must approve the Project. The cost of such Construction Contract Documents shall be included in the compensation paid to the Architect, notwithstanding subparagraph 1.3.9.2. Construction Contract Documents shall be subject to Agency concurrence in writing prior to advertisement for bids. The Architect shall furnish additional copies of the Construction Contract Documents as requested by prospective bidders, material suppliers, and other interested parties, but may charge them a refundable deposit fee for the reasonable cost of such copies.

2.4.4.4 Upon award of the construction contract, the Architect shall furnish the Owner ____ sets of Construction Contract Documents for execution. The cost of these sets shall be included in the compensation to the Architect.

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 participate in 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 Project Representatives to assist in carrying out such additional on-site responsibilities. The selection and compensation of the Project Representative must be concurred with in writing by Agency.

2.8.3.c _____ sets of Record Drawings shall be provided to the Owner.

SIGNATURE BLOCK:

Delete the signature blocks on pages 1-12 and 2-12 of this Agreement and substitute the block on the following page in both locations:

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 _____

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

The provisions of this Attachment shall delete, modify and supplement the provisions contained in the "*Instructions to Bidders*," AIA Document A701-1997 Edition. The provisions contained in this Attachment 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 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:

4.4.1 No Bidder may withdraw, modify or cancel a Bid within 60 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.

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 have the right to accept Alternates in the sequence or combinations listed and to determine the low Bidder on the basis of the sum of the Base Bid and the Alternates accepted.

ARTICLE 7, PERFORMANCE BOND AND PAYMENT BOND

7.1.1 Delete subparagraph 7.1.1 and substitute the following:

7.1.1 Prior to execution of the Contract, the Bidder shall furnish Bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder. Both Bonds shall be separately written, each in the amount of the Contract Sum. The cost shall be included in the Bid.

7.1.2 Delete subparagraph 7.1.2 and substitute the following:

7.1.2 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.

7.1.3 Delete subparagraph 7.1.3.

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 within ten (10) 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.

(Note: Any additional provisions that are necessary to remain effective after execution of the Contract for Construction will be inserted here and continue in the same format.)

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

The provisions of this Attachment shall delete, modify and supplement the provisions contained in the "*Standard Form of Agreement Between Owner and Contractor*," AIA Document A101-1997 Edition. The provisions contained in this Attachment shall 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 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 by 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 Owner will sustain damage that will be impracticable and extremely difficult to quantify in the event of and by reason of such delays. 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 "ten" and "10" 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 10% of the value of Work until 50% of the Work has been completed. At 50% 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. At 50% completion or any time thereafter when the progress of the Work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of Work completed.

ARTICLE 7, MISCELLANEOUS PROVISIONS

7.6 Add the following subparagraph 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. 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.

ARTICLE 8, ENUMERATION OF CONTRACT DOCUMENTS

The following Documents should be referenced, if applicable:

Subparagraph 8.1.3:

Attachment to the *Standard Form of Agreement Between Owner and Contractor* (RD Instruction 1942-A, Guide 27, Attachment 3)
General Conditions of the Contract for Construction, AIA A201-1997
Attachment to the *General Conditions of the Contract for Construction*
(RD Instruction 1942-A, Guide 27, Attachment 4)
Federal Supplementary Conditions of the Contract for Construction (AIA Document A201/SC)
Attachment to the *Federal Supplementary Conditions of the Contract for Construction* (RD Instruction 1942-A, Guide 27, Attachment 5)
Special Conditions

Subparagraph 8.1.7:

Invitation for Bids (Form RD 1924-5)
Instructions to Bidders (AIA Document A701)
Supplementary Instructions to Bidders (RD Instruction 1942-A, Guide 27, Attachment 2)
Bid Form
Bid Bond
Compliance Statement (Form RD 400-6)
Payment Bond
Performance Bond
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions (Form AD 1048)
Disclosure of Lobbying Activities (SF-LLL)
Certification for Contracts, Grants and Loans (RD Instruction 1940-Q, Exhibit A-1)

SIGNATURE BLOCK:

Delete the signature block on page 7 of this Agreement and substitute the block on the following page:

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 _____

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

The provisions of this Attachment shall delete, modify and supplement the provisions contained in the "*General Conditions of the Contract for Construction*," AIA Document A201-1997 Edition. The provisions contained in this Attachment 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 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, ____ 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 4, ADMINISTRATION OF THE CONTRACT

4.1.1 Delete the last sentence of subparagraph 4.1.1 and substitute the following:

The term "Architect" means the Architect, or the Engineer when the nature of the Work is within the authority granted engineers by the State licensure law, or an authorized representative of the Architect or Engineer.

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 Contract Sum is based on unit price, a unit bid quantity may be increased or decreased by a maximum of twenty percent (20%) without invalidating the unit price.

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.

9.4.1 Replace the word "seven" with the word "ten (10)" in the first sentence; and add the words, "using AIA Documents 702, 'Application and Certificate for Payment' or Form RD 1924-18, 'Partial Payment Estimate'," after "Certificate for Payment" in Subparagraph 9.4.1.

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 Architect or Engineer," 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.

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. The Acts require the Contractor to:

13.9.1.1.1 Notify the Owner of the receipt of any communication from EPA indicating that a facility to be utilized in the performance of the Contract is under consideration to be listed on the EPA list of Violating Facilities,

13.9.1.1.2 Certify that any facility to be utilized in the performance of any nonexempt contractor or subcontractor is not listed on the EPA list of Violating Facilities as of the date of the Contract Award.

13.9.1.1.3 Include or cause to be included the above criteria and requirements of clauses 13.9.1.1.1 and 13.9.1.1.2 in every nonexempt Subcontract, and that the Contractor will take such actions as the Agency may direct as a means of enforcing such provisions.

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.

13.10 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. These may be obtained from the Agency representative.

13.11.2 Endangered Species - The Contractor shall comply with the Endangered Species Act. Should any evidence of the presence of endangered or threatened species or their critical habitat be brought to the attention of the Contractor, the Contractor will immediately report this evidence to the Architect and the Agency representative. Construction shall be temporarily halted pending the notification process and further directions issued by the Agency after consultation with the U.S. Fish and Wildlife Service.

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

13.11.3.1 Historic Preservation - Any excavation or other earth moving activity by the Contractor that uncovers a historical or archaeological artifact shall be immediately reported to the Architect and the Agency representative. Construction shall be temporarily halted pending the notification process and further directions issued by the Agency after consultation with the State Historic Preservation Officer or other appropriate historic preservation official.

13.11.3.2 Human Remains and Cultural Items - Any excavation or other earth moving activity by the Contractor that uncovers human remains or cultural items shall be immediately reported to the Architect and the Agency representative. Construction shall be temporarily halted pending the notification process and further directions issued by the Agency after consultation with the appropriate authorities.

13.11.3.3 Paleontology - Any excavation or other earth moving activity by the Contractor that uncovers a fossil or other paleontological materials that may have scientific significance shall be immediately reported to the Architect and the Agency representative. Construction shall be temporarily halted pending the notification process and further directions issued by the Agency after consultation with appropriate authorities.

13.11.3.4 Wetlands - The Contractor, when disposing of excess, spoil, or other construction materials on public or private property, will not fill in wetlands.

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

13.11.4 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 et seq.), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 et seq.) 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.

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ATTACHMENT TO AIA DOCUMENT A201/SC-1999, *FEDERAL SUPPLEMENTARY CONDITIONS OF THE CONTRACT FOR CONSTRUCTION*

The provisions of this Attachment shall delete, modify 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 this Attachment 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 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 Delete the words "on Standard Form 25" from the first sentence
Replace the fourth sentence in its entirety with "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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