
Construction Manager as Advisor (CMA) may be used with specific, prior written concurrence from USDA-Rural Development (RD). Concurrence will be provided in accordance with the Administrative Notice titled “Design/Build and Construction Management Proposal for Community Facilities Projects”.

All contracting method projects must comply with the RD requirements for “maximum open and free competition.” All procurement transactions, regardless of whether by sealed bids or by negotiation, and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include but are not limited to: placing unreasonable requirements on firms in order for them to qualify to do business, using location of the firm in the selection criteria, noncompetitive practices between firms, organizational conflicts of interest and unnecessary experience and bonding requirements.

RD has specific documents for both the Architect and CMA. The steps needed to seek concurrence along with the required documents are attached or identified in this document.

STEP 1 - Steps for selecting an Architect:

If an Architect has been selected, provide a summary of the selection process. The summary should include a) list of firms contacted, b) list of firms selected for interviews and c) a statement on why the firm was chosen over the other firms. If several firms were not evaluated, explain why in detail.

Or

If an Architect has not been selected, seek out at least three Architect firms and request qualifications. Interview several firms and submit the following to RD to review: a) list of firms contacted, b) list of firms selected for interviews and c) a statement on why the firm selected was chosen over the other firms.

The Iowa RD approved Architect Agreement for use with a CMA is AIA Document B132-2019, “Standard Form of Agreement Between Owner and Architect” and RD Attachment (attached as Appendix C).

STEP 2 - Steps for selecting a CMA:

Prepare a Request for Proposal (RFP) and Scoresheet to rank the proposals. A sample RFP is included in this document. The Owner will send the RFP directly to CMA firms. The list of firms directly contacted will be included in the documentation to RD. Multiple firms must be contacted.

After the proposals are received, the CMA selection committee will review all proposals and select the best firms to interview.

Interview the best firms, complete the Scoresheet, and make a recommendation to select a firm.

If the selected firm fees are above other qualified firms' fees, including firms not selected for an interview, provide a detailed explanation explaining the benefit of the selected firm over all the other qualified firms.

STEP 3 - Documentation to submit to RD for review and concurrence of a CMA:

The Owner will prepare the CMA request addressing items A-F below. All of this information must be submitted in one package to RD, preferably by email. RD will review the request for completeness and submit it to the RD National Office for review and concurrence. The review process may take several weeks to complete.

- A) The Owner shall submit a written request to use a CMA with a description of the proposed contracting method to RD. The request shall document why this method is advantageous to the Owner and RD.
- B) Documentation of selection process of the selected Architect and CMA; see items in Steps 1 & 2 above.
- C) Proposed scope of work describing in clear, concise terms the technical requirements of the contract including:
 - i. A non-technical statement summarizing the work to be performed by the contractor and the results expect.
 - ii. The sequence of work to be performed and proposed construction schedule.
- D) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility.
- E) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired. Explain or define how inspection services will be performed. Detail what the Architect and CMA will do and explain third party inspector(s) roles. Provide a sample listing of stage and component inspections and who is proposed to complete the inspections.
- E) Provide a Preliminary Architectural Report prepared in accordance with Guide 6 of RD Instructions 1942-A.
- F) Provide an Owner's attorney's opinion and comments regarding the legal adequacy of the proposed Contract Documents and evidence that the Owner has the legal authority to enter into and fulfill the contract.

After the RD National Office concurs in the CMA process, RD will provide a written concurrence to the Owner. If you have any questions on the process, please contact the RD Area Specialist.

Note on inspections:

RD requires full time inspection on all projects by independent parties from the Contractor performing the work. RD requires that qualified people perform the inspections / observations. RD will review the resumes and concur in all inspectors. The Architect will be performing some of the inspections/observations and some of the inspections will be completed by the CMA or 3rd party independent firms. We request that the Architect develop a list of systems to be inspected and a suggested list of who will be doing the inspections.

The Architect Agreement requires the Architect to attend monthly progress meetings as part of Basic Services. RD will not concur in this as the only inspections/observations the Architect performs.

Request for Proposal Construction Manager as Advisor

May be modified to fit specific project needs.

A. EXECUTIVE SUMMARY

ABC is requesting proposals for Construction Manager as Advisor (CMA). The request for proposal is part of a competitive selection process to engage a CMA firm to provide services for the construction of XXXXX.

ABC has procured the services of Architect to provide professional services for the design of this project. A copy of the most recent floor plan, and preliminary site plan are included as Attachment A.

ABC has (submitted an application for) (or secured) funding this project with the USDA-Rural Development. Commencement of this project is dependent on the timing of securing financing. Owner is hopeful for a construction start date of XXXX.

B. OWNER

Owners name.

C. PROJECT LOCATION

XXXX

D. SCOPE OF PROJECT

XXXX

E. PROJECT DELIVERY METHOD

It is intended that this project will be delivered using a CMA. The form of contract for CMA Services will be C132-2019, *Standard Form of Agreement Between Owner and Construction Manager as Advisor* with USDA Rural Development attachment to AIA C132 (Appendix B).

The selected CMA firm will NOT be allowed to perform any of the construction work.

F. PROJECT SCHEDULE MILESTONES

- Send Out RFP for CMA Services XX
- Proposals for CMA Services Due XX
- Selection Committee Interviews XX*
- Notification of Selected CMA firm XX Contingent **

* Please reserve your calendar accordingly. It is a requirement that the key members of the team and the Project Superintendent be present at the interview.

** USDA Rural Development requests the CMA Agreement not be executed until after RD has concurred in the use of a CMA.

G. SCOPE OF SERVICES

The CMA along with Owner and Architect will be a critical member of the project team. It is expected that the CMA provide input on constructability, quality of materials, schedule, and cost prior to the completion of the design documents.

The following is a discussion if any CMA firm has worked with the Owner on this specific project and is planning to submit a proposal.

CM firms develop relationships in the course of their business practices. Repeat projects is the reward for past successful endeavors. The RD does not want to prevent that relationship. However on government funded projects all CM firms should have an equal opportunity to be considered for the project. To do this the Owner needs to create a properly detailed RFP that describes the project and describes the selection process/criteria and any past involvement that other CM firms have had on this specific project with the Owner. Therefore if the Owner has had a CM firm work specifically on this project the information generated by this CM firm needs to be shared with others in this RFP. To do this the RFP must state the name of the CM firm and what was done. Here is an example:

XYZ was asked to develop a scoping cost estimate to assist the owner with a project feasibility study. XYZ developed a scoping cost estimate based on past experience with similar projects and generic high level discussions with the owner. The cost estimate is attached as Appendix A.

H. REQUEST FOR INFORMATION

To properly evaluate each CMA firm please provide the following information using this outline as a template for your responses. If additional information is submitted, please include it separately from your official proposal. The Owner needs [redacted] hard copies of the proposal and email a PDF copy to [redacted]

Section 1.0

Background Information

- Company profile.
- Company capacity and projected volume of work.
- List company's total construction dollar volume, over past 3 years, by year.
- Company philosophy and core values.
- Company mission statement.

Section 2.0

Experience and Qualifications

- Provide five (5) profiles of projects your company has completed that are of similar size and complexity, where your company was the CMA. NOTE: Do not include multiple phase projects without noting size and scope of each phase.

CMA firms must have experience in successfully completing a project that is similar in size and complexity to that of a XXXXXX.

- Brief description of project and photo
- Size, e.g. square feet and scope
- Original contract construction costs and final contract construction costs

- Project delivery method
 - Names and positions of CM firms key staff on the project
 - Owner and contact information
 - Completion date
 - Architect/Engineer of record
- Describe your experience and knowledge of Iowa contractors, and the contractor market specific to this project area.
 - Describe your company's experience in working with state and local review agencies applicable to this project.

Section 3.0

Office/Corporate Structure

- Provide a corporate organizational chart for your company, inclusive of any parent companies.
- List number of Project Managers and Principals.

Section 4.0

Project Team

- How will your firm propose to structure the project team to ensure a successful project?
- Provide a detailed project specific organizational chart indicating titles and responsibilities. Address such for both pre-construction and construction phase services.
- Include a resume and references for each specific individual that will be working on the project.

Section 5.0

Company Differentiation and Management of the Process

- Describe how your company will manage the design and construction process, including how proactive and participative your firm will be during the programming, schematic design, design development phase, and construction of the project. Use the following items as an outline for you responses.
 1. Programming and preliminary design.
 2. Preconstruction Phase:
 - Explain what Value Engineering services your firm can provide.
 - Describe what your firm does when reviewing plans for constructability.
 - Estimate the number of Prime Contractors, discuss how your firm will assist the Architect in developing the Divisions of Work in the Contract Documents, and how you will minimize conflicts in Divisions.
 - Explain how detailed and accurate your schedules and cost projections are at the project stages of SD and DD – 50% - 75%, and final construction documents.
 3. Discuss your Bidding strategy, and how many prime contracts estimated. If more than 5 explain why in detail.
 4. Construction Phase. Discuss how your firm will coordinate the activities of the Prime Contractors in the following areas:
 - Pay Requests.
 - Change Orders.
 - Schedule Management.
 - General Construction.
 - Safety program review.
 - Performance of work by Contractors. Discuss your preferred method for detail inspections of the work using your own staff or others, and how you coordinate the inspections.

5. Discuss your Project Close-Out and Start-Up strategy.
6. Discuss any additional services your firm can provide.

Section 6.0
Insurance

- Indicate your insurance coverage limits.
- Provide your current and historic (3 prior years) experience modifier rating for your Workers Compensation program.
- Provide your current and historic (3 prior years) general liability insurance cost on a cost/\$ Thousand basis.

Section 7.0
Litigation

- Has your organization been involved in litigation within the past five years? If so, please describe and note the disposition of all cases.

Section 8.0
Construction Schedule

- Develop and submit a proposed construction schedule based off the aforementioned information.

Section 9.0

Address these general questions:

(add other questions here and remove this note)

Section 10.0
Fee Proposal

- USDA-RD generally limits the total costs of services paid to the CMA to 2- 4% of the cost of construction. The costs of services paid to the CMA include pre-construction services, insurance, reimbursables, General Conditions, CMA personnel, indirect costs, and profit and overhead fees. Costs of services above this level can be approved by USDA-RD depending on the scope of work and complexity of the project. Provide your costs in the following format:

Pre-Construction Services:

- a. Your cost for pre-construction services with a cost not to exceed. Lump sum amount. Your pre-construction reimbursable itemized expenses stated as a total not-to-exceed cost.
- b. Provide specific costs of “value engineering” contributions your firm can provide or arrange for. Some value engineering services can be shown as additional services depending on extent of services identify and list these separately.

Construction Services:

Clearly define and itemize all of your cost of services as follows:

- c. CMA personnel cost as a Not-To-Exceed cost.
- d. Identify the number of personnel and positions budgeted for this Project (Full Time and Part Time), and hourly rate for each.
- e. CMA Fee (Profit and Overhead). The CMA fee for Profit and Overhead shall be a fixed lump sum amount. **The fee cannot be a percent of construction costs.** The CMA fee can be based on the Work performed by the CMA. The fee must be a lump sum or a cost not to exceed.

- f. Reimbursable costs. Provide a list and costs of items and services that your firm will provide. General labor costs that do not involve construction such as daily cleanup labor or temporary fencing installation, office trailer rental, cell phones, fax, vehicle costs, or equipment that your firm will provide and charge for. Do not include pass through costs such as dumpsters, rock for temporary drives, toilets, or items that you will rent or purchase from outside your firm and charge to the project. The CMA is not allowed to construct any of the permanent project.

I. INTERVIEWS

The CMA selection committee will include board members, administrative team members, and the Architect. The selection committee will review the proposals and select the most qualified firms to interview. The interviews will be scheduled for the week of XXXX.

Note: RD requires the applicant to interview at least 2 firms. Remove this note

ATTACHMENTS:

Appendix A: Project information.

Appendix B: RD Attachment to AIA Document C132-2019, Standard Form of Agreement Between Owner and Construction Manager as Advisor Edition.

Appendix C: RD Attachment to AIA Document B132-2019, Standard Agreement Between Owner and Architect, Construction Manager as Advisor Edition.

Appendix D: RD Attachment to AIA Document A132-2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Advisor Edition.

Appendix E: RD Attachment to AIA Document A232-2019, General Conditions of the Contract for Construction, Construction Manager as Advisor Edition.

Appendix F: CMA Index for Construction Contracts.

This is a sample score sheet. Each project will develop its own point system based on the specifics of the project. Location of the firm should not be a consideration.

The owner is not required to include this score sheet with the RFP or share the scores with the CMA firms.

CMA Score Sheet

These are the questions in Section H of the RFP	RFP Item No.	Maximum Points per Category	Points Awarded to CMA
Background Information	1		
Experience and Qualifications	2		
Principal Office & Structure	3		
Project Team	4		
Management Process	5		
Value Engineering & Constructability Services	5a		
Insurance	6		
Litigation	7		
Construction Schedule	8		
Owner Questions	9		
Preconstruction Service Fee	10a		
Value Engineering Services	10b		
CM Personnel Cost	10c		
Number of People Full Time= Part Time=	10d		
CM Fees Profit & Overhead	10e		
Reimbursable Cost	10f		
Total CM Fees (a-f)	10		
Interview	l		
Score		100	

Appendix A: Project information

Appendix B

ATTACHMENT TO AIA DOCUMENT C132-2019 Standard Form of Agreement Between Owner and Construction Manager as Advisor.

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 Advisor," AIA Document C132-2019 Edition. The provisions contained in this Attachment will 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 1.1.6:

“accelerated or fast-track scheduling”

Add the following subparagraphs and clauses to subparagraph 1.1.16:

1.1.16.1 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. 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](#).

1.1.16.1.1 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. 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 200, 2 CFR 184) on the application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

1.1.16.1.2 In cooperation with the Designer, Architect, and / or Engineer; the Construction Manager shall be responsible for:

.1 Providing opinions of costs and / or time and revisions thereof that reflect compliance with BABAA requirements.

.2 Determining 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 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.

.6 Assisting the Owner, if needed, in due diligence related to any BABAA waiver request.

ARTICLE 2, CONSTRUCTION MANAGER’S RESPONSIBILITIES

Add the words "with RD Regulation 1942-A, Guide 27, attachment 9" after the words "AIA Document B132-2019" in paragraph 2.3.

ARTICLE 3, SCOPE OF CONSTRUCTION MANAGER’S BASIC SERVICES

Paragraph 3.2, PRECONSTRUCTION PHASE

Add the following subparagraph to subparagraph 3.2.1:

3.2.1.1 The Construction Manager shall consult with the Agency Architect or Engineer about the Agency’s requirements and procedures.

Add the words "and concurrence by the Agency" after the first occurrence of the words "Owner’s approval" in subparagraph 3.2.18.

Add to the end of paragraph 3.2.20: "The Construction Manager shall assist the Architect and Owner with public notice of each bid opportunity."

Paragraph 3.3, CONSTRUCTION PHASE

Add the words "with RD Regulation 1942-A, Guide 27, attachment 14" after the words "AIA Document A232-2019" in subparagraph 3.3.1.

Delete the following, "on the date the Architect issues the final Certificate for Payment", and replace it with, "at the expiration of the warranty period described in the Contract for Construction.", in subparagraph 3.3.2.

Add ", Agency" after "Owner" in subparagraph 3.3.4.

Add ", Agency" after "Architect" in subparagraph 3.3.6.

Add the words ", Owner, and Agency." to the end of paragraph 3.3.12.2.1.

Add the words ", Owner, and Agency." to the end of paragraph 3.3.12.2.2.

Revise the last sentence of this paragraph 3.3.12.3 to read... "The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect, Owner and Agency that the Contractor be paid the amount certified."

Delete paragraph 3.3.17 and replace with:

"The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect, Owner and Agency, and, if they are accepted, prepare Change Orders that incorporate accepted modifications to the Contract Documents. Preparation of Change Orders which do not substantially affect the Project shall be included in the compensation computed in paragraph 11.1. The Owner, with the assistance of the Architect and Construction Manager, shall obtain Agency concurrence in writing for all Change Orders prior to the performance of the Work."

Add "Agency" after "submit written progress reports to the Owner, " in the second sentence of subparagraph 3.3.21.2.

Add "Agency" after "conduct a meeting with the Owner" in subparagraph 3.3.30.

ARTICLE 4, SUPPLEMENTAL AND ADDITIONAL SERVICES

Add the words "and concurrence by the Agency" at the end of the second sentence of subparagraph 4.2.2.

ARTICLE 5, OWNER'S RESPONSIBILITIES

Delete paragraph 5.3

Add the following subparagraph to Article 5:

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

ARTICLE 8, CLAIMS AND DISPUTES

Delete the words "unless the parties mutually agree otherwise" and substitute the words "if the parties mutually agree" in the first sentence of subparagraph 8.2.2.

ARTICLE 9, TERMINATION OR SUSPENSION

Delete the second sentence in subparagraph 9.2 and substitute the following:

"When the Project is resumed, the Construction Manager's compensation may be equitably adjusted, as mutually agreed, to provide for expenses incurred in the interruption and resumption of the Construction Manager's services."

Insert the words "as mutually agreed " after "Owner shall compensate the Construction Manager" in subparagraph 9.6.

ARTICLE 10, MISCELLANEOUS PROVISIONS

Add the following to subparagraph 10.2 after the words "AIA Document A232-2019": "with RD Instruction 1942-A, Guide 27, Attachment 14."

Add the following subparagraphs:

10.10 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.

10.11 If applicable, the Construction Manager shall comply with section 319 of Public Law 101-121, 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 a certification form 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.

10.12 The Construction Manager 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.

ARTICLE 11, COMPENSATION

Add the following subparagraph 11.6.3:

11.6.3 The Construction Manager shall provide a detailed cost estimate for Reimbursable Expenses as defined in subparagraph 11.6.1, 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.

Add "and the Agency" after "Owner" in subparagraph 11.8.2.3.

ARTICLE 12, SPECIAL TERMS AND CONDITIONS

Add the following subparagraph 12.1:

12.1 This Agreement is modified and supplemented by RD Instruction 1942-A, Guide 27, Attachment 18.

ARTICLE 13, SCOPE OF THE AGREEMENT

Delete "both the Owner and the Construction Manager" from the end of the second sentence in subparagraph 13.1 and replace with "the Owner, the Construction Manager, and the Agency".

Reference the following documents in 13.2.4:

Attachment to the Standard Form of Agreement Between Owner and Construction Manager as Advisor (this Attachment)
General Conditions of the Contract for Construction Manager as Advisor Edition, Current AIA A232-2019
Attachment to the General Conditions of the Contract for Construction (RD Instruction 1942-A, Guide 27, Attachment 14)
Certification for Contracts, Grants and Loans (RD Instruction 1940-Q, Exhibit A-1)
Disclosure of Lobbying Activities (Form SF-LLL)

OWNER AND ARCHITECT 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.

Appendix C

ATTACHMENT TO AIA DOCUMENT B132-2019 Standard Form of Agreement Between Owner and Architect, Construction Manager as Advisor Edition.

The provisions of this Attachment shall delete, modify and supplement the provisions contained in the "Standard Form of Agreement Between Owner and Architect, Construction Manager as a Constructor Edition," AIA B132-2019. The provisions contained in this Attachment will 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 1.1.6:

“accelerated or fast-track scheduling”

Add the following subparagraphs and clauses to subparagraph 1.1.13:

1.1.13.1 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 Buy America Waivers for Federal Financial Assistance | USDA](#).

1.1.13.1.1 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.

1.1.13.1.2 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.

ARTICLE 2, ARCHITECT’S RESPONSIBILITIES

Delete the second sentence from paragraph 2.6.

ARTICLE 3, SCOPE OF ARCHITECT’S BASIC SERVICES

Add the following subparagraph to subparagraph 3.1.6:

3.1.6.1 The Architect shall consult with the Agency Architect or Engineer about the Agency’s requirements and procedures.

Paragraph 3.2, SCHEMATIC DESIGN SERVICES

Add the following subparagraph to paragraph 3.2.2

3.2.2.1 The Architect shall prepare a Preliminary Architectural Report (PAR) as outlined in RD Instruction 1942-A Guide 6 “Preliminary Architectural Feasibility Report”.

Add the words "and concurrence by the Agency" after "Owner’s approval" at the end of the first sentence in subparagraph 3.2.5.

Add the words "and concurrence by the Agency" after "Owner’s approval" in subparagraph 3.2.7.

Add the following to the end of subparagraph 3.2.7:

“When the Owner has accepted and the Agency has concurred on the Schematic Design Documents and estimated project cost, the project

Architect may be authorized to proceed with the Design Development Documents."

Add the following subparagraph to read as follows:

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

Paragraph 3.3, DESIGN DEVELOPMENT PHASE SERVICES

Add the words "and concurrence by the Agency" after for "Owner's approval" in subparagraph 3.3.1.

Add the words "and concurrence by the Agency" after "Owner's approval" in subparagraph 3.3.3.

Add the following to the end of subparagraph 3.3.3:

"When the Owner has accepted and the Agency has concurred on the Design Development Documents and updated estimated project cost, the project Architect may be authorized to proceed with the Construction Documents."

Paragraph 3.4, CONSTRUCTION DOCUMENTS PHASE SERVICES

Add the words "and concurrence by the Agency" after for "Owner's approval" in subparagraph 3.4.1.

Add the words "and concurrence by the Agency" after "Owner's approval" in subparagraph 3.4.5

Add the following subparagraphs:

3.4.6 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 the applicable development standard, as defined in Agency regulations furnished by the Owner under subparagraph 5.17.

3.4.7 Prior to advertisement for bids, the Architect shall provide _____ sets of the Bidding and Contract Documents for use by the Owner, the Construction Manager, the Agency, and the appropriate Federal, State and local agencies from whom approval of the project must be obtained. The reproduction cost of such Documents shall be included in the compensation paid to the Architect. The Owner shall obtain Agency concurrence with the Bidding and Contract Documents, estimated project costs, and written authorization to proceed prior to advertisement for bids as applicable.

Paragraph 3.5, PROCUREMENT PHASE SERVICES

Add the following clause to subparagraph 3.5.2.2:

.5 furnishing additional copies of the Construction Documents as requested by the prospective bidders, and other interested parties, and owner may charge them a reasonable cost for such copies.

Paragraph 3.6, CONSTRUCTION PHASE SERVICES

Add the words ", and the conditions of RD Instruction 1942-A, Guide 27, Attachment 14." after "Contract for Construction" in subparagraph 3.6.1.1.

Delete the first sentence of subparagraph 3.6.1.2 and substitute the following:

"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 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".

Delete the following, "on the date the Architect issues the final Certificate for Payment", and replace it with, "at the expiration of the warranty period described in the Contract for Construction.", in subparagraph 3.6.1.3.

Add the following subparagraphs to paragraph 3.6.1:

3.6.1.4 Upon award of the construction contract, the Architect shall furnish to the Contractor _____ sets of Construction Contract Documents for execution of the work. The costs of these sets shall be included in the compensation to the Architect notwithstanding subparagraph 11.8.1.

3.6.1.5 The Architect shall participate in the Preconstruction Conference prior to the start of construction and shall advise and consult with the Owner and the Agency.

3.6.1.6 The Architect shall conduct on-site pay/progress meetings no less than once a month during the periods of active construction. Meeting minutes must be distributed promptly to the Owner, the Contractor, and the Agency.

Add the following after the first sentence of subparagraph 3.6.2.1

"Such visits to the site shall be documented in writing on inspection report forms acceptable to the Owner and the Agency. Copies shall be furnished to the Owner, the Construction Manager, the Contractor, and the Agency."

Add the words "with RD Regulation 1942-A, Guide 27, attachment 14" after the words "AIA Document A232-2019" in subparagraph 3.6.2.5.

Add the following subparagraph to subparagraph 3.6.2:

3.6.2.6 The Architect shall advise the Owner, the Construction Manager, and the Agency of required tests and inspections; and advise the Owner, the Construction Manager, and the Agency of the results of same.

Add the following subparagraph to subparagraph 3.6.3:

3.6.3.5 All Certificates of Payment shall receive Agency concurrence before payment is made.

Add the words “and Agency concurrence” after the words “Owner’s approval” in subparagraph 3.6.5.1.

Add the following to the end of the subparagraph 3.6.5.2: “Preparation of Change Orders which do not substantially affect the Project shall be included in the compensation computed in paragraph 11.1. The Owner, with the assistance of the Architect and the Construction Manager, shall obtain Agency concurrence in writing for all Change Orders prior to the performance of the Work.”

Delete subparagraph 3.6.6.1 and associated clauses in its entirety and substitute the following:

3.6.6.1 The Architect, assisted by the Construction Manager, shall conduct an inspection of the work, or designated portion thereof, prior to the issuance of the Certificate of Substantial Completion and shall submit a written report of work to be completed to the Owner, the Agency, the Construction Manager, and the Contractor prior to final acceptance. The Architect shall notify the Agency about inspection allowing reasonable time for the Agency's representative to attend. Such services shall be coordinated with the Agency. Prior to submitting the final Certificate for Payment, the Architect shall; 1) conduct an inspection 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.

ARTICLE 4, SUPPLEMENTAL AND ADDITIONAL SERVICES

Insert the word “Architect” under the heading “Responsibility” for line items 4.1.1.13, 4.1.1.14, and 4.1.1.17 in the chart.

Add the following subparagraphs to subparagraph 4.1.2 below the chart:

4.1.2.1.1 The Architect shall provide a cost estimate based on Construction Contract Documents. The estimate shall show a breakdown of the project cost in accordance with Rural Development requirements and procedures.

4.1.2.1.2 The selection and compensation of the Project Representative, if required, shall be concurred in by the Agency.

4.1.2.1.3 The Architect shall provide Record Drawings of the project to the Owner. The costs of these sets shall be included in the compensation to the Architect notwithstanding Subparagraph 11.8.1.

ARTICLE 5, OWNER’S RESPONSIBILITIES

Add the following subparagraph to Article 5:

5.17 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.

ARTICLE 8, CLAIMS AND DISPUTES

Delete subparagraph 8.1.2 in its entirety.

Delete the words "unless the parties mutually agree otherwise" and substitute the words "if the parties mutually agree" in the first sentence of subparagraph 8.2.2.

ARTICLE 9, TERMINATION OR SUSPENSION

Delete the second sentence in subparagraph 9.2 and substitute the following:

"When the Project is resumed, the Architect's compensation may be equitably adjusted, as mutually agreed, to provide for expenses incurred in the interruption and resumption of the Architect's services."

Insert the words "as mutually agreed " after "Owner shall compensate the Architect" in subparagraph 9.6.

ARTICLE 10, MISCELLANEOUS PROVISIONS

Add the following to subparagraph 10.2 after the words "AIA Document A232-2019": "with RD Instruction 1942-A, Guide 27, Attachment 14."

Add the following subparagraphs:

10.10 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.

10.11 If applicable, the Architect shall comply with section 319 of Public Law 101-121, 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 a certification form 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.

10.12 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.

ARTICLE 11, COMPENSATION

Delete subparagraph 11.1, clause .2 in its entirety.

Add the words "and the Agency" after the words "Owner" in subparagraph 11.10.2.3.

Add the following subparagraph to subparagraph 11.10.2:

11.10.2.4 The Architect shall provide a detailed cost estimate for Reimbursable Expenses as defined in subparagraph 11.8.1, 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.

ARTICLE 12, SPECIAL TERMS AND CONDITIONS

Add the following subparagraph 12.1:

12.1 This Agreement is modified and supplemented by RD Instruction 1942-A, Guide 27, Attachment 9.

ARTICLE 13, SCOPE OF THE AGREEMENT

Delete "both the Owner and the Architect" from the end of the second sentence in subparagraph 13.1 and replace with "the Owner, the Architect, and the Agency".

OWNER AND ARCHITECT 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 _____

ARCHITECT:

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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Appendix D

ATTACHMENT TO AIA DOCUMENT A132-2019, *Standard Form of Agreement Between Owner and Contractor, Construction Manager as Advisor Edition*

The provisions of this Attachment shall delete, modify and supplement the provisions contained in the “Standard Form of Agreement Between Owner and Contractor, Construction Manager as Advisor Edition” AIA Document A132-2019 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 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 3.4.3 with the following:

3.4.3 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. Liquidated damages shall be assessed as set forth in Section 4.5.

ARTICLE 4, CONTRACT SUM

In paragraph 4.1, delete the option “Cost of the Work plus the Contractor’s Fee in accordance with Section 4.3 below.”

Delete paragraph 4.3 and associated subparagraphs in their entirety.

Insert the following in paragraph 4.5: “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 Construction Manager and 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 of the last sentence in subparagraph 5.1.3.

Delete the clause 5.1.4.3.1.3

Delete paragraph 5.1.5 and associated subparagraphs in their entirety.

Delete the clause 5.1.6.4.1.3

Delete subparagraph 5.1.6.5 in its entirety and replace with the following:

5.1.6.5 The Owner and the Contractor 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 Contractor shall execute subcontracts in accordance with those agreements.

Insert the following retainage description 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.

Add paragraph 5.4 as follows:

5.1.6.10 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.

ARTICLE 7, TERMINATION OR SUSPENSION

Insert the words "as mutually agreed" after "Owner shall pay the Contractor" in subparagraph 7.1.1.1.

Insert the words "as mutually agreed" after "Owner shall pay the Contractor" in subparagraph 7.2.1.3.

ARTICLE 8, MISCELLANEOUS PROVISIONS

Add the following subparagraphs and clauses to paragraph 8.8:

8.8.1 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.

8.8.2 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 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 Buy America Waivers for Federal Financial Assistance | USDA](#).

8.8.2.1 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, 2 CFR 184) on the application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

8.8.2.2 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,
Construction Manager as Advisor Edition (this Attachment)
Attachment to the General Conditions of the Contract for Construction, Construction
Manager as Advisor Edition(RD Instruction 1942-A, Guide 27, Attachment 14)
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 1924-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)

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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Appendix E

ATTACHMENT TO AIA DOCUMENT A232-2019, General Conditions of the Contract for Construction, Construction Manager as Advisor Edition

The provisions of this attachment shall delete, modify and supplement the provisions contained in the "General Conditions of the Contract for Construction, Construction Manager as Advisor Edition," AIA Document A232-2019 Edition. The provisions contained in this attachment will 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, GENERAL PROVISIONS

Add the following paragraphs and subparagraphs:

1.9 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.

1.9.1 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.

1.1.9.2 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.

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

ARTICLE 2, OWNER

Delete subparagraph 2.3.7 and substitute the following:

2.3.7 The Owner shall furnish to the Contractor, free of charge, _____ copies of the Contract Documents necessary for execution of the Work. Additional copies will be available from the Architect at the cost of reproduction and handling.

ARTICLE 3: CONTRACTOR

Add the following sentence to the end of subparagraph 3.3.2: “Any additional costs that may result from any such acts and omissions will be the responsibility of the Contractor.”

Add the following subparagraph to paragraph 3.7:

3.7.3.1 The Contractor shall comply with the Federal Requirement for Domestic Preference: Iron and steel products, Manufactured Products, and Construction Materials used in this project shall comply with the Build America, Buy America Act (BABAA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. 177-58. Installation of materials or products that are not compliant with BABAA requirements shall be considered defective work.

ARTICLE 4, ARCHITECT

Add the following to subparagraph 4.1.1: The term "Architect" means the Architect, or 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.

ARTICLE 5, SUBCONTRACTORS

Add the following to the end of subparagraph 5.2.2: “The Contractor 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 Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection”.

ARTICLE 7, CHANGES IN THE WORK

Delete the words ", Construction Change Directive" from subparagraph 7.1.1.

Insert the words ", Agency " after the word "Owner," and delete the words "A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor" in subparagraph 7.1.2.

Delete the words "Construction Change Directive" from subparagraph 7.1.3.

Delete paragraph 7.2, associated clauses, and substitute the following:

7.2 Change Orders

A Change Order is a written order to the Contractor utilizing AIA Document G701, ‘Change Order’, or Form RD 1924-7, ‘Contract Change Order’, signed by the Owner, Architect, Contractor, 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 Contractor's signing of a Change Order indicates complete agreement therein.

Add subparagraph 7.2.1, and associated clauses as follows:

7.2.1 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 evaluating.
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon.

Add the following sentence to the beginning of subparagraph 7.3.1: “A Construction Change Directive may be used only for a change in response to an emergency as described in paragraph 10.4”.

Delete subparagraph 7.3.2 in its entirety.

Add the sentence “When the use of a Construction Change Directive is justified” where appropriate to subparagraphs 7.3.3, 7.3.6, 7.3.7, 7.3.9, and 7.3.10.

ARTICLE 8, TIME

Delete subparagraph 8.1.2 in its entirety and replace with the following:

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

Add the following subparagraphs:

8.2.4 The Notice to Proceed shall be issued within twenty (20) calendar days of the execution of the Agreement by the Owner. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement of the Owner and Contractor, with the concurrence of the Agency. If the Notice to Proceed has not been issued within the twenty (20) calendar day period or within the period mutually agreed, the Contractor may terminate the Agreement without further liability on the part of either party.

8.3.4 As outlined in the Agreement, the Contractor agrees to pay liquidated damages to the Owner for each calendar day the Contractor shall be in default.

ARTICLE 9, PAYMENTS AND COMPLETION

Delete subparagraph 9.3.1.1 and substitute the following:

9.3.1.1 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 and concurred with by the Agency.

Add the following sentence to the end of subparagraph 9.4.1: "All Certificates for Payment shall be prepared using AIA Document G702, 'Application and Certificate for Payment' or Form RD 1924-18, 'Partial Payment Estimate'.

Add the following subparagraph:

9.6.9 No progress payments will be made that deplete the retainage, nor place in escrow any funds that are required for retainage, nor invest the retainage for the benefit of the Contractor. Retainage will not be adjusted until after construction is substantially complete.

Replace the word "seven" with the words "fifteen (15)" in the first sentence of subparagraph 9.7.

Delete subparagraph 9.8.5, after the first sentence, and substitute the following: "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".

Delete subparagraphs 9.9.1 in its entirety and replace with the following subparagraph and clauses:

9.9.1 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 as provided in subparagraph 9.8.4, except that 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 in 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.

Add the following sentence to the end of subparagraph 9.9.3: "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 Documents until the Project is completed and accepted by the Owner".

ARTICLE 11, INSURANCE AND BONDS

Add the following subparagraphs and clauses:

11.1.1.1 Insurance shall be:

- .1 Written with 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 Written with 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.
- .3 Insurance policies shall be written with limits of liability consistent with those insurance liability limits contained in the Contract Documents but not less than limits prescribed in 11.1.1.1.1 and 11.1.1.1.2.

Delete subparagraph 11.1.2 in its entirety and substitute the following:

11.1.2 The Contractor shall furnish the Owner bonds covering faithful performance of the Contract and payment of obligations arising

thereunder within ten (10) calendar days after receipt of the Notice of Award. 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. The United States, acting through 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.

Add the following subparagraphs:

11.1.2.1 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.

11.1.2.2 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.

Add the following sentence to the end of subparagraph 11.3.1: "The provisions of this subparagraph shall apply to the Contractor if the Contractor purchases and maintains said insurance coverage".

ARTICLE 13, MISCELLANEOUS PROVISIONS

Add the following paragraphs, subparagraphs, and clauses:

13.6 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.

13.7 Lands and Rights-of Way

13.7.1 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.

13.8 Equal Opportunity Requirements

Non-discrimination in Employment by Federally Assisted Construction Contractors, by Executive Order 11246.

13.8.1 This section summarizes Executive Order 11246, 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.

13.8.2 Executive Order 11246, 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.

13.8.3 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 of women. The goals apply 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.

13.8.4 The non-discrimination requirements of Executive Order 11246 shall apply to all 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.

13.8.4.1 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.

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

13.8.5 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.

13.8.6 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.

13.9 Statutes

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

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

13.9.1.2 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.

13.9.1.3 Restrictions on Lobbying (Public Law 101-121, section 319) as supplemented in Department of Agriculture regulations (2 CFR part 418). This statute applies to the recipients of contracts or 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 Contractor must complete a certification form on lobbying activities related to the specific Federal loan or grant that is a funding source for this contract. The certification and disclosure forms shall be provided by the Owner.

13.10 Records

13.9.1 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.

13.11 Environmental Requirements

13.11.1 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.

13.11.2 The Contractor, when constructing a Project involving trenching, excavating, or other earth moving activity, shall comply with the following environmental constraints:

13.11.2.1 Endangered Species, Historic Preservation, Human Remains and Cultural Items, Hazardous Materials, and Paleontology - Any excavation or other earth moving activity by the 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 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.

13.11.2.2 Historic Preservation - Applicants shall ensure that Contractors maintain a copy of the following inadvertent discovery plan onsite for review:

.1 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) and shall include the following:

.2 All Work, including vehicular traffic, shall immediately stop within a 50 ft. radius around the area of discovery. The Contractor shall ensure barriers are established to protect the area of discovery and notify the Architect or Engineer to contact the appropriate RD personnel. The Architect or Engineer shall engage a Secretary of the Interior (SOI) qualified professional archeologist to quickly assess the nature and scope of the discovery; implement interim measures to protect the discovery from looting and vandalism; and establish broader barriers if further historic and/or precontact properties, can reasonably be expected to occur.

.3 The RD personnel shall notify the appropriate RD environmental staff member, the Federal Preservation Officer (FPO), and State Historic Preservation Office (SHPO) immediately. Indian tribe(s) or Native Hawaiian Organization (NHOs) that have an interest in the area of discovery shall be contacted immediately. The SHPO may require additional tribes or NHOs who may have an

interest in the area of discovery also be contacted. The notification shall include an assessment of the discovery provided by the SOI qualified professional archeologist.

.4 When the discovery contains burial sites or human remains, the Contractor shall immediately notify the appropriate RD personnel who will contact the RD environmental staff member, FPO, and the SHPO. The relevant law enforcement authorities shall be immediately contacted by onsite personnel to reduce delay times, in accordance with tribal, state, or local laws including 36 CFR Part 800.13; 43 CFR Part 10, Subpart B; and the Advisory Council on Historic Preservation's Policy Statement Regarding treatment of Burial Sites, Human Remains, or Funerary Objects (February 23, 2007).

.5 When the discovery contains burial sites or human remains, all construction activities, including vehicular traffic shall stop within a 100 ft. radius of the discovery and barriers shall be established. The evaluation of human remains shall be conducted at the site of discovery by a SOI qualified professional. Remains that have been removed from their primary context and where that context may be in question may be retained in a secure location, pending further decisions on treatment and disposition. RD may expand this radius based on the SOI professional's assessment of the discovery and establish broader barriers if further subsurface burial sites, or human remains can reasonably be expected to occur. RD, in consultation with the SHPO and interested tribes or NHOs, shall develop a plan for the treatment of native human remains.

.6 Work may continue in other areas of the undertaking where no historic properties, burial sites, or human remains are present. If the inadvertent discovery appears to be a consequence of illegal activity such as looting, the onsite personnel shall contact the appropriate legal authorities immediately if the landowner has not already done so.

.7 Work may not resume in the area of the discovery until a notice to proceed has been issued by RD. RD shall not issue the notice to proceed until it has determined that the appropriate local protocols and consulting parties have been consulted.

.8 Inadvertent discoveries on federal and tribal land shall follow the processes required by the federal or tribal entity.

13.11.3 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 built prior to 1978.

13.12 Debarment and Suspension

13.12.1 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.

13.13 **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](#).

13.13.1 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.

13.13.2 The Contractor or 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 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 or 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 Contractor's or 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 15 CLAIMS AND DISPUTES

Add the words "may be" after "on the parties but" in the last sentence of subparagraph 15.2.5.

Replace the word "shall" with the word "may" in the first sentence, first occurrence of subparagraph 15.3.2

Add the subparagraph: 15.4.1.2 The arbitrators will select a hearing location as close to the Owner's current place of business as possible

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Appendix F

CMA Index for Construction Contracts

<u>Notice and Instructions</u>	<u>DOCUMENT</u>
Notice of Public Hearing (Public Bodies)	Provided by Legal Counsel
Advertisement for Bids (Public Bodies)	Provided by Legal Counsel
Instructions to Bidders	AIA Document A701-2018
Supplemental Instructions to Bidders	RD 1942-A, Guide 27 Attachment 2
<u>Bid Documents</u>	
Bid Bond (When Required Contact Legal Counsel)	RD 1942-A, Guide 19, Attachment 4
Bid	RD 1942-A, Guide 19, Attachment 3
Contractor's Qualifications (Optional)	AIA A305
<u>Award Documents</u>	
Notice of Award	RD 1942-A, Guide 19, Attachment 7
Agreement	AIA Document A132-2019
Supplement to Standard Form of Agreement	RD Attachment to A132-2019
Performance Bond	RD 1942-A, Guide 19, Attachment 5
Payment Bond	RD 1942-A, Guide 19, Attachment 6
Certificate of Insurance	Contractor Provided
Compliance Statement	RD 400-6
Certification for Contracts, Grants and Loans	RD 1940-Q, Exhibit A-1
Certificate of Owners Attorney – Contract Review	Iowa Guide D-7
Notice to Proceed	RD 1942-A, Guide 19, Attachment 8
<u>Construction Documents</u>	
General Conditions	AIA Document A232-2019
RD Attachment to General Conditions (Appendix C)	RD Attachment to A232-2049
Partial Payment	RD 1924-18
Contract Change Order	RD 1924-7
Statement of Final Completion	Iowa Guide E-3
Plans and Specifications	
Shop Drawings	
Addenda	
Project Sign	Iowa Sample D-4

The non-AIA documents can be found on the Iowa RD web site under the “Other Requirements” button at:
<https://www.rd.usda.gov/programs-services/community-facilities-direct-loan-grant-program/ia>