

ATTACHMENT TO AIA DOCUMENT A141-2014, *Standard Form of Agreement Between Owner and Design/Builder*

The provisions of this Attachment shall delete, modify and supplement the provisions contained in the "*Standard Form of Agreement between Owner and Design/Builder*", AIA Document A141 - 2014 Edition. The provisions contained in this Attachment will supercede 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.

ARTICLE 1: General Provisions

Modify paragraph 1.1 by inserting the words "and is concurred with by the Agency" after "Owner's Criteria" in the first sentence.

Modify paragraph 1.1.7 by inserting the following sentences in subparagraph 1.1.7.4:

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, the Design/Builder 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 Design/Builder under the Contract or may be collected from the Design/Builder's surety.

Modify paragraph 1.1.11 by inserting the words ", the Agency," after "Owner" in the second sentence.

Add the following subparagraphs and clauses to paragraph 1.4:

1.4.16 Agency

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

1.4.17 Independent Inspector

The term "Independent Inspector," as used in this Attachment, shall mean the Inspector independent from the Design/Builder hired by the Owner to represent the Owner's interests. The Agency requires a construction inspector independent of the Design/Builder.

1.4.17.1 The Independent Inspector shall be a representative of and shall advise and consult with the Owner during construction until final payment is due to the Design/Builder, and at the Owner's direction during the period of correction of

the Work described in the design/build documents. The Independent Inspector shall furnish consultations necessary to identify construction defects and correct unforeseen conditions encountered during this period. The Independent Inspector shall assist the Owner in performing a review of the Project during the 11th month after the date of Substantial Completion.

1.4.17.2 The Independent Inspector shall conduct an inspection prior to the issuance of the Acknowledgement of Substantial Completion and shall submit a written report to the Owner, Agency and the Design/Builder about Work to be completed prior to final acceptance. Such services shall be coordinated with the Agency. Prior to submitting the final Application for Payment, the Independent Inspector shall conduct an inspection, submit a Statement of Completion, and 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 Design/Builder.

1.4.17.3 Visits to the site shall be documented in writing on standard inspection report forms with copies furnished to the Owner, Design/Builder and Agency. Visits to the site shall be in accordance with Agency requirements and procedures.

ARTICLE 2: Compensation and Progress Payments

Modify subparagraph 2.1.4.1 by inserting the following in the appropriate space:

Interest at 1% per month or 12% per year for pay estimates outstanding for 60 days will be paid to the Design/Builder.

ARTICLE 3: DESIGN/BUILDER

Add the following subparagraph to subparagraph 3.1.3:

3.1.3.3 The Design/Builder shall advise the Owner of required tests, inspections and reports, shall furnish coordination of such tests and inspections, and shall advise the Owner and Agency of the results of same. Copies of test results shall be furnished to the Owner, Owner's Independent Inspector and Agency, as appropriate.

Add the following sentence to subparagraph 3.1.4: "Any extra cost that may result from any such acts and omissions will be the responsibility of the Design/Builder."

Add the following sentence to paragraph 3.1.5: The Design/Builder shall conduct a Preconstruction Conference prior to the beginning of construction to familiarize all parties involved with the necessary work. This meeting shall be held with the Design/Build representative, Owner, Owner's Independent Inspector, Agency representative(s) and other interested parties as appropriate. The Agency 'Record of Preconstruction Conference' may be used to document the meeting.

Add the following subparagraph to subparagraph 3.1.7:

3.1.7.1 The Design/Builder shall consult with the Agency Architect or Engineer about the Agency's requirements and procedures.

Add the following clauses to subparagraph 3.1.8.1:

3.1.8.1.13 The Design/Builder shall conduct on-site pay/progress meetings no less than once a month during the periods of active construction. These meetings shall be held with the Design/Build representative, Owner, Owner's Independent Inspector, Agency representative(s) and other interested parties as appropriate, to review and discuss the application for payment, work progress schedule, construction problems or disputes and other appropriate matters.

In subparagraph 3.1.11.3, add the words "and written concurrence by the Agency has been issued" after "Owner has approved the respective Submittal" and add the following sentence after the first sentence: Two (2) sets of submittals for the Agency are required.

ARTICLE 4: Work Prior to Execution of the Design-Build Amendment

Modify paragraph 4.4.1.2 by deleting "and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;". Insert a period after method.

ARTICLE 5: Work Following Execution of the Design-Build Amendment

In subparagraph 5.3, add the following subparagraph:

5.3.4 The Design/Builder shall not contract with any person or entity declared ineligible under Federal laws or regulations from participating in federally assisted construction projects for to whom the Owner has made reasonable objection. The Design/Builder shall not be required to contract with anyone to whom the Design/Builder has reasonable objection.

ARTICLE 6: CHANGES IN THE WORK

Insert the word ", Agency" after the word "Owner" in its first occurrence in subparagraph 6.1.2.

Delete subparagraph 6.2 and substitute the following:

6.2 A change order is a written order to the Design/Builder utilizing Form RD 1924-7, "Contract Change Order," signed by the

Owner, Independent Inspector, Design/Builder, and the Agency representative. It is issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. The Design/Builder's signing of the change order indicates complete agreement therein.

Add the following sentence to the end of subparagraph 6.3.1: "A Construction Change Directive may be used only for a change in response to an emergency, as described in Paragraph 10.4."

Delete subparagraph 6.3.3.

Delete subparagraph 6.3.5.

Delete subparagraph 6.3.7.

ARTICLE 7: OWNER

Add the following sentence to the end Paragraph 7.1.1:

The Owner shall provide the Design/Builder with Agency standard Contract Document Guides.

ARTICLE 9: PAYMENT APPLICATIONS AND PROJECT COMPLETION

Add the words, "using AIA Document G-702, 'Application and Certificate for Payment' or Form RD 1924-18, 'Partial Payment Estimate'," after "Application for Payment" in the first sentence of subparagraph 9.3.1.

Under subparagraph 9.3.1, add the following subparagraph:

9.3.1.3 The Design/Builder shall obtain Agency concurrence on all Applications of Payment before payment is made.

Add the following sentence to the end of paragraph 9.4: "Agency concurrence is required on all Certificates of Payment before payment is made."

Add the following subparagraph to paragraph 9.6:

9.6.8 No progress payments will be made that deplete the retainage, place in escrow any funds that are required for retainage, or invest the retainage for the benefit of the Design/Builder.

Replace the word "seven" with the word "ten (10)" in the first sentence of subparagraph 9.7.

Add the words ", in collaboration with the Agency Architect or Engineer," after "prepare" in the first sentence of subparagraph 9.8.5.

Delete subparagraph 9.8.6 and substitute the following:

9.8.6 The certificate of substantial completion shall be submitted by the Design-Builder to the Owner and the Agency for written acceptance of responsibilities assigned to it in the certificate. When the Work has been substantially completed, except for the 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.

Delete subparagraph 9.9.1 and substitute the following subparagraphs:

9.9.1 The Design/Builder agrees to the use and occupancy of a portion or unit of the Project before formal acceptance by the Owner under the following conditions:

9.9.1.1 A Certificate of Substantial Completion shall be prepared and executed as provided in subparagraph 9.8.4, except that when, in the opinion of the Inspecting Architect, the Design/Builder is chargeable with unwarranted delay in completing the Work or the Contract requirements, the signature of the Design/Builder will not be required. The Certificate of Substantial Completion shall be accompanied by copies of Design/Builder's insurance policies, written endorsements of the Design/Builder's insurance carrier, and the 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.

9.9.1.2 Occupancy by the Owner shall not be construed by the Design/Builder as being an acceptance of that part of the Project to be occupied.

9.9.1.3 The Design/Builder shall not be held responsible for any damage to the occupied part of the Project resulting from the Owner's occupancy.

9.9.1.4 Occupancy by the Owner shall not be deemed to constitute a waiver of existing claims in behalf of the Owner or Design/Builder against each other.

9.9.1.5 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.

Add the following subparagraph to the beginning of subparagraph 9.9.2:

With the exception of clause 9.9.1.5, use and occupancy by the Owner prior to Project acceptance does not relieve the

Design/Builder of the responsibility to maintain all insurance and bonds required of the Design/Builder under the Contract Documents until the Project is completed and accepted by the Owner.

Delete subparagraph 9.10.1 and substitute the following:

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner, Owner's Independent Inspector and Agency representative shall promptly make such inspection and, and when the Owner finds the Work acceptable under the Design/Build documents and fully performed, the Owner with Agency concurrence shall, subject to Section A.9.10.2, promptly make final payment to the Design/Builder.

Delete the second and third sentences of subparagraph 9.10.2.

ARTICLE 14: CLAIMS AND DISPUTE RESOLUTION

In subparagraph 14.4.1, delete "shall" and replace with "may" in the first sentence.

Delete subparagraph 14.4.1.1 and substitute the following subparagraphs:

14.4.1.1 The arbitration provisions in this subsection may be initiated by either party to this Contract by filing with the other party a written request for arbitration. The other party may accept or reject the request by filing a written answering statement with the requesting party within fourteen (14) calendar days of the receipt of such request. If the request is accepted the provisions of this section shall apply. If the request is rejected or an answering statement is not filed within the fourteen (14) day period, the provisions in this subsection will not apply.

14.4.1.2 Within fourteen (14) calendar days or any mutually agreeable time period thereafter, each party to this Contract will appoint one arbitrator. Within fourteen (14) calendar days or any mutually agreeable time period thereafter, the two arbitrators will select a third arbitrator. Failure to appoint an arbitrator within the mutually agreeable time periods will terminate further actions under this subsection.

14.4.1.3 The arbitrators will select a hearing location as close to the Owner's locale as possible.

ARTICLE 15: MISCELLANEOUS PROVISIONS

Modify paragraph 15.2.1 by inserting the following at the end:

This Agreement will 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 this attachment to the Agreement. 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 payment hereunder.

But in the event such financial assistance is provided, the Agency concurrence shall signify the provisions of this Agreement are consistent with the requirements of the Agency.

Add the following paragraphs 15.9 through 15.13.1 to Article 15.

15.9 EQUAL OPPORTUNITY REQUIREMENTS - Non-discrimination in Employment by Federally Assisted Construction Contractors, by Executive Order 11246.

15.9.1 This section summarized Executive Order 11246, as amended, which prohibits employment discrimination and requires employers holding non-exempt Federal contracts and subcontracts and federally-assisted construction contracts and subcontracts in excess of \$10,000 to take affirmative action to ensure equal employment opportunity without regard to race, color, religion, sex, or national origin. The Executive Order requires, as a condition for the approval of any federally assisted construction contract, that the applicant incorporate nondiscrimination and affirmative action clauses into its non-exempt federally assisted construction contracts.

15.9.2 Executive Order 11246, as amended, is administered and enforced by the Office of Federal Contract Compliance Programs (OFCCP), an agency in the U.S. Department of Labor's Employment Standards Administration. OFCCP has issued regulations at 41 CFR chapter 60 implementing the Executive Order. The regulations at 41 CFR part 60-4 establish the procedures which the Agency, as an administering agency, must follow when making grants, contracts, loans, insurance or guarantees involving federally assisted construction which is not exempt from the requirements of Executive Order 11246. The regulations which apply to Federal or federally assisted construction contractors also are published at 41 CFR part 60-4.

15.9.3 OFCCP has established numerical goals for minority and female utilization in construction work. The goals are expressed in percentage terms for the contractor's aggregate workforce in each trade. OFCCP has set goals for minority utilization based on the percentage of minorities in the civilian labor force in the relevant area. There is a single nationwide goal of 6.9 percent for utilization for women. The goals to all construction work in the covered geographic area, whether or not it is federal, federally assisted or non-federal. A notice advises bidders of the applicable goals for the area where the project is to be located.

15.9.4 Application. This section applies to all of a construction contractor's or subcontractor's employees who are engaged in on-site construction including those construction employees who work on a non-Federal or non-Federally assisted construction site.

15.9.4.1 Agency officials will notify the appropriate Regional Director of OFCCP that an Agency financed construction contract has been awarded, and that the equal opportunity clauses are included in the contract documents.

15.7.4.2 The Regional Director, OFCCP-DOL, will enforce the non-discrimination requirements of Executive Order 11246.

15.9.4.3 The prospective contractor or subcontractor must comply with the Immigration Reform and Control Act of 1986 by completing and retaining Form I-9, "Employment Eligibility Verification," for employees hired. This form is available from the Immigration and Naturalization Service, and Department of Justice.

15.9.4.4 The prospective contractor or subcontractor must submit Form RD 400-6, "Compliance Statement," to the applicant and an Agency official as part of the bid package, prior to any contract bid negotiations and comply with the Executive Order 11246 as stated in the contract documents.

15.10 STATUTES

15.10.1 The Design/Builder and each subcontractor shall comply with the following statutes (and the regulations issued pursuant thereto, which are incorporated herein by reference):

15.10.2 The Design/Builder agrees to abide by the requirements of 2 CFR part 417 and under Executive Order 12549, which pertains to the debarment or suspension of a person from participating in a Federal program or activity. If the total compensation exceeds \$25,000, the Design/Builder shall complete the relevant certification form provided by the Owner.

15.10.3 If applicable, the Design/Builder shall comply with Section 319 of Public Law 101-121, as supplemented by the Department of Agriculture regulations (2 CFR part 418 and DR 2400-5). This Law 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 Design/Builder must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding for this Contract. The certification and disclosure forms shall be provided by the Owner.

15.10.4 Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). This Act provides that each Contractor shall be prohibited from inducing, by any means, any person in connection with the construction to give up any part of the compensation to which the person is otherwise entitled.

15.10.5 Clean Air Act (42 U.S.C. 7414), section 114, and the Water Pollution Control Act (33 U.S.C. 1813), section 308. Under Executive Order 11738 and Environmental Protection Agency (EPA) regulations 40 CFR part 15, all Contracts in excess of \$100,000 are required to comply with these Acts. The Acts require the Contractor to:

15.10.5.1 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,

15.10.5.2 Certify that any facility to be utilized in the work by any nonexempt contractor or subcontractor is not listed on the EPA list of Violating Facilities as of the date of the Contract Award.

15.10.5.3 Include or cause to be included the above criteria and requirements of clauses A.13.3.5.1 and A.13.3.5.2 in every nonexempt Subcontract, and that the Contractor will take such actions as the Agency may direct as a means of enforcing such provisions.

15.10.6 The Contractor shall be required to comply with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) entitle "Safety and Health Regulations for Construction" (29 CFR Part 1926) to the extent that any resulting Contract involves construction.

15.11 ENVIRONMENTAL REQUIREMENTS

15.11.1 Mitigation Measures - The Design/Builder shall comply with applicable mitigation measures established in the environmental assessment for the project. These may be obtained from the Agency representative.

15.11.2 The Design/Builder, when constructing a Project involving trenching, excavating, or other earth moving activity, shall comply with the following environmental constraints:

15.11.2.1 Endangered Species, Historic Preservation, Human Remains and Cultural Items, Hazardous Materials, and Paleontology - Any excavation or other earth moving activity by the Design/Builder 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 Design/Builder 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 Take reasonable measures as necessary to protect the discovered materials or protected resource;
- .4 Abide by such direction as provided by the Agency, or Agencies responsible for resource protection or hazardous materials management; and
- .5 Resume work only upon notice from the Architect and the Agency.

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

15.13 RECORDS

15.13.1 If the Contract is based on a negotiated Bid, the Owner, the United States Department of Agriculture, 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 Design/Builder which are directly pertinent to a specific Federal loan program for the purpose of making audit, examination, excerpts, and transcriptions. The Design/Builder shall maintain records for at least three years after the Owner makes final payment and all other pending matters are closed.

ARTICLE 16: Scope of the Agreement

Modify subparagraph 16.1.6 by inserting the following in the appropriate space:

Payment Bond
Performance Bond
Compliance Statement (Form RD 400-6)
Certification Regarding Debarment, Suspension, Ineligibility and
Voluntary Exclusion - Lower Tier Covered Transactions (Form AD
1048)
Disclosure of Lobbying Activities (SF-LLL)
Certification for Contracts, Grants and Loans (RD Instruction
1940-Q, Exhibit A-1)

Exhibit B: INSURANCE AND BONDS

B.2.1 Add subparagraph B.2.1.1.6:

B.2.1.1.6 The Owner shall be named as co-insured on the liability insurance.

Add the following clauses to B.2.1.

B.2.1.11 The insurance required in subparagraph B.2.1 shall be written for not less than the following limits, or greater if required by law:

.1 Workers' Compensation:

- (a) State: Statutory
- (b) Applicable Federal Statutory
(E.g. Longshoremen's)
- (c) Employer's Liability: \$ _____ per Accident
\$ _____ Disease, Policy Limit
\$ _____ Disease, Each Employee

.2 Comprehensive or Commercial General Liability (Including Premises-Operations; Independent Design/Builders' Protective; Products and Completed Operations; Broad Form Property Damage):

- (a) Bodily Injury: \$ _____ Each Occurrence
\$ _____ Aggregate
- (b) Property Damage \$ _____ Each Occurrence
\$ _____ Aggregate
- (c) Products and Completed Operations to be maintained for years after final payment: \$ _____ Aggregate
- (d) Property Damaged Liability Insurance shall provide X, C and U coverage.
- (e) Broad Form Property Damage Coverage shall include Completed Operations.

.3 Contractual Liability:

- (a) Bodily Injury \$ _____ Each Occurrence
\$ _____ Aggregate
- (b) Property Damage \$ _____ Each Occurrence
\$ _____ Aggregate

.4 Personal Injury, with Employment Exclusion deleted:
\$ _____ Aggregate

.5 Business Auto Liability (including owned, non-owned and hired vehicles):

- (a) Bodily Injury \$ _____ Each Person

(b) Property Damage \$ _____ Each Occurrence
\$ _____ Each Occurrence

.6 If the General Liability Coverages are provided by a Commercial Liability policy, the:

- (a) General Aggregate shall be not less than \$ _____ and it shall apply, in total, to this Project only.
- (b) Fire Damage Limit shall be not less than \$ _____ on any one fire.
- (c) Medical Expense Limit shall be not less than \$ _____ on any one person

.7 Umbrella Excess Liability:

\$ _____ over primary insurance
\$ _____ retention for self-insured hazards each occurrence.

.8 If an exposure exists, Aircraft Liability (owned and non-owned) and Watercraft Liability (owned and non-owned) with limits approved by the Owner shall be provided.

Add the following subparagraphs to subparagraph B.2.2:

B.2.2.2 The Design/Builder shall furnish the Owner Bonds covering faithful performance of the Contract and payment of obligations arising thereunder with such bonds dated on or before the date of this agreement. 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, as amended, and be authorized to transact business in the State where the Project is located. The Bonds (using the latest AIA forms) shall each be equal to the amount of the Contract Sum. The cost of these Bonds shall be included in the Contract Sum.

B.2.2.3 The Design/Builder 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.

B.2.2.4 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 Design/Builder 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 the Design/Builder. 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.

Delete the last sentence in subparagraph B.3.2.4.

Delete subparagraph B.3.2.5.

SIGNATURE BLOCK:

Delete the signature block on page 34 of this Agreement and substitute the following signature block:

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Design/Builder, one to the Owner and one to the Agency. Concurrence in the Contract by the Agency is required before the contract is effective.

OWNER:

ATTEST: _____
Print Name: _____
Title: _____
Date: _____

BY: _____
Print Name: _____
Title: _____
Date: _____

DESIGN/BUILDER:

ATTEST: _____
Print Name: _____
Title: _____
Date: _____

BY: _____
Print Name: _____
Title: _____
Date: _____

OWNER'S ATTORNEY REVIEW:

I have examined this design/build contract and have received verification that the proper performance and payment bond(s) will be issued and executed thereof, and I am of the opinion that each of the aforesaid agreements are adequate and has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof.

By: _____

Print Name: _____

Date: _____

AGENCY CONCURRENCE:

Approved as lender or insurer of fund to defray the costs of this contract and without liability for any payments thereunder, the USDA Rural Development hereby concurs in the award of this contract.

By: _____

Title: _____

Print Name: _____

Date: _____