

**ATTACHMENT TO AIA DOCUMENT A133-2009, *Standard Form of Agreement Between Owner and Construction Manager as Constructor* where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.**

The provisions of this Attachment shall delete, modify, and supplement the provisions contained in the "***Standard Form of Agreement Between Owner and Construction Manager as Constructor***", AIA Document A133-2009 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 2, CONSTRUCTION MANAGER'S RESPONSIBILITIES**

**2.3.2.5** Add a sentence to the end of subparagraph 2.3.2.5 reading "The Construction Manager shall attend on-site progress meetings no less than once a month during the periods of active construction."

**ARTICLE 7, PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

**7.1.7.3 and 7.1.7.4-Delete both of these paragraphs. Reference insert 7.1.11 for retainage on each pay application.**

**7.1.8** Delete existing paragraph and replace with the following:

The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than ten percent (10%). The Construction Manager shall execute subcontracts in accordance with those agreements.

**7.1.11** Insert the following subparagraph:

7.1.11 The amount retained, on each pay application, 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 Construction Manager 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 Construction Manager. 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.

**7.2.2** Replace the word "seven" with the word "ten (10)" in the second sentence; and add the words, "using AIA Document G702, 'Application and Certificate for Payment,' or Form RD 1924-18, 'Partial Payment Estimate,'" after "Certificate for Payment" in that sentence.

**7.2.3** Delete the first two sentences of section 7.2.3 and replace them with the following sentences:

If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall not be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007 unless the Owner specifically authorizes such action in writing. If such action has been authorized by the Owner, the Construction Manager may make a request for mediation within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment.

**7.2.5** Insert the following subparagraph:

7.2.5 Amounts withheld from the final payment to cover any incomplete Work are not considered retainage and shall not be paid to the Construction Manager 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 11, MISCELLANEOUS PROVISIONS**

**11.5** Delete "Other Provisions:" and insert the following paragraph:

11.5 The date of Substantial Completion established by this contract is:

**11.6** Insert the following paragraph:

11.6 If the Work is not substantially complete on or before the date of Substantial Completion established in paragraph 11.5, or extension thereof granted by the Owner, the Construction Manager shall pay to the Owner liquidated damages in the sum of \$ \_\_\_\_\_ for each calendar day of delay. Any sums that may be due by the Construction Manager to the Owner as liquidated damages may be deducted from any monies due or to become due to the Construction Manager under the Contract or may be collected from the Construction Manager's surety.

11.7 Insert the following paragraph:

11.7 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.

ARTICLE 12, SCOPE OF THE AGREEMENT

12.1 Delete the last sentence of section 12.1 and replace it with the following sentence:

"This Agreement may be amended only by written instrument signed by Agency, the Owner, and the Construction Manager."

12.2.5 The following Documents should be referenced, if applicable:

Attachment to the **Standard Form of Agreement Between Owner and Construction Manager as Constructor** (this Attachment)  
*General Conditions of the Contract for Construction*, AIA A201-2007  
Attachment to the *General Conditions of the Contract for Construction* (RD Instruction 1942-A, Guide 27, Attachment 4)  
Invitation for Bids  
*Instructions to Bidders* (AIA Document A701-1997)  
Attachment to *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 (Form SF-LLL)  
Certification for Contracts, Grants and Loans (RD Instruction 1940-Q, Exhibit A-1)

**SIGNATURE BLOCK:**

The following signature block shall replace the signature block following paragraph 12.2:

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 \_\_\_\_\_

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

**OWNER:**

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

**CONSTRUCTION MANAGER:**

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 that the provisions of this Agreement are consistent with Agency requirements.