



Construction Manager as Constructor (CMc) 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 Architects and CMc. 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 CMc is AIA Document B133-2019, “Standard Form of Agreement Between Owner and Architect” and RD Guide 27 Attachment 4.

### **STEP 2 - Steps for selecting a CMc:**

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 CMc 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 CMc 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 CMc:**

The Owner will prepare the CMc 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 CMc with a description of the proposed 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 CMc, see items in Steps 1 & 2 above.
- C) Provide a detailing listing and estimated cost for the entire project which includes Architect, CMc, Environmental, Equipment, Furnishings, Land/Rights, Legal; Professional fees, and all other costs to complete the project and are necessary to properly operate the facility.

Architect fees: Provide a summary of the proposed Architect fees. Fees should not be based as a percent of the work, instead fees can be a lump sum or a cost not to exceed amount. Show Basic Services 11.1, Additional Services 11.2, and Reimbursable expenses 11.10. A full copy of the Architect Agreement is not required at this time.

CMc fees: Provide a summary of the selected CMc fees as lump sum or cost not to exceed amounts for these four areas: Preconstruction services, Personnel, Fee (profit and overhead), and General Conditions and Reimbursables. A full copy of the CMc Agreement is not needed at this time.

- D) Explain or define how inspection services will be performed. Detail what the Architect will do, and explain third party inspector(s) roles. The CMc cannot perform inspections for RD purposes. Provide a sample listing of stage and component inspections and who is proposed to complete the inspections. A sample inspection list is provided in this document.
- 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 CMc 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. RD will review the resumes and concur in all inspectors. The Architect will be performing some of the inspections and some of the inspections will be completed by 3<sup>rd</sup> party independent firms. A CMc will not meet RD's requirements for an independent inspector. 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 the Architect performs for CMc projects.

# Request for Proposal Construction Manager as Constructor

To be modified to fit specific project needs. "Remove this note"

## A. EXECUTIVE SUMMARY

ABC is requesting proposals for Construction Manage as Constructor (CMc). The request for proposal is part of a competitive selection process to engage a CMc firm to provide services for the construction of XXXXXX.

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 CMc. The form of contract for CMc Services will be A133/CMc-2019, *Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor* with USDA Rural Development attachments. Owner will hold the project team's contracts (including the CMc and Architect). The CMc will hold the subcontractors' contracts. Construction Phase services will be at-risk via a guaranteed maximum price (GMP). Owner is budgeting \$ million for the GMP. It is Owner's expectation that the CMc will be able to deliver services, information, and benchmarking costs which will allow Owner to make timely and informed decisions in a compressed schedule. It is anticipated that the CMc will deliver a final GMP to the Owner upon completion of the Construction Documents. 100% of any savings to the GMP will be returned to the Owner.

This will be an open-book, transparent process. The successful CMc will have the ability to self perform work, but only through a competitive bid process for the work. Any bidding event that includes a bid from the CMc for work they will self perform will require that sealed bids be received at the same time by the Owner from all bidding contractors.

## F. PROJECT SCHEDULE MILESTONES

- Send Out RFP for CMc Services XX
- Proposals for CMc Services Due XX

- Selection Committee Interviews **XX\***
- Notification of Selected CMc 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 CMc Agreement not be executed until after RD has concurred in the use of a CMc.

## G. SCOPE OF SERVICES

Services are to be as outlined in the AIA A133-2019 and USDA RD attachment documents.

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

The following is a discussion if any CM firm has worked with the Owner on this specific project.

CM firms develop relationships in the course of their business practices. Repeat projects from owners, or by building type, is the reward for a successful endeavor. The government 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 product is attached as Appendix A.

## H. REQUEST FOR INFORMATION

To properly evaluate each CMc 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 the 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 CMc “At Risk”. NOTE: Do not include multiple phase projects without noting size and scope of each phase. Include:
  - 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
  - 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 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.
    - 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.
    - Discuss when you will submit a GMP for the project.
  3. Discuss your Bidding strategy.
  4. Construction Phase. Discuss how your firm will coordinate the activities of the subcontractors in the following areas:
    - Change Orders.
    - Schedule Management.
    - General Construction.

- Performance of work by subcontractors. Discuss your method of oversight of the work, and how you coordinate third party inspections.
- Safety program.
- Federally funded work performed for construction must allow open competition. Whether performed by the CMc or subs. The CMc Proposal must reveal to the owner the CMc's intent to self-perform any work so the competitive process is fair, open and free. If the CMc desires to self-perform work the CMc must submit a Bid to the Owner prior to receiving bids from subs for that work. The owner will review all Bids and has the option of accepting or rejecting the Bid by the CMc.

Some self-perform work by a CMc can be done without competition if said work is secondary or complementary to the project such as temp fencing, access, temp utilities, or other features that are not a part of the final project. The CMc must identify this work including a cost not to exceed amount in the Proposal. The work will be paid on an hourly basis with a cost not to exceed.

5. Discuss your Project Close-Out and Start-Up strategy.

***Section 6.0***  
***Bonding Requirements***

- 100 % Performance and Payment Bonds are required to be provided by the CMc.
- Provide your present total and available bonding capacity, your bonding company, and its rating according to generally recognized rating services.

***Section 7.0***  
***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 8.0***  
***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 9.0***  
***Construction Schedule***

- Develop and submit a proposed construction schedule based off the aforementioned information.
- A complete set of construction documents (100% complete design) will need to be submitted to RD for review for any phase of work, prior to start of construction on that phase of work. RD will require a minimum of two weeks to review the documents.

***Section 10.0***  
***Construction Budget***

- The GMP budget is maximum of \$XXX million. What will your firm do to stay within this budget?

### ***Section 11.0***

#### ***Cost Proposal***

- USDA Rural Development generally limits the total cost paid to the CMc to 2 - 7% of the cost of construction. Excluding bidding in specific Division of the work. Provide a detailed breakout of the following:
  - a. Pre-Construction Services:
    - Your proposal for pre-construction services with a cost not to exceed.
    - Your reimbursable itemized expenses stated as a total not-to-exceed cost.

Construction Services and fees:

- Clearly define and itemize all of your estimated cost of services as follows:
  - b. CMc personnel Cost. Identify the number of personnel and positions budgeted for this project (Full Time and Part Time, hourly rates). Show the cost for each position and the total lump sum amount for the project.
  - c. Number of full time and number of part time people.
  - d. CMc Fee (Profit and Overhead). The CMc fee for Profit and Overhead shall be a fixed lump sum amount set at the time the GMP is established. The lump sum fee shall only change for change orders requested by the Owner. The fee shall increase and decrease on the net change order amount. However, the fee will not be reduced below the amount set at the time the GMP is established.
  - e. General Condition costs. Provide an itemized list of costs.
  - f. Bond and insurance costs.
- Specify what you will negotiate and set to be the markup and markdown on change order work for all subcontractors.

**NOTE:** RD will require that any details that are not described in the Design Development Documents will be up to the Architect and the CMc to work out within the established GMP amount and without a change order cost paid by the Owner. Inferred items will not be considered a change order cost that the Owner is responsible for unless they are specifically spelled out in the CMc comments in the GMP Agreement. In addition any changes in the final plans due to errors or omissions shall be responsibility of the CMc and Architect to work out. The contingency built into the GMP may be used for missing items, errors, or omissions. If there is a project scope change requested by the Owner or if unknown/undiscovered conditions are encountered during construction those costs will be the responsibility of the Owner.

**NOTE:** Owner, Architect, and the CMc need to have a detailed discussion about the design intent, including quality and quantity of the components and materials. Knowledge of the details needs to be clearly understood by all parties and is the key to a successful project. When the design development documents and the proposed GMP have been developed, a copy of AIA Document A133-2009 Exhibit A will be submitted to Rural Development for review. When the Owner, the Architect, the CMc, and RD agree to a GMP, RD will provide concurrence.



**Section 12.0**

**Address these general questions:**

***(Owner to add in other questions here and remove this note)***

**I. INTERVIEWS**

The CMc 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 A133-2019, Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor.

Appendix C: RD Attachment to AIA Document A201-2017, General Conditions of the Contract for Construction

Appendix D: RD Attachment to AIA Document B133-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

Appendix E: RD Instruction 194O-Q, Exhibit A-I.

Appendix F: Compliance Statement, RD 400-6.

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.

## CMc Score Sheet

	RFP Item No.	Maximum Points per Category	Points Awarded the CMc
Background Information	1		
Experience References	2		
Office & Structure	3		
Project Team	4		
Management Process	5		
Bonding	6		
Insurance	7		
Litigation & Conflicts of Interest	8		
Construction Schedule	9		
GMP Construction Budget	10		
Preconstruction Service Fee	11a		
CM Personnel Cost	11b		
Number of People Full Time=      Part Time=	11c		
CM Fees Profit & Overhead	11d		
CM General Conditions cost	11e		
Bond Cost & Insurance Costs	11f		
Total CM Fees (a-f)	11		
Owner Questions	12		
Interview	l		
Score		100	

## **Appendix A: Project information**

## Appendix B:

ATTACHMENT TO AIA DOCUMENT A133-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

The provisions of this Attachment shall delete, modify, and supplement the provisions contained in the "Standard Form of Agreement Between Owner and Construction Manager as Constructor", AIA Document A133-2019 Edition. The provisions contained in this attachment shall supersede any conflicting provisions of the AIA Document. The term "Agency", as used in this Attachment, shall mean the United States of America, acting through the United States Department of Agriculture.

**When the project is not subject to the Build America, Buy America Act the provisions in bold do not apply.**

### ARTICLE 1, INITIAL INFORMATION

Delete the following references from subparagraph 1.1.5:

“accelerated or fast-track scheduling”

**Add the following subparagraphs and clauses to subparagraph 1.1.15:**

#### **1.1.15.1 Build America, Buy America Act**

**Domestic Preference Requirements for Federal Financial Assistance to Non-Federal Entities. Federal Financial Assistance to Non-Federal Entities, defined pursuant to 2 CFR 200.1 and 2 CFR 184, as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABAA), under Title IX of the Infrastructure Investment and Jobs Act, Pub. L. 177-58. Any requests for waiver of these requirements must be submitted pursuant to USDA’s guidance available online at [USDA's Build America Buy America website](#).**

**1.1.15.1.1 This agreement is for services related to a project that is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. 177-58. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States, as further outlined by the Office of Management and Budget’s regulation (reference 2 CFR 200, 2 CFR 184) on the application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.**

**1.1.15.1.2 The Construction Manager shall be responsible for:**

- .1 Providing costs and revisions thereof that reflect compliance with BABAA requirements.**



- .2 Providing only iron, steel, construction materials and manufactured products that meet BABAA requirements. Installation of materials or products that are not compliant with BABAA requirements shall be considered defective work.**
- .3 Including manufacturer’s certification for BABAA requirements with all applicable submittals. If a specific manufacturer is used during subcontractor pricing, a statement that the manufacturer will comply with BABAA requirements must be included with the GMP submission. The Construction Manager shall comply with BABAA requirements, including coordination with manufacturers, distributors, and suppliers to correct deficiencies in any BABAA documentation.**
- .4 Providing manufacturer’s certification for BABAA requirements with any change order for any new construction materials or manufactured products required by the change.**
- .5 Certifying by submitting an application for payment, based in whole or in part on furnishing construction materials or manufactured products; that such materials and products, to the Construction Manager’s knowledge, are compliant with BABAA requirements.**
- .6 Ensuring that the Architect / Engineer has been provided an approved manufacturer’s certification or waiver prior to items being delivered to the project site.**
- .7 Certifying upon completion that all work and materials are in compliance with BABAA requirements.**

#### ARTICLE 3, CONSTRUCTION MANAGER’S RESPONSIBILITIES

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

Insert subparagraph 3.2.1.1 as follows:

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

Insert subparagraph 3.2.6.1 as follows:

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

Add the following sentence to the end of subparagraph 3.3.2.1:

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

## ARTICLE 6, COMPENSATION FOR CONSTRUCTION PHASE SERVICES

Replace subparagraph 6.1.6 with the following:

6.1.6 If the work is not substantially complete on or before the date of Substantial Completion established in paragraph 1.1.4, or extension thereof granted by the Owner, The Construction Manager shall pay to the Owner liquidated damages in the sum of \$ \_\_\_\_\_ for each calendar day of delay. Any sums that may be due the Owner as liquidated damages may be deducted from any monies due or to become due the Construction Manager under the Contract or may be collected from the Construction Manager's surety.

## ARTICLE 9, SUBCONTRACTORS AND OTHER AGREEMENTS

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

## ARTICLE 11, PAYMENTS FOR CONSTRUCTION PHASE SERVICE

Modify subparagraph 11.1.1 by adding the following:

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

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

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

Insert the following retainage description in subparagraph 11.1.8.1:

The amount retained shall be 10% of the value of Work until 50% of the Work has been completed or a withholding of equal or greater value, such as, 5% for the full duration of the project. If 10% is held, at 50% completion, further partial payments shall be made in full to the Contractor and no additional amounts may be retained unless the Architect certifies that the Work is not proceeding satisfactorily but amounts previously retained shall not be paid to the Contractor. At 50% completion or any time thereafter when the progress of the Work is not satisfactory, additional amounts may be retained, but in no event shall the total retainage be more than 10% of the value of Work completed. Alternate industry-standard retainage proposals may be considered by RD when:

.1 The retainage proposal is mandated by the State in which the project is located.

.2 The retainage proposal does not add risk to the applicant and the Agency.

Replace subparagraph 11.1.11 with the following:

11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than ten percent (10%). The Construction Manager shall execute subcontracts in accordance with those agreements.

Replace subparagraph 11.2.2.3 with the following:

11.2.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall not be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2017 unless the Owner specifically authorizes such action in writing. If such action has been authorized by the Owner, the Construction Manager may make a request for mediation within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment.

Insert subparagraph 11.2.5 as follows:

11.2.5 Amounts withheld from the final payment to cover any incomplete Work are not considered retainage and shall not be paid to the Construction Manager until the work is completed and accepted by the Owner. Such withholdings shall not be less than 150% of the estimated cost to complete the Work.

## ARTICLE 14, MISCELLANEOUS PROVISIONS

Add the following subparagraphs and clauses to paragraph 14.5:

14.5.1 This Agreement and any amendments to this Agreement shall not be in full force and effect until concurred with in writing by a duly authorized representative of the Agency. The concurrence so evidenced by the Agency shall in no way commit the Agency to render financial assistance to the Owner and is without liability to the Agency for any payment thereunder, but in the event such assistance is provided, the concurrence shall signify that the provisions of this Agreement and any amendments to this Agreement are consistent with Agency requirements.

## ARTICLE 15, SCOPE OF THE AGREEMENT

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

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

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



Attachment to the *Standard Form of Agreement Between Owner and Construction Manager as Constructor* (this Attachment)

Attachment to the General Conditions of the Contract for Construction (RD Instruction 1942-A, Guide 27, Attachment 4)

Payment Bond

Performance Bond

Certification for Contracts, Grants and Loans (RD Instruction 1940-Q, Exhibit A-1)

Disclosure of Lobbying Activities (Form SF-LLL)

Compliance Statement (Form RD 400-6)

OWNER AND CONSTRUCTION MANAGER SIGNATURE PAGE

Delete the signature block and replace with the following:

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below:

OWNER:

ATTEST: \_\_\_\_\_ By \_\_\_\_\_

Type Name \_\_\_\_\_ Type Name \_\_\_\_\_

Title \_\_\_\_\_ Title \_\_\_\_\_

Date \_\_\_\_\_ Date \_\_\_\_\_

CONSTRUCTION MANAGER:

ATTEST: \_\_\_\_\_ By \_\_\_\_\_

Type Name \_\_\_\_\_ Type Name \_\_\_\_\_

Title \_\_\_\_\_ Title \_\_\_\_\_

Date \_\_\_\_\_ Date \_\_\_\_\_

AGENCY CONCURRENCE:

By \_\_\_\_\_

Type Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

The concurrence so evidenced by the Agency shall in no way commit the Agency to render financial assistance to the Owner and is without liability to the Agency for any payment hereunder, but in the event such assistance is provided, the concurrence shall signify the provisions of this Agreement are consistent with Agency requirements.

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ATTACHMENT TO AIA DOCUMENT A201-2017, *General Conditions of the Contract for Construction*

The provisions of this attachment shall delete, modify and supplement the provisions contained in the "*General Conditions of the Contract for Construction*," AIA Document A201-2017 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.

ARTICLE 1, GENERAL PROVISIONS

Add the following subparagraph:

1.2.4 Concurrence of the Contract by the Agency is required before it is effective.

ARTICLE 2, OWNER

Delete subparagraph 2.2.5 and substitute the following:

2.2.5 The Contractor will be furnished, free of charge, 2 copies of the Drawings and Projects Manuals necessary for execution of the Work. Additional copies will be available from the Architect at the cost of reproduction and handling.

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 subparagraph 5.2.2:

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

## 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 subparagraph 7.2.1 and substitute the following:

7.2.1 A Change Order is a written order to the Contractor utilizing Form RD 1924-7, "Contract Change Order". 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 7.2.2:

7.2.2 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 paragraph 7.3: "A Construction Change Directive may be used only for a change in response to an emergency as described in paragraph 10.4.

## ARTICLE 8, TIME

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 Article 3 of 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 clause 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, including the Agency.

Add the words ", Form RD 1924-18, 'Partial Payment Estimate'," after "Certificate for Payment" in subparagraph 9.4.1.

Add the following subparagraph:

9.6.8 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, third line of subparagraph 9.7.

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

9.8.5 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. Provide a copy of the Certificate to the Agency.

Delete subparagraphs 9.9.1 through 9.9.3 and substitute the following:

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.

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 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.

Delete the second and third sentences of subparagraph 9.10.2.

## ARTICLE 11, INSURANCE AND BONDS

Replace the words "the Contract Documents" with the words "subparagraph 11.1.5" in the first sentence of subparagraph 11.1.2.

Add the following subparagraph:

11.1.5. Insurance shall be:

- .1 Written with a limit of liability of not less than \$ [REDACTED] 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 \$ [REDACTED] 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 \$ [REDACTED] for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$ [REDACTED] 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 \$ [REDACTED] per occurrence; and with an aggregate of not less than \$ [REDACTED] per occurrence.

Modify the first sentence of subparagraph 11.3.1 as follows:

11.3.1 Delete "Unless otherwise provided, the Owner" and substitute "The Contractor".

Add the following sentences to the end of subparagraph 11.3.1

The policy shall name as the insured the Contractor and the Owner. If the Owner is damaged by the failure of the Contractor to purchase and maintain such insurance without so notifying the Owner in writing, then the Contractor shall bear all reasonable costs attributable thereto.

Insert the word "Owner" after the words "protect the interests of the" in the second sentence of subparagraph 11.3.1.2.

Add the following sentence to the end of subparagraph 11.3.6:

The provisions of this subparagraph shall apply to the Contractor if the Contractor purchases and maintains said insurance coverage.

Delete subparagraph 11.3.7 in its entirety.

Delete subparagraph 11.4.1 and substitute the following:

11.4.1 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 Sum. The cost of these bonds shall be included in the Contract Sum

Add the following subparagraphs:

11.4.1.1 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.

11.4.1.2 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.

## ARTICLE 13, MISCELLANEOUS PROVISIONS

Add the following paragraphs:

### 13.8 LANDS AND RIGHTS-OF WAY

13.8.1 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.

### 13.9 EQUAL OPPORTUNITY REQUIREMENTS

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

13.9.1 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.

13.9.2 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.

13.9.3 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 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.



13.9.4 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.

13.9.4.1 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.

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

13.9.5 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.

13.9.6 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.

## 13.10 STATUTES

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

13.10.1.1 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.

13.10.1.2 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.

13.10.1.3 Restrictions on Lobbying (Public Law 101-121, section 319) as supplemented in Department of Agriculture regulations (7 CFR part 3018). 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.

### 13.11 RECORDS

13.11.1 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.

### 13.12 ENVIRONMENTAL REQUIREMENTS

13.12.1 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.

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

13.12.2.1 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.

13.12.3 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.

### 13.13 DEBARMENT AND SUSPENSION

13.13.1 The Contractor shall comply with the requirements of 7 CFR part 3017, which pertains to the debarment or suspension of a person from participating in a Federal program or activity.

## 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

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

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ATTACHMENT TO AIA DOCUMENT B133-2019 *Standard Form of Agreement Between Owner and Architect, Construction Manager as a Constructor 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 B133, 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 second agreement option listed in subparagraph 1.1.5.

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 3.3, SCHEMATIC DESIGN PHASE SERVICES

Add the following subparagraph to paragraph 3.3.2.

3.3.2.1 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 3.3.5.

Add the words "and concurrence by the Agency" after "Owner's approval" in subparagraph 3.3.7.

Add the following to the end of subparagraph 3.3.7:

"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:

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

#### **Paragraph 3.4, DESIGN DEVELOPMENT PHASE SERVICES**

Add the words "and concurrence by the Agency" after "Owner's approval" at the end of the first sentence in subparagraph 3.4.1.

Add the words "and concurrence by the Agency" after "Owner's approval" in subparagraph 3.4.3.

Add the following to the end of subparagraph 3.4.3:

"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 3.5, CONSTRUCTION DOCUMENT PHASE SERVICES**

Add the words "and concurrence by the Agency" after "Owner's approval" at the end of the first sentence in subparagraph 3.5.1.

Add the words "and concurrence by the Agency" after "Owner's approval" in subparagraph 3.5.5

Add the following subparagraph to the end of paragraph 3.5.5:

3.5.5.1 The Architect shall provide {} sets of Construction Documents for use by the Owner, the Agency and the appropriate Federal, State and local agencies from whom approval of the Project must be obtained. The reproduction cost of such Construction Documents shall be included in the compensation paid to the Architect, notwithstanding subparagraph 11.8.1. The Owner shall obtain Agency concurrence with the Construction Documents, estimated project cost, and authorization to proceed in writing prior to the owner's acceptance of the Construction Manager's Guaranteed Maximum Price.

Add the following subparagraphs:

3.5.6 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.

## Paragraph 3.6, CONSTRUCTION PHASE SERVICES

Add the words ", and the conditions of RD Instruction 1942-A, Guide 27, Attachment 4." after "Contract for Construction" in subparagraph 3.6.1.1.

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 3.6.1.2.

Delete the first sentence of subparagraph 3.6.1.3 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 Construction Manager 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".

Add the following subparagraphs to paragraph 3.6.1

3.6.1.4 Upon acceptance of the GMP, the Architect shall furnish to the Construction Manager \_\_\_\_\_ 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, and the Agency."

Add the following to subparagraph 3.6.2.5 after the words "AIA Document A201-2017": "with RD Instruction 1942-A, Guide 27, Attachment 4,"

Add the following subparagraph to subparagraph 3.6.2:

3.6.2.6 The Architect shall advise the Owner and the Agency of required tests, inspections and test results; and shall advise the Owner and the Agency of the results of same. Copies of tests results shall be furnished upon request to the Owner and the Agency.

Add the following subparagraph to subparagraph 3.6.3:

3.6.3.4 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 3.6.5.1: “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, 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 shall conduct an inspection 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, and the Construction Manager 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 Construction Manager.

## 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, as the Owner’s Agent, shall review and recommend the cost estimate provided by the Construction Manager, 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 A201-2017": "with RD Instruction 1942-A, Guide 27, Attachment 4."

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 17.

#### 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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CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(title)

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(08-21-91) PN 171

**Appendix F:**

USDA  
Form RD 400-6  
(Rev. 4/00, Page 1 of 2)

Form Approved  
OMB No. 0575-0018

**COMPLIANCE STATEMENT**

This statement relates to a proposed contract with \_\_\_\_\_

*(Name of borrower or guarantee)*

who expects to finance the contract with assistance from Rural Development, United States Department of Agriculture (whether by a loan, grant, loan insurance, guarantee, or other form of financial assistance.) I am the undersigned bidder or prospective contractor. I represent that:

1. I  have  have not, participated in a previous participated in a previous contract or subcontract subject to Executive Order 11246 (regarding equal employment opportunity) or a preceding similar Executive Order.
2. If I have participated in such a contract or subcontract, I  have,  have not, filed all compliance reports that have been required to file in connection with the contract or subcontract.
3. I  have,  have not previously had contracts subject to the written affirmative action programs requirements of the Secretary of Labor.
4. If I have participated in such a contract or subcontract, I  have,  have not developed and place on file at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor.

I understand that if I have failed to file any compliance reports that have been required of me, I am not eligible and will not be eligible to have my bid considered or to enter into the proposed contract unless and until I make an arrangement regarding such reports that is satisfactory to either the RHS, RBS, RUS, or to the office where the reports are required to be filed.

I also certify that I do not maintain or provided for my employees any segregated facilities at any of my establishments, and that I do not permit my employees to perform their services at any locations, under my control, where segregated facilities are maintained. I certify further that I will not maintain or provide for my employees any segregated facilities at any of my establishments, and that I will not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I agree that a breach of this certification is a violation of the Equal Opportunity clause in my contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed color, or national origin, because of habit, local custom, or otherwise. I further agree that (except where I have obtained identical certifications for proposed subcontractors for specific time periods) I will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity clause; that I will retain such certifications in my files; and that I will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods): (See Reverse).

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*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0018. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

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**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR  
CERTIFICATIONS OF NON-SEGREGATED FACILITIES**

A certification of Non-segregated Facilities, as required by the May 9, 1967, order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

DATE \_\_\_\_\_

\_\_\_\_\_  
(Signature of Bidder or Prospective Contractor)

\_\_\_\_\_  
Address (including Zip Code)

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*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0018. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

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