

ATTACHMENT TO AIA DOCUMENT A133-2019, 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 A133-2019 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 1, INITIAL INFORMATION

Delete the following references from subparagraph 1.1.5:

"accelerated or fast-track scheduling"

Add the following subparagraphs and clauses to subparagraph 1.1.15:

1.1.15.1 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 and 2 CFR 184, 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's Build America Buy America website](#).

1.1.15.1.1 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, 2 CFR 184) on the application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

1.1.15.1.2 The Construction Manager 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 during subcontractor pricing, a statement that the manufacturer will comply with BABAA requirements must be included with the GMP submission. The Construction Manager 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 Construction Manager'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 3, CONSTRUCTION MANAGER'S RESPONSIBILITIES

Delete the following from subparagraph 3.1.5: "accelerated or fast-track"

Insert subparagraph 3.2.1.1 as follows:

3.2.1.1 Agency review and concurrence of the Guaranteed Maximum Price proposal is required prior to the Owner's acceptance.

Insert subparagraph 3.2.6.1 as follows:

3.2.6.1 The Guaranteed Maximum Price proposal shall not be in full force and effect until concurred with in writing by a duly authorized representative of the Agency.

Add the following sentence to the end of subparagraph 3.3.2.1:

3.3.2.1: The Construction Manager shall schedule on-site progress meetings no less than once a month during the periods of active construction.

ARTICLE 6, COMPENSATION FOR CONSTRUCTION PHASE SERVICES

Replace subparagraph 6.1.6 with the following:

6.1.6 If the work is not substantially complete on or before the date of Substantial Completion established in paragraph 1.1.4, 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 the Owner as liquidated damages may be deducted from any monies due or to become due the Construction Manager under the Contract or may be collected from the Construction Manager's surety.

ARTICLE 9, SUBCONTRACTORS AND OTHER AGREEMENTS

Add the following to the end of paragraph 9.1: "The Contractor shall not contract with any person or entity declared ineligible under Federal laws or regulations from participating in federally assisted construction projects."

ARTICLE 11, PAYMENTS FOR CONSTRUCTION PHASE SERVICE

Modify subparagraph 11.1.1 by adding the following:

"using AIA Document G702, 'Application and Certificate for Payment,' or Form RD 1924-18, 'Partial Payment Estimate,'" after "Payment issued by the Architect".

"Agency concurrence is required on all Applications of Payment before payment is made" to the end of subparagraph 11.1.1.

Insert "ten" and "10" in the appropriate spaces of the last sentence in subparagraph 11.1.3.

Insert the following retainage description in subparagraph 11.1.8.1:

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.

Replace subparagraph 11.1.11 with the following:

11.1.11 The Owner and the 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.

Replace subparagraph 11.2.2.3 with the following:

11.2.2.3 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 A201-2017 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.

Insert subparagraph 11.2.5 as follows:

11.2.5 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 completed and accepted by the Owner. Such withholdings shall not be less than 150% of the estimated cost to complete the Work.

ARTICLE 14, MISCELLANEOUS PROVISIONS

Add the following subparagraphs and clauses to paragraph 14.5:

14.5.1 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.

ARTICLE 15, SCOPE OF THE AGREEMENT

Delete the last sentence of paragraph 15.1 and replace it with the following:

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

The following documents should be referenced, if applicable; in paragraph 15.2, clause .7:

Attachment to the *Standard Form of Agreement Between Owner and Construction Manager as Constructor* (this Attachment)
Attachment to the General Conditions of the Contract for Construction (RD Instruction 1942-A, Guide 27, Attachment 4)
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)

OWNER AND CONSTRUCTION MANAGER 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 _____

CONSTRUCTION MANAGER:

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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