

ATTACHMENT TO AIA DOCUMENT A101-2017, *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 A101-2017 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.

When the project is not subject to the Build America, Buy America Act the provisions in bold do not apply.

ARTICLE 3, DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

Delete paragraph 3.1 and associated option boxes in their entirety and replace with the following:

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

Replace subparagraph 3.3.3 with the following:

3.3.3 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, damage will be sustained by the Owner and that it is and will be impracticable and extremely difficult to fix the actual damage which the Owner will sustain 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

Add the following after the words "Payment issued by the Architect" in subparagraph 5.1.1: "using AIA Document G702, 'Application and Certificate for Payment,' or Form RD 1924-18, 'Partial Payment Estimate'".

Add the following to the end of subparagraph 5.1.1: "Agency concurrence is required on all Applications of Payment before payment is made".

Insert "ten" and "10" in the appropriate spaces in the last sentence in subparagraph 5.1.3.

Insert the following retainage description and clauses in subparagraph 5.1.7.1:

The amount retained shall be 10% of the value of Work until 50% of the Work has been completed or a withholding of equal or

greater value, such as, 5% for the full duration of the project. If 10% is held, 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. Alternate industry-standard retainage proposals may be considered by RD when:

- .1 The retainage proposal is mandated by the State in which the project is located.
- .2 The retainage proposal does not add risk to the applicant and the Agency.

ARTICLE 8, MISCELLANEOUS PROVISIONS

Add the following subparagraphs and clauses to paragraph 8.7:

8.7.1 This agreement and any amendments to this agreement shall not be in full force and effect until concurred with in writing by a duly authorized representative of the Agency. 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 thereunder, but in the event such assistance is provided, the concurrence shall signify that the provisions of this Agreement and any amendments to this Agreement are consistent with Agency requirements.

8.7.2 Build America, Buy America Act

Domestic Preference Requirements for Federal Financial Assistance to Non-Federal Entities. Federal Financial Assistance to Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABAA), under Title IX of the Infrastructure Investment and Jobs Act, Pub. L. 177-58. Any requests for waiver of these requirements must be submitted pursuant to USDA's guidance available online at [USDA Buy America Waivers for Federal Financial Assistance | USDA.](#)

8.7.2.1 This agreement is for services related to a project that is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 177-58. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States, as further outlined by the Office of Management and Budget's regulation (reference 2 CFR 200) on the application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

8.7.2.2 The Contractor shall be responsible for:

- .1 Providing costs and revisions thereof that reflect compliance with BABAA requirements.
- .2 Providing only iron, steel, construction materials and manufactured products that meet BABAA requirements. Installation of materials or products that are not compliant with BABAA requirements shall be considered defective work.
- .3 Including manufacturer's certification for BABAA requirements with all applicable submittals. If a specific manufacturer is used in the bidding, a statement that the manufacturer will comply with BABAA requirements must be included with the bid submission. Contractor shall comply with BABAA requirements, including coordination with manufacturers, distributors, and suppliers to correct deficiencies in any BABAA documentation.
- .4 Providing manufacturer's certification for BABAA requirements with any change order for any new construction materials or manufactured products required by the change.
- .5 Certifying by submitting an application for payment, based in whole or in part on furnishing construction materials or manufactured products; that such materials and products, to the Contractor's knowledge, are compliant with BABAA requirements.
- .6 Ensuring that the Architect / Engineer has been provided an approved manufacturer's certification or waiver prior to items being delivered to the project site.
- .7 Certifying upon completion that all work and materials are in compliance with BABAA requirements.

ARTICLE 9, ENUMERATION OF CONTRACT DOCUMENTS

The following documents should be referenced, if applicable; in paragraph 9.1, clause .9:

Attachment to the *Standard Form of Agreement Between Owner and Contractor* (this Attachment)
Attachment to the General Conditions of the Contract for Construction (RD Instruction 1942-A, Guide 27, Attachment 4)
Advertisement For Bids (RD Instruction 1942-A, Guide 19, Attachment 1)
Instructions to Bidders, AIA A701-2018
Attachment to the Instructions to Bidders (RD Instruction 1942-A, Guide 27, Attachment 2)
Bid Form
Bid Bond
Payment Bond
Performance Bond
Certification for Contracts, Grants and Loans (RD Instruction 1940-Q, Exhibit A-1)
Disclosure of Lobbying Activities (Form SF-LLL)
Compliance Statement (Form RD 400-6)

PAGE 8, OWNER AND CONTRACTOR SIGNATURE PAGE

Delete the signature block and replace with the following:

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:

OWNER:

ATTEST: _____	By _____
Type Name _____	Type Name _____
Title _____	Title _____
Date _____	Date _____

CONTRACTOR:

ATTEST: _____	By _____
Type Name _____	Type Name _____
Title _____	Title _____
Date _____	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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