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.

**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 subparagraphs to paragraph 1.1:**

**1.1.9 <u>Build America, Buy America Act (BABAA)</u> – 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.**

**1.1.9.1 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 2.3.6 and substitute the following:

2.3.6 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 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 or to whom the Owner has made 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 subparagraph 7.2.1, associated clauses, and substitute the following:

7.2.1 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 7.2.2, and associated clauses as follows:

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 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 of delay.

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 subparagraphs:

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 Sum. 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.

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 11.2.1

Property insurance written on a builder's risk "all-risks" completed value shall be provided as described in AIA Document A101-2017 Exhibit A, paragraph A.2.3, or AIA A133-2019, Exhibit B, as applicable. The policy shall name as the insured the Contractor and the Owner. The provisions of this paragraph 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 Reserved.

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

13.10.1 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 child occupied facilities and 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 14, Reserved

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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