

USDA RURAL DEVELOPMENT ATTACHMENT TO THE AGREEMENT BETWEEN OWNER AND ARCHITECT

For projects with **USDA RD MFH Direct Funding**

For use with AIA Contract Documents or other USDA approved contract documents

The provisions contained herein will supersede any conflicting provisions of the Agreement dated _____

between _____ (Owner)

and _____ (Architect)

for _____ (Project Name).

The term "Agency," as used in this document, shall mean the United States of America, acting through the United States Department of Agriculture.

AGENCY CONCURRENCE

The Agreement, and any Amendments to the Agreement, between Owner and Architect shall not be in full force and effect until concurred with in writing by the Agency. Such concurrence shall be evidenced by the signature of a duly authorized representative of the Agency at the end of the Attachment. In the event such assistance is provided, the Agency's concurrence signifies that the provisions of this Agreement are consistent with Agency requirements.

This Contract is expected to be funded in part with funds from the USDA Rural Development. Neither the United States nor any of its departments, agencies, or employees is or will be a party to this Contract or any Subcontract.

INITIAL INFORMATION

The planning, bidding, contracting, and construction must comply with any applicable State laws and requirements imposed by local, county, State or Federal agencies.

Accelerated or fast-track construction methods are not permissible and shall not be used. The Agency shall review and concur in final plans and specifications prior to bidding or negotiation.

SCOPE OF ARCHITECT'S BASIC SERVICES

For each Design Phase the Architect shall provide the Owner with the appropriate Design Documentation and the estimated project cost to seek the concurrence of the Agency. When the Owner has accepted and the Agency has concurred with the documentation and estimated project cost, the project Architect may be authorized to proceed with the next phase of work.

The Architect shall attend conferences with the Owner, representatives of the Agency and other interested parties as may be reasonably necessary.

Schematic Design Phase

The Architect will:

1. Consult with the Owner to obtain available information pertinent to the project requirements.
2. Consult with the Agency about USDA Rural Development requirements and procedures.
3. Assist in preparing the project design after analyzing engineering and survey data on the site selected by Owner.
4. Prepare schematic design studies consisting of:
 - a. Drawings and other documents illustrating the scale and relationship of project components for the Owner's approval.

- b. For rehabilitation projects: a rehab scope of work describing the planned rehab work items with preliminary plans and outline specifications.
- 5. Submit estimates of probable construction costs.

When the Owner and the Agency have accepted the schematic design studies and statement of probable costs, the project architect may be authorized to proceed with the next phase.

Construction Documents Phase Services

The Architect will:

1. Prepare the working drawings and specifications from the approved schematic design drawings and set forth in detail the requirements for the construction of the entire project in accordance with applicable regulations and codes; for example, necessary bidding information, assistance in preparing bidding forms, conditions of the construction contract, and the form of agreement between Owner and Contractor.
 - a. The drawings must be clear, accurate, with adequate dimensions and of sufficient scale for estimating purposes.
 - b. Construction sections and large-scale details sufficient for accurate bidding and for the purpose of correlating all parts of the work should be part of the general drawings.
 - c. Mechanical and electrical work should be shown on separate plans.
 - d. Schedules should be provided for doors, windows, finishes, electrical fixtures, finish hardware, and any other specialty items necessary to clarify drawings.
 - e. Trade-type specifications (specifications divided into sections for various trades) should be used. The specifications should be complete, clear, and concise, with adequate description of the various classes of work shown under the proper sections and headings. Maximum Open and Free Competition must be maintained.
 - f. The Project Manual will contain front-end documents, including Agency required content, and the specifications. Construction contracts should be an AIA contract with RD Supplemental General Conditions, or for very small projects RD Guide 17 with RD Guides 18 and 19, or other Agency approved contract documents.
 - g. Non-AIA contracts are required to be submitted for review by the Agency's Office of General Counsel prior to bidding and execution. Contracts must include and any additional provisions the Agency may require.
 - h. All contract documents will be reviewed and approved by the Agency prior to bidding and execution.
2. Submit a final and more comprehensive statement of probable development cost. It should show a breakdown of the estimated total development cost of the project and the various trades in enough detail for an adequate review.
3. Obtain the acceptance of the Owner and the Agency for contract documents, including approval of the final drawings and specifications and authorization to proceed.
4. Discuss with the Owner various items as they develop.

The Architect shall certify in writing, to the best of the Architect's knowledge, information and belief, that the Drawings and Specifications are in conformance with Agency requirements or standards, applicable building codes, accessibility standards, other federal, state and local laws, or any other regulatory requirement.

The Architect will certify using Form RD 1924-25 Plan Certification.

Prior to advertisement for bids, the Architect shall provide Construction Documents for use by the Owner, the Agency and the appropriate Federal, State and local agencies from whom approval of the Project must be obtained. Any reproduction cost of such Construction Documents shall be part of the Basic Services compensation paid to the Architect or shown in the detailed cost estimate for reimbursable expenses required under COMPENSATION. The Owner shall obtain Agency concurrence with the Construction Documents, estimated Project costs, and authorization to proceed in writing prior to advertisement for bids.

Procurement Phase Services

Competitive Sealed Bids is the preferred procurement method for construction contracts.

The Owner may request an exception to competitive bidding. When the Agency grants an exception to competitive bidding, the Owner may negotiate a construction contract.

The Architect will:

1. Assist in review and selection of bidders and submission of contract documents to selected bidders. Public notice must be given inviting all interested bidders to submit a bid.
2. Assist in the interpretation of drawings and specifications, and other contract documents.
3. Receive and tabulate all bids.
4. Review the bids or negotiated proposals and assist in the award and preparation of construction contracts. The Owner, with the assistance of the Architect, shall obtain Agency concurrence in the award of construction contracts.
 - a. For competitive bidding, the Agency must concur in the Notice of Award prior to the Owner's issuance of the notice.
 - b. For negotiated proposals, the Architect will assist the Owner in determining whether the negotiated contract price is competitive with other similar projects and if the proposed contractor is experienced and recognized as a reliable builder.

Upon award of the construction contract, the Architect shall furnish to the Owner, Construction Contract Documents for execution. Any cost of such Construction Contract Documents shall be part of the Basic Services compensation paid to the Architect.

Construction Phase Services

This phase includes the administration of the construction contract. It will commence with the award of the construction contract and terminate at the expiration of the warranty period described in the Contract for Construction. The Architect shall be a representative of and shall advise and consult with the Owner during construction until final payment to the Contractor is paid, and at the Owner's direction during the period of correction of the Work described in the Contract for Construction. The Architect shall furnish architectural services and consultations

necessary to correct minor construction defects encountered during such correction period. The Architect will:

1. Attend the preconstruction conference, complete Form RD 1924-16 Record of Preconstruction Conference (or approved alternative), obtain signatures of all attendees, and distribute to Owner, Agency, and Contractor.
2. Advise and consult with the Owner and the Agency and issue the Owner's instructions to the contractor.
3. Prepare change orders utilizing AIA G701, 'Change Order' with RD Concurrence Attachment or Form RD 1924-7, 'Contract Change Order'. Change order requests must include a narrative memo, in plain language, explaining why the change is needed, whether the request is from the Owner or the Contractor, and any other necessary supporting documentation. Preparation of Change Orders which do not substantially affect the Project shall be included in the compensation to the Architect for Basic Services. The Owner, with the assistance of the Architect, shall obtain Agency concurrence in writing for all change orders prior to the performance of the Work and prior to requesting payment for the Work.
4. A Construction Change Directive may only be used for a change in response to an emergency. An emergency is a situation posing imminent risk to the safety of persons or property.
5. When the Davis-Bacon Act applies, assist the Owner in reviewing certified payrolls submitted with pay applications for compliance with the labor standards provisions.
6. Interpret the contract documents and have the authority to reject all work and materials which do not comply.
7. Review and approve shop drawings, samples, and other submissions of the contractor for conformance with the design concept and for compliance with the contract documents.
8. The Architect shall advise the Owner and the Agency of required tests, inspections, and test results. Copies of tests results shall be furnished upon request to the Owner, and the Agency.
9. Conduct periodic inspections of all phases of construction to determine compliance with the contract documents and certify as to the amount that is in place and materials suitably stored on site or off-site for partial payment estimates. These inspections will be augmented, when necessary, by inspections performed by structural, mechanical, and electrical representatives. Periodic inspections should be made no less than once a month and as frequently as is necessary to verify that the work conforms with the intent of the contract documents and that a high quality of workmanship is maintained.
10. The Agency may require Resident Inspection when in the opinion of the Agency there is a need for such inspection. The term "Resident Inspector," as used in this document, shall mean the Owner's Inspector – an individual approved by the Owner, Architect, and Agency - who assists the Owner in Construction Contract Administration by preparing daily inspection reports, verifying compliance with BABAA and participating in the preconstruction conference, construction coordination meetings, pre-final inspection and final inspection. The selection of the Resident Inspector shall be concurred in by the Agency.

- a. The Resident Inspector will be independent from the Contractor. Prior to the preconstruction conference, the Owner must submit a resume of the representative's qualifications to the project architect/engineer and the Agency for acceptance in writing. If the consulting architect/engineer provides the project representative, the architect/engineer will submit a resume of qualifications of the project representative to the Owner and Agency for acceptance in writing. The Resident Inspector will attend the preconstruction conference where duties and responsibilities will be fully discussed. The Resident Inspector will work under the general supervision of the architect/engineer.
 - b. The contract between Owner and Resident Inspector shall be reviewed and concurred in by the Agency.
11. On-site pay/progress meetings shall occur no less than once a month during the periods of active construction. Progress meetings and the Architect's visits to the site shall be documented in writing on forms acceptable to the Owner and the Agency. Meeting minutes and observation reports shall be distributed promptly to the Owner, Contractor and the Agency
12. The Architect shall obtain Agency concurrence on all Certificates of Payment before payment is made. All Certificates of Payment shall be prepared using AIA Document G702/703, 'Application and Certificate for Payment' with RD concurrence attachment or Form RD 1924-18, 'Partial Payment Estimate'.
13. Determine, based on the inspections, the dates of substantial completion and final completion; receive on the Owner's behalf all written guarantees and related documents assembled by the contractor; and issue a final certificate for payment.
- a. Substantial Completion: The Architect, Owner, Resident Inspector, and the Agency shall conduct an inspection prior to the issuance of the Certificate of Substantial Completion. The Architect shall submit a written report of work to be completed to the Owner, the Agency and the Contractor prior to final acceptance. The Architect shall notify the Agency about the inspection allowing reasonable time for the Agency's representative to attend.
 - b. Final Completion: Prior to submitting the final Certificate for Payment, the Architect shall; 1) conduct an inspection with the Owner, Resident Inspector (if applicable) and the Agency (if available) to determine compliance with the requirements of the Contract Documents, and 2) 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.

Warranty Phase Services

The architect will advise and consult with the Owner, as the Owner's representative, about items to be corrected within the warranty period. The Architect shall assist the Owner in performing a review of the Project during the 11th month after the date of substantial completion. Such services shall be furnished without additional charge except for travel and subsistence costs.

SUPPLEMENTAL SERVICES

The Architect shall be responsible for the following supplemental services:

1. Detailed cost estimating: The Architect shall provide a cost estimate based on the Construction Contract Documents, except when the Construction Management method is used. For Construction Management type projects, the Architect will review and recommend the cost estimate provided by the Construction Manager. The estimate shall show a breakdown of the project cost in accordance with Rural Development requirements and procedures.
2. On-site project representation (if required): When required, the Resident Inspector should be provided by the Architect.

ADDITIONAL SERVICES

When the Davis Bacon Act applies, acting as the Contracting Officer may be considered an additional service if not included in the Architect's Basic Services.

OWNER'S RESPONSIBILITIES

The Owner shall provide Agency design and construction document regulations and guides to the Architect, upon request. The Owner shall provide information on requirements and procedures of the Agency.

MISCELLANEOUS PROVISIONS

If applicable, the Architect shall comply with section 319 of Public Law 101-121 (31 U.S.C. 1352), as supplemented by the Department of Agriculture regulations (2 CFR part 418). This statute 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 either Exhibit A-1 to 1940-Q, or Form SF-LLL 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.

The Architect agrees to abide by the requirements under Executive Order 12549, which pertains to the debarment or suspension of a person from participating in a Federal program or activity.

COMPENSATION

The Owner shall compensate the Architect with a Stipulated Sum. Percentage Basis or Other methods of compensation shall not be used.

Fees shall be reasonable; not in excess of those ordinarily charged for similar work when Agency financing is not involved.

The Architect shall provide a detailed cost estimate for Reimbursable Expenses as defined in the Agreement, which shall be attached and made a part of this Agreement. The cost estimate must be approved in writing by the Owner and shall be concurred with in writing by the Agency before the services are rendered. The billings for reimbursable services shall not exceed the budgeted amount without prior approval of the Owner with the concurrence of the Agency. The Agency may not concur in requests for payments which exceed the budgeted amount unless it is established that funds are available for such expenditures.

BUILD AMERICA, BUY AMERICA ACT

When the project is not subject to the Build America, Buy America Act the provisions of this section do not apply.

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](#).

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. 116-260. 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 part 200, 2 CFR part 184) on the application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

The Designer, Architect, and / or Engineer shall be responsible for:

1. Providing opinions of costs, and revisions thereof, that reflect compliance with BABAA requirements.
2. Determining and certifying that to the best of Provider's knowledge and belief all iron and steel products, manufactured products, and construction materials referenced in any technical analysis/report; the plans, specifications, and bidding documents; any bid addenda; and change orders comply with all federal requirements, including BABAA.
3. Reviewing and approving or taking action with respect to shop drawings, samples, and other required Contractor submittals, including applications for payment, to ensure compliance with BABAA requirements.
4. Reviewing substitutions and "or equals" for conformity with contract conditions, Rural Development (RD) regulations, and BABAA requirements.
5. Obtaining and reviewing manufacturer's and contractor's certifications on compliance with BABAA requirements and maintain copies of certifications in project files.
6. Assisting the Owner, if needed, in due diligence related to any BABAA waiver request.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, the Agreement

dated _____

between _____ (Owner)

and _____ (Architect)

for _____ (Project Name)

on the respective dates indicated below.

OWNER:

By _____

ATTEST: _____

Type Name _____

Type Name _____

Title _____

Title _____

Date _____

Date _____

ARCHITECT:

By _____

ATTEST: _____

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.