

USDA RURAL DEVELOPMENT SUPPLEMENTAL GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

For projects **without** new USDA Rural Development 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 _____ (Contractor)
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. Neither the United States nor any of its departments, agencies, or employees is or will be a party to this Contract or any Subcontract.

DATES OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

If the work is not substantially complete within the Contract Time established in the Agreement, 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.

ARCHITECT

The term "Architect" means the Architect engaged directly by the Owner. "Architect" may mean 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.

CONTRACTOR

The term "Contractor" means

The General Contractor, in Design-Bid-Build or Negotiated Contract projects

RESIDENT INSPECTOR

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 Resident Inspector will be qualified and independent of the Contractor.

SUBCONTRACTORS

The Contractor shall not contract with any party who is suspended or debarred by any Federal government agency from participating in Federally assisted construction projects or to whom the Owner or the Architect has made reasonable and timely objection.

CONTRACT SUM

Cost plus a percentage of cost method of contracting should not be used. The Contract Sum should be a firm, fixed price, in the form of a Stipulated Sum or Guaranteed Maximum Price.

PRECONSTRUCTION CONFERENCE

A Preconstruction Conference will be held prior to the beginning of construction to familiarize all parties involved with the work. This meeting shall be held with the Contractor, Owner, Architect, Resident Inspector (if applicable), Agency Representative(s) (if available) and other interested parties as appropriate. Form RD 1924-16 Record of Pre-construction Conference (or similar) may be used to document the meeting. The Preconstruction Conference must be held prior to issuance of the Notice to Proceed for the construction phase.

CHANGES IN THE WORK

A Change Order is a written order to the Contractor signed by the Owner, Architect, and Contractor. The Contract Sum and the Contract Time may be changed only by Change Order.

Methods used in determining adjustments to the Contract Sum may include any of the following:

1. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
2. Unit prices stated in the Contract Documents or subsequently agreed upon.

PROGRESS PAYMENTS

On-site progress meetings shall be conducted no less than once a month during the periods of active construction. These meetings shall be conducted with the Contractor, Owner, Architect, Resident Inspector (if applicable), Agency Representative(s) (if available) and other interested parties as appropriate.

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.

For each progress payment made the Owner shall retain an amount determined by the Lender or Third-Party Funder.

Retainage will not be adjusted until after construction is substantially complete.

SUBSTANTIAL COMPLETION

When the Work has been substantially completed, except for 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. The Owner shall provide a copy of the Certificate of Substantial Completion to the Agency.

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:

1. A "Certificate of Substantial Completion" shall be prepared and executed. When, in the opinion of the Architect, the Contractor is chargeable with unwarranted delay in completing the Work or other Contract requirements, the signature of the Contractor will not be required. The Certificate of Substantial Completion shall be accompanied by a written endorsement of the Contractor's insurance carrier and 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.
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.

3. The Contractor shall not be held responsible for any damage to the occupied part of the Project resulting from the Owner's occupancy.
4. Occupancy by the Owner shall not be deemed to constitute a waiver of existing claims on behalf of the Owner or Contractor against each other.
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.

Use and occupancy by the Owner prior to Project acceptance does not relieve the Contractor of responsibility to maintain all insurance and bonds required of the Contractor under the Contract until the Project is completed and accepted by the Owner.

FINAL PAYMENT

The Contractor, Owner, Architect, Resident Inspector (if applicable), and Agency Representative(s) (if available) shall conduct the final inspection.

Amounts withheld from the final payment to cover any incomplete Work are not considered retainage and shall not be paid to the Contractor 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.

INSURANCE

The Owner shall be named as co-insured on the Contractor's liability insurance.

Insurance shall be written with limits consistent with the Contract Documents but not less than:

1. A limit of liability of not less than \$500,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$200,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$200,000 aggregate for any such damage sustained by two or more persons in any one accident, or,
2. A combined bodily injury and damage liability of not less than \$700,000 per occurrence; and with an aggregate of not less than \$700,000 per occurrence.

The responsibility by either the Owner or the Contractor to obtain Property insurance written on a builder's risk "all-risks" completed value covering the total value of the entire Project on a replacement cost basis shall be clearly defined in the Contract.

The policy shall name as the insured the Contractor and the Owner.

BONDS

538 Guarantee Option 1, LIHTC and Third Party Funds: Provide Surety as required by 538 Lender, LIHTC, third party, or interim lender.

538 Guarantee Options 2 & 3: Provide one of the following forms of surety:

Performance Bond and Payment Bond

1. The Contractor shall furnish the Owner bonds covering faithful performance of the Contract and payment of obligations arising thereunder at or prior to closing. 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 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 United States, acting through USDA Rural Development, will be named as co-obligee on all surety unless prohibited by State law. The cost of these bonds shall be included in the Contract Sum.

2. 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.
3. 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 any 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.

Unconditional and Irrevocable Letter of Credit that is Acceptable to the Agency

Pledge to the Lender of Collateral that is Acceptable to the Agency

LATENT DEFECTS PROTECTION:

If the Contractor does not furnish payment and performance bonds when construction surety is required, then the Contractor shall provide surety or guarantee acceptable to the Owner and the Agency against latent obligations and defects in connection with the construction.

1. The Contractor shall furnish a properly executed corporate latent defects bond, a maintenance bond, an unconditional and irrevocable letter of credit, or a cash deposit into a supervised bank account. Whichever instrument is used shall be in the amount of 10 percent of the Contract Sum.
2. The period of protection against latent obligations and defects shall be one year from the final acceptance of Work by the Owner and the Agency.
3. Final payment to the Contractor shall not be issued until the provisions of this section have been met.

FEDERAL INSPECTION

The authorized representatives and agents of the Federal Government shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

LANDS AND RIGHTS-OF WAY

Prior to the start of construction, the Owner shall obtain all lands and rights-of-way necessary for the execution and completion of work to be performed under this contract.

STATUTES

The Contractor and each Subcontractor shall comply with the following statutes (and with regulations issued pursuant thereto, which are incorporated herein by reference):

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 construction to give up any part of the compensation to which the person is otherwise entitled.

The Clean Air Act (42 U.S.C. 7414), section 114, and 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:

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.
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.
3. Include or cause to be included the above criteria and requirements of paragraphs .1 and .2 in every nonexempt subcontract, and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

RECORDS

If the Contract is based on a negotiated Bid, the Owner, the Agency, 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 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.

IDENTITY OF INTEREST

The Owner and Contractor will complete and sign the applicable form, either Form RD 3560-30, "Certification of No Identity of Interest (IOI) or Form RD 3560-31 "Identity of Interest (IOI) Disclosure Certificate."

ENVIRONMENTAL REQUIREMENTS

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.

The Contractor shall comply with the following environmental constraints:

Endangered Species, Historic Preservation, Human Remains and Cultural Items, Hazardous Materials, and Paleontology – Any excavation or other earth moving activity by the Contractor that provides evidence of the presence of endangered or threatened species or their critical habitat, uncovers a historical or archaeological artifact, human remains or cultural items, hazardous materials, a fossil or other paleontological materials will require the Contractor to:

1. Temporarily stop work;
2. Provide immediate notice to the Architect and the Agency, and in the case of potentially hazardous materials, provide immediate notice to local first responders and take such measures as necessary to protect the public and workers;
3. If during the course of any ground disturbance related to any Project, any post review discovery, including but not limited to, any artifacts, foundations, or other indications of past human occupation of the area are uncovered, shall be protected by complying with 36 CFR § 800.13(b)(3) and (c). The on-site supervisor shall immediately delineate a discovery area large enough to allow safe continuation of work outside the buffer. The

Contractor shall ensure barriers are established to protect the area of discovery and notify (Applicant) and their Engineer, and/or Architect, if any, to contact the appropriate RD personnel. The RD personnel shall notify the appropriate RD environmental staff member and the Federal Preservation Officer (FPO). The FPO will follow the RHS/RBCS Inadvertent Discovery Plan.[JP1.1] When the discovery contains human remains, the Contractor shall cease all construction within the area immediately, establish and secure a buffer zone large enough to protect the discovery, and contact Law Enforcement. If Law Enforcement determines the remains are not a crime scene, the Contractor will follow the State's statute for the discovery of human remains. If the inadvertent discovery appears to be a consequence of illegal activity such as looting, the onsite personnel shall contact the appropriate legal authorities and RD staff immediately if the landowner has not already done so. Work may not resume in the area of the discovery until a notice to proceed has been issued by RD. Inadvertent discoveries on federal and tribal land shall follow the processes required by the responsible federal or tribal entity.

4. Take reasonable measures as necessary to protect the discovered materials or protected resource;
5. Abide by such direction as provided by the Agency, or Agencies responsible for resource protection or hazardous materials management; and
6. Resume work only upon notice from the Owner, Architect, and the Agency.

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), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851) for rehabilitation work on residential property and child occupied facilities built prior to 1978.

Compliance with all Federal, State, and local requirements effective on the contract execution date will be the responsibility of the Contractor.

DEBARMENT AND SUSPENSION

The Contractor shall comply with the requirements of 2 CFR part 417, which pertains to the debarment or suspension of a person from participating in a Federal program or activity.

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.

Definitions:

Build America, Buy America Act (BABAA) – Requirements instituted by the Bipartisan Infrastructure Law of 2021 mandating domestic preference that all iron and steel, manufactured products, and construction materials are produced in the United States.

Construction Materials – Those articles, materials, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives – that are or consist primarily of: non-ferrous metals, plastic and polymer-based products, glass, lumber or drywall.

Manufactured Product – Items assembled out of components, or otherwise made or processed from raw materials into finished products. Manufactured products must be manufactured (assembled) in the United States, and the cost of components that were mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the project.

Manufacturer's Certification – Documentation provided by a Manufacturer, certifying that the items provided by Manufacturer meet the domestic preference requirements of BABAA.

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. 117-58. 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. 117-58. 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 part 200, 2 CFR part 184) on the application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

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 or subcontractor pricing, a statement that the manufacturer will comply with BABAA requirements must be included with the bid or GMP 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.**

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 _____ (Contractor)

for _____ (Project Name)

on the respective dates indicated below.

OWNER:

By _____

ATTEST: _____

Type Name _____

Type Name _____

Title _____

Title _____

Date _____

Date _____

CONTRACTOR:

By _____

ATTEST: _____

Type Name _____

Type Name _____

Title _____

Title _____

Date _____

Date _____