

UNITED STATES DEPARTMENT OF AGRICULTURE
Rural Utilities Service

BULLETIN 1780-26

SUBJECT: Guidance for the Use of Engineers Joint Contract Documents Committee (EJCDC) Documents on Water and Waste Disposal Projects with RUS Financial Assistance

TO: Rural Development State Directors, RUS Program Directors, and State Engineers

EFFECTIVE DATE: Date of approval.

OFFICE OF PRIMARY INTEREST: Environmental and Engineering Staff, Water and Environmental Programs

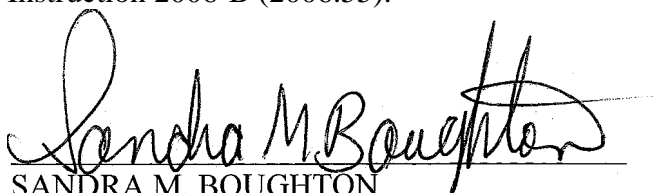
INSTRUCTIONS: This bulletin replaces RUS Bulletin 1780-26, dated September 10, 2003. For projects initiated prior to the effective date of this bulletin, agreements for engineering services and construction contract documents approved under the previous bulletin will be considered acceptable until the project is completed.

AVAILABILITY: This bulletin and all the exhibits, as well as any Rural Development instruction or Rural Utilities Service instructions, regulations, or forms referenced in this bulletin are available at any Rural Development State Office. The State Office staff is familiar with the use of the documents in their States and can answer specific questions on Agency requirements.

This bulletin is available on the Rural Utilities Service website at <http://www.usda.gov/rus/water/regs-bulletins.htm>.

PURPOSE: This bulletin assists Rural Development staff in providing information and guidance to applicants and professional consultants in the development of engineering agreements and construction contract documents that are legally sufficient, ensure appropriate services are provided for a reasonable fee, and expedite the achievement of the applicant's goals.

MODIFICATIONS: Rural Development State Offices may modify this guidance when appropriate to comply with State statutes in accordance with the procedures outlined at RD Instruction 2006-B (2006.55).


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Acting Assistant Administrator
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Date

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Agreement for Engineering Services
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ABBREVIATIONS

CFR – Code of Federal Regulations
EJCDC – Engineers Joint Contract Documents Committee
EO – Executive Order
PER – Preliminary Engineering Report
PL – Public Law
RPR – Resident Project Representative
SHPO – State Historic Preservation Officer
USC – United States Code

The EJCDC documents and this bulletin contain references to the USC, the CFR, EO, and PL. The current versions of these documents are available online at the locations listed below.

Type of Document	Web Site URL
USC	http://uscode.house.gov/search/criteria.shtml
CFR	http://www.gpoaccess.gov/cfr/index.html
EO	http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1
PL	http://thomas.loc.gov/

**Guidance for the Use of Engineers Joint Contract Documents Committee (EJCDC)
Documents on Water and Waste Disposal Projects with RUS Financial Assistance**

**Rural Utilities Service
August 2009**

1. GENERAL

It is the Rural Utilities Service's policy that the Engineers Joint Contract Documents Committee (EJCDC) documents be used as the foundation for the engineering and construction contract documents for all Water and Waste Disposal program actions. The EJCDC has developed the following documents which will be considered previously approved by the Agency for use by applicants, owners, and borrowers in the Rural Utilities Service's Water and Waste Disposal program.

- a. Agreement between Owner and Engineer for Professional Services (EJCDC No. E-500, including Exhibits A through J, 2008 Edition),
- b. Suggested Form of Agreement between Owner and Contractor for Construction Contract (Stipulated Price) (EJCDC No. C-520, 2007 Edition), and
- c. Standard General Conditions of the Construction Contract (EJCDC No. C-700, 2007 Edition).

When these documents are properly coordinated with other documents in the EJCDC set of Construction Related Documents, the documents are acceptable for use by RUS applicants and borrowers in the procurement of engineering professional services and utility construction services for projects with financial assistance under the Water and Waste Disposal programs. Attachments refer to this Bulletin. Exhibits refer to the EJCDC documents. Bold text in the attachments are headings. Italicized text in the attachments indicate a decision must be made to determine what text to include.

2. AVAILABILITY

The EJCDC documents are available from any of the sponsoring organizations: the National Society of Professional Engineers (www.nspe.org), American Council of Engineering Companies (www.acec.org), or American Society of Civil Engineers (www.asce.org), and the Associated General Contractors of America (www.agc.org). RUS offices will not distribute EJCDC documents for any purpose other than training or to illustrate the appropriate use of the integrated set of documents on RUS financially assisted projects.

Any utility or consulting engineer that is anticipating funding all or part of a water or waste improvement project with financial assistance from RUS should contact the USDA, Rural Development State Office for guidance before executing a professional services agreement or preparing a set of construction contract documents. The RUS Water and Waste Disposal programs are delivered through the USDA, Rural Development offices.

Any Rural Development or RUS instructions, regulations, or forms referenced in this bulletin are available from any Rural Development State Office or from the internet at www.usda.gov/rus/water/ or www.rurdev.usda.gov/regs/. Typical forms to be used are:

- a. Compliance Statement (RD 400-6).
- b. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions (AD-1048).
- c. RD Instruction 1940-Q, Exhibit A-1, Certification for Contracts, Grants, and Loans.

The RUS National Office maintains a web site for Water and Environmental Programs at www.usda.gov/rus/water/. In addition to other valuable information, this site provides a listing of all the Rural Development State Offices (State Staff), the capability to download a copy of Bulletin 1780-26 and the Exhibits in a MS Word format (Regulations/Bulletins), and copies of most Rural Development and RUS forms (Forms).

3. PURPOSE

This bulletin on the use of the EJCDC documents is to be used by Rural Development staff in providing information and guidance to applicants and professional consultants in the development of agreements that are legally sufficient, ensure appropriate services are provided for a reasonable fee, and expedite the achievement of the applicant's goals. This guidance package consists of attachments that when combined with the standard EJCDC documents, create a complete set of engineering and construction contracts. However, the guidance or model documents in these attachments are not to be used as a substitute for the careful evaluation of the requirements for a project. The owner, their engineer and legal counsel, with Rural Development consultation, must determine the best approach for a successful outcome. Attachment A is a list of documents that constitute the Owner – Engineer Agreement, including EJCDC E-500. Attachment A includes notes on each document that goes into the complete Agreement. Attachment B is instructions in letter format to be provided to the engineer by the owner. Attachment C is a replacement for Exhibit C of the E-500 Agreement for use in Water and Waste Disposal program funded projects. Attachment D is a list of documents that constitute the Owner – Construction Contractor Agreement, including EJCDC C-520, the EJCDC construction agreement form and C-700, the EJCDC General Conditions of the Contract. Attachments E through H constitute parts of the construction contract as explained in Attachment D.

4. OWNER RESPONSIBILITY

Before an applicant or consultant proceeds with the development of an agreement or a set of construction contract documents, they should contact the Rural Development State Office to verify they have the most current information specific to the type of project and state or other jurisdiction where the project is located. Consultants may use these electronic files as the starting point in preparing a set of construction

contract documents for a project. This bulletin and the attachments are formatted for copying as a doubled sided document to reduce paper usage after the first computer printing.

The Owner is responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of a loan or grant. These include, but are not limited to: source evaluation, protests, disputes, and claims. Matters concerning violations of laws are to be referred to the applicable local, State, or Federal authority.

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Owner-Engineer Agreement Document List

The EJCDC has developed a 2008 edition of the Owner-Engineer Agreement that, when assembled as described in this Bulletin, is acceptable for use on water and waste projects funded by RUS. The executed Owner-Engineer Agreement must be approved by the USDA Rural Development State Engineer prior to Agency concurrence in any payment of RUS funding for engineering services.

It is RUS policy that applicants use the EJCDC documents with minimal modification. However, RUS recognizes each project is unique and that modifications may be required to satisfy project requirements or State statutes. Because the EJCDC documents are fully integrated, when making a modification in one document applicants must ensure that appropriate modifications are made in all affected documents.

For a Project that will not be clearly defined until the Preliminary Engineering Report (PER) is approved and fees for basic services are to be either a lump sum or hourly rates with a not to exceed limit, the Owner and Engineer may wait until the Project is defined in the approved PER to negotiate services and compensation for the Design and Construction Phases.

Before applicants or consultants proceed with the development of an agreement, they should contact the Rural Development State Office to verify they have the most current information specific to the type of project and State or other jurisdiction where the project is located.

This table provides a list of the component parts of a complete Owner-Engineer Agreement and RUS Notes on their use.

Title	Form	Notes
Standard Form of Agreement Between Owner and Engineer for Professional Services	E-500 (08) and Attachment C of this Bulletin	<ul style="list-style-type: none"> • Before an “Effective Date” is entered the Owner should consult with a Rural Development representative regarding funding requirements, appropriate services, and reasonable fees. • Insert Rural Utilities Service and names of other Federal or State funding agencies that will be concurring in the Agreement. • 4.01, If the Owner has specific invoicing requirements, those requirements should be outlined in Exhibit J, Special Provisions, as an amendment to this paragraph. • 8.02, This Agreement constitutes the entire agreement between Owner and Engineer for the Project. No agreements for additional compensation for services provided under this Agreement are permitted. Former Agreements may be listed in Exhibit J.

Title	Form	Notes
Engineer's Services	E-500 (08) Exhibit A (Required)	<ul style="list-style-type: none"> • Any additional Federal funding agency requirements should be outlined in Exhibit J, Special Provisions, as a supplement to this paragraph. • State funding agency requirements not in conflict with Federal requirements should be outlined in Exhibit J, Special Provisions, as a new paragraph 8.05. • RUS funding can be used for payment of engineering services only after RUS has concurred in the agreement. • In addition to copies customarily provided for Owner, Engineer, and others, two executed copies with all Exhibits will be provided for Rural Development use. • A1.01.A.4, Insert number of alternatives or list of alternatives to be evaluated, but leave option to add any required by funding agencies. • A1.01.A.6, A1.02.A.5, A1.03.A.4, A1.04.A.7, A1.05.A.18, and A1.06.A.3, Any unique tasks or deliverables not covered in the standard language must be added in the appropriate phase. • A1.06.B, The Engineer should provide a number of hours commensurate with the size and complexity of the project.
Owner's Responsibilities	E-500 (08) Exhibit B (Required)	<ul style="list-style-type: none"> • Any of the listed responsibilities that have been moved to Exhibit A or are included in Additional Engineer's Services should be deleted here. • B2.01.S, Any unique tasks or deliverables not covered in the standard language must be added.

Title	Form	Notes
Payments to Engineer for Services and Reimbursable Expenses	E-500 (08) Exhibit C (Must Select One Option)	<ul style="list-style-type: none"> • Replace E-500, Exhibit C with a Compensation Packet from this Bulletin. • In accordance with RD Instruction 2006-B (2006.55) Rural Development State Directors may modify Exhibit C and appendixes to be consistent with state requirements and local practices that do not conflict with Federal requirements. • The Owner and Engineer have several methods of compensation available for Basic Services. The choice of the method of compensation determines which Exhibit C Sheets must be part of the Agreement. Although no specific format is provided, the Owner and Engineer may negotiate a Lump Sum method of compensation for well defined tasks under Additional Services. • Each sheet requires items to be entered to make the document complete. The estimates of total compensation associated with the Standard Hourly Rates method of compensation are required for project budgeting. • For Compensation Packet RUS-1 reimbursable expenses are included in the lump sum cost. • The Owner and Engineer may wait until the Project is defined in the approved PER to negotiate services and compensation for the Design and Construction Phases. . • Be specific about fees regarding bidding and advertising multiple construction contracts and change order adjustments of contract amount and time.
Reimbursable Expenses Schedule	E-500 (08) Exhibit C, Appendix 1 (Required when any reimbursable expenses are not part of basic fees)	<ul style="list-style-type: none"> • This suggested format will normally be replaced by the Engineer's standard schedule. • Note that agreement provides for rates to be adjusted annually. Budget for expenses at time of service. Revised rates should be submitted to State Engineer as an Amendment to the Agreement subject to concurrence prior to implementation.

Standard Hourly Rates Schedule	E-500 (08) Exhibit C, Appendix 2 (Required when any Standard Hourly Rates method of compensation is selected)	<ul style="list-style-type: none"> • This suggested format will normally be replaced by the Engineer's standard schedule. • Note that agreement provides for rates to be adjusted annually. Budget for expenses at time of service. Revised rates should be submitted to State Engineer as an Amendment to the Agreement for determination of reasonableness prior to implementation.
Duties, Responsibilities, and Limitations of Authority of Resident Project Representative	E-500 (08) Exhibit D (Required)	<ul style="list-style-type: none"> • Required if Engineer provides this service • A similar document outlining duties, responsibilities and limitations of authorities must be used if others provide service.
Notice of Acceptability of Work	E-500 (08) Exhibit E (Required)	<ul style="list-style-type: none"> • Executed copy will be provided to Rural Development at Project final inspection.
Construction Cost Limit	E-500 (08) Exhibit F (Optional)	<ul style="list-style-type: none"> • If Owner has strict budgetary limitations, this Exhibit assigns Engineer more responsibility for cost control.
Insurance	E-500 (08) Exhibit G (Required)	<ul style="list-style-type: none"> • The purpose of this Exhibit is two fold: a) disclosure of insurance coverage by each party, and b) confirmation of each party's insurance requirements for this Agreement. Owner and Engineer are not required to carry each type of insurance listed. • Owner should review and update insurance coverage where necessary to maintain adequate protection during construction period.
Dispute Resolution	E-500 (08) Exhibit H (Optional)	<ul style="list-style-type: none"> • Use only if it is desirable to settle disputes between Engineer and Owner using a process other than the court system.
Limitations of Liability	E-500 (08) Exhibit I	<ul style="list-style-type: none"> • Delete or modify in accordance with state law.
Special Provisions	E-500 (08) Exhibit J (Optional)	<ul style="list-style-type: none"> • Use only if specific modifications are required by State statute or unique project requirements. • Follow document format.
Amendment to Owner-Engineer Agreement	E-500 (08) Exhibit K (Required)	<ul style="list-style-type: none"> • Exhibit K is the proper format for amending the Agreement.

Owner's Instructions Regarding Bidding Procedures And Construction Contract Documents

The Engineers Joint Contract Documents Committee (EJCDC) construction contract documents are acceptable for use as the foundation of the Construction Contract Documents on water and waste projects funded by RUS. This attachment is adapted from EJCDC No. C-050 (2007 edition) and is provided to indicate RUS requirements and recommendations in preparation of the Construction Contract Documents and to expedite the entire process of preparing for the project construction. RUS recognizes each project is unique and that modifications may be required to satisfy specific project requirements or State statutes.

This attachment is a model letter that the Owner and Engineer can use to delineate the issues and conclusions reached by the Owner and Engineer before preparing documents. The Owner and their Engineer should collaborate in the development of this or a similar document in consultation with the Owner's legal counsel before the Engineer begins development of the Construction Contract Documents.

Text enclosed in { } indicates a choice is necessary or information should be inserted.

PROJECT: {Insert name }

OWNER: {Insert name }

TO: {Insert Engineer's name }

CC: USDA, Rural Development State Office

You are hereby instructed to proceed with preparation of necessary Bidding Requirements and Contract Documents on the basis of the advice and information given below or provided in attachments. This letter is to confirm decisions made and does not change any relationships or assignment of responsibilities established in the Owner-Engineer Agreement.

1. Project name to be used: {Insert name, if other than above }
2. Legal name and address of the Owner for construction contract purposes: {Insert Owner's legal name and address }
3. Form of Owner's organization: ___Not-for-Profit Corporation ___Municipality ___Utility District ___County ___Township ___Tribe.
4. Detailed description of property, including designation of property owner if different from the Owner identified above: {Insert detailed description of property }

5. During the Construction Phase, Owner's Representative (point of contact) will be: {Insert name}
6. The Project will be constructed utilizing: {Single/Multiple} contract{s}, stipulated sum {, Portions of construction by Owner's own forces, Other (specify)}.
7. The method of selecting the Contractor(s) shall be open and competitive.
8. If multiple contracts are to be utilized on the same site, the activities of the Contractors will be coordinated by a designated prime contractor.
9. The Bidding Documents, Contract Forms, and General Conditions will be as follows:
 - a. Advertisement (RUS B1780-26, Attachment E).
 - b. Instructions to Bidders (RUS B1780-26, Attachment F). Will clearly define process for determining lowest responsive, responsible bidder.
 - c. Bid Form (RUS B1780-26, Attachment G). Base bid with alternative deducts format will not be used.
 - d. Bid Bond shall be EJCDC No. C-430 (2007 Edition)
 - e. Notice of Award shall be EJCDC No. C-510 (2007 Edition).
 - f. Agreement between Owner and Contractor(s) shall be EJCDC No. C-520 (2007 Edition)
 - g. General Conditions shall be EJCDC No. C-700 (2007 Edition).
 - h. Supplementary Conditions (RUS B1780-26, Attachment H).
 - i. Performance Bond shall be EJCDC No. C-610 (2007 Edition).
 - j. Payment Bond shall be EJCDC No. C-615 or C-615A (2007 Edition).
 - k. Application for Payment shall be EJCDC No. C-620 (2007 Edition).
 - l. Change Order shall be EJCDC No. C-941 (2007 Edition).
 - m. Notice to Proceed shall be EJCDC No. C-550 (2007 Edition).
 - n. Certificate of Substantial Completion shall be EJCDC No. C-625 (2007 Edition).
10. Development of Supplementary Conditions of the Contract prior to bidding will be discussed and reviewed with Owner's Representative.
11. Entire package of Bidding Documents must be submitted to Rural Development for review and approval obtained prior to beginning advertisement for bids. No changes will be made after Rural Development approval without concurrence.
12. Contractor's applications for payment will be paid by the {20th} day of each month. The Application for Payment will be based on EJCDC No. C-620 (2007 Edition) with Funding Agency signature.
13. Interest on late contractor payments will be paid at the rate of {insert rate}% per annum (insert into C-520, article 7.01).

14. For Item 12 above to apply, applications for payment must be received by Owner 10 days before payment is due. Funding Agency must approve all contractor applications for payment.

15. Retainage will be as stated in Owner-Contractor Agreement (EJCDC No. C-520). Retainage can not be paid to contractor prior to Substantial Completion, nor can the retainage be invested for contractor's benefit.

16. Liquidated Damages are required in each construction contract. Owner's records for calculation of liquidated damages amount for each calendar day required to (calculate separately for each contract):

Achieve Substantial Completion Readiness for Final Payment (Optional)

Interest	_____	_____
Inspection	_____	_____
Administration	_____	_____
Engineering	_____	_____
Impact on other Contractors	_____	_____
Other	_____	_____
TOTAL	_____	_____

17. Special Instructions to Bidders regarding Site visits are as follows: {Insert visit instructions or N/A}

18. Bid Form shall be prepared by Engineer and based on RUS B1780-26, Attachment G.

19. Bids shall be solicited by Public Advertisement {or other method}, Arranged by {Owner/Engineer}. Actions will be taken to encourage small, minority, and woman-owned businesses to participate in Project. Publications may include: local and regional newspapers, builders exchange, etc. {Add places where construction is normally advertised in specific States and where small, minority, and woman-owned businesses obtain bid information.}

20. Instructions, if any, on the method of selection or qualification of Bidders: {Insert special selection method or N/A}

21. Bid Security is required, in the amount of 5% of the total Bid in the form of a Bid Bond using EJCDC No. C-430 (2007 Edition) or Certified Check.

22. Copies of the Bidding Documents may be made available in plan rooms: {Selected by Engineer}.

23. Date and time for receipt of Bids will be determined later by Owner and Engineer, with Rural Development concurrence.

24. Place of receipt of Bids will be {determined by Owner and Engineer}.

25. Detailed bid tabulation forms will be prepared by Engineer.
26. Bids shall be publicly opened and read aloud.
27. In addition to the usual original signed Bid, the Owner requires the following (See RUS Bulletin 1780-26, Attachment G): {Insert any additional requirements or N/A}
28. Bids shall not be withdrawn by Bidders for {60 days} after the receipt of Bids.
29. Before a Contract is awarded, all Funding Agencies must concur prior to announcement of award. Construction at the site by the Contractor may commence upon, but not before, receipt of a Notice to Proceed.
30. Work shall be substantially complete {_____} calendar days after Contract Times commence to run.
31. All Change Orders will be on EJCDC form No. C-941 (2007 Edition) with Funding Agency signature. Funding Agency must approve all Change Orders.
32. The Owner and Engineer will need to determine what if any special conditions apply to this project. If special instructions are required, they should be detailed below. Special instructions are attached for the following items:
 - {Archeological/Environmental mitigation conditions
 - Equal opportunity requirements
 - Lien waivers
 - Limited access during bidding
 - Limited access during construction
 - Maintaining operations of existing facilities
 - Milestones (interim)
 - Monthly affidavits
 - Other contracts, not in this project
 - Phased occupancy
 - Phasing or Sequencing of specific elements of the Work
 - Pre-bid conference
 - Schedule of completion
 - Separate contracts in this project
 - Site security requirements
 - Special time periods during which Contractor cannot perform construction
 - Tax exemptions
 - Wage standards or determinations, to which Contractor must conform (check with Rural Development)
 - Work by Owner's own forces
 - Other (specify)}

Owner:

By: _____

Date: _____

Phone: _____

Fax: _____

E-mail: _____

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Funding Agency Clauses to Modify E-500, “Agreement between Owner and Engineer for Professional Services”

(Formatted for use with E-500, 2008 Edition on RUS funded projects)

The following clauses replace, modify or supplement existing clauses in the subject Agreement.

Article 3 of the Agreement is amended and supplemented to include the following agreement of the parties:

3.02.E. If Engineer fails, through its own fault, to complete the performance required within this agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

4.01.A. *Preparation and Submittal of Invoices.* {Change 30 days to 60 days.}

4.02.B. *Failure to Pay:* {Change 30 days to 60 days.}

Article 6 of the Agreement is amended and supplemented to include the following agreement of the parties:

6.03 *Use of Documents* {Note the following sections are changed. 6.03.C through F are retained unchanged from E-500}

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. {Note last sentence of E-500, 6.03.A is stricken.}
- B. Either party to this Agreement may rely that data or information that the party receives from the other party by mail, hand delivery, facsimile, or electronic media are the items that the other party intended to send. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J. ConsensusDOCS 200.2 Electronic Communications Protocol Addendum may be attached to Exhibit J and become a part of this Agreement. {Note: Updated to allow electronic media and communication. Also, use of ConcensusDOCS 200.2 is allowed.}

Article 6.05.A.1 By Owner. Owner may suspend the project upon seven days written notice to Engineer. If the project is suspended by the Owner for more than 30 days and is then resumed, the Engineer's compensation may be equitably adjusted, as mutually agreed, using Exhibit K, Amendment to Owner Engineer Agreement, to provide for expenses incurred in the interruption and resumption of Engineer's services.

Article 7 of the Agreement is amended and supplemented to include the following agreement of the parties:

Article 7.01.A.34 Resident Project Representative – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any Resident Inspector, assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

Article 7.01.A.35. Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.

Article 8 of the Agreement is amended and supplemented to include the following agreement of the parties:

Article 8.05 Federal Requirements

- A. *Agency Concurrence.* Signature of a duly authorized representative of Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.
- B. *Audit and Access to Records.* Owner, 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 Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- C. *Restrictions on Lobbying.* Engineer and each Consultant shall comply with Restrictions on Lobbying if they are recipients of engineering services 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, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the

tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

- D. *Suspension and Debarment.* Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions" to the Owner who will forward it the USDA, Rural Development processing office.

Funding Agency Clauses to Modify E-500, Exhibit A to “Agreement between Owner and Engineer for Professional Services”

(Formatted for use with E-500, 2008 Edition on RUS funded projects)

The following clauses replace, modify or supplement existing clauses in the subject Exhibit.

Article 1 of Exhibit A of the Agreement is amended and supplemented to include the following agreement of the parties:

Article A.1.01.A.5: The Report mentioned in Article 1.01.A.5 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletins 1780-2, 1780-3, 1780-4, and 1780-5. This document must meet customary professional standards as required by 7 CFR 1780.55.

Article A.1.01.A.6: The Environmental Report defined at 7 CFR 1794 and RUS Bulletin 1794A-602 is required under Article 1.01.A.6 of Exhibit A to the Agreement.

Article A.1.02.A. After the words “acceptance by Owner” insert “and concurrence by Agency.”

Insert the following after Article A.1.03.A.4.a: Article A.1.03.A.4.a: The Engineer shall identify the building codes and accessibility standards used in the design, and certify that the final plans and specifications comply with those standards as well as the planning requirements of this subpart.

Article A.1.03.A.5: After the word “counsel” add “and Agency.”

Article A.1.04.A.7: Upon award of the Construction Contract, the Engineer shall furnish { ___ } executed copies of the Contract Documents.

Article A.1.05.A.4: *Pre-Construction Conference:* Participate in and chair a Pre-Construction Conference prior to commencement of Work at the Site.

Article A.1.05.A.18: The visits described in Article A.1.05.A.7.a shall be at least monthly.

Article A.1.05.A.18.b: The Engineer shall document visit to the project site in writing on standard inspection report forms approved by the Agency with copies furnished to the Owner, Agency, and Contractor.

Article A.1.05.A.18.c: Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.

Article A.1.05.A.18.d: The Engineer shall prepare Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.

Article A.2.01.A.17: [Deleted].

Funding Agency Clauses to Modify E-500, Exhibit B to “Agreement between Owner and Engineer for Professional Services”

(Formatted for use with E-500, 2008 Edition on RUS funded projects)

The following clauses replace, modify or supplement existing clauses in the subject Exhibit.

Article 2.01.S.a: The Owner shall pay the Contractor any amounts due under the Construction Contract, but must obtain Agency concurrence prior to issuing such payment.

Funding Agency Clauses to Modify E-500, Exhibit C to “Agreement between Owner and Engineer for Professional Services”

(Formatted for use with E-500, 2008 Edition on RUS funded projects)

The following clauses replace, modify or supplement existing clauses in the subject Exhibit C.

The following “Compensation Packets” should be used in place of the E-500 Exhibit C Compensation Packets provided by EJCDC. The Compensation Packets in E-500, Exhibit C should not be used for RUS projects. Only the Exhibits here should be used.

Each packet below provides additional clauses to be added to the Agreement between Owner and Engineer for Professional Services. One packet must be selected for Basic Services. Packets RUS-3 and RUS-4 are for Resident Project Representative Services and Additional Services.

The Packets presented are as follows:

COMPENSATION PACKET RUS-1: Basic Services – Lump Sum

COMPENSATION PACKET RUS-2: Basic Services – Standard Hourly Rates

COMPENSATION PACKET RUS-3: Resident Project Representative Services – Standard Hourly Rates

COMPENSATION PACKET RUS-4: Additional Services – Standard Hourly Rates

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This is EXHIBIT C, consisting of _____ pages, referred to in part of the Agreement between Owner and Engineer For Professional Services dated _____, _____.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET RUS-1: Basic Services – Lump Sum

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C.2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
 1. For services performed or furnished under paragraph A.1.01, the Lump Sum amount of _____ Dollars (\$_____) after the Study and Report Phase Services are considered complete as defined in Exhibit A.
 2. For services performed or furnished under paragraphs A.1.02 through A.1.06 (excluding the services of the Resident Project Representative) the Lump Sum amount of _____ Dollars (\$_____).
 3. The Lump Sum compensation for services performed or furnished under paragraphs A.1.02 through A.1.0.6 shall be payable as follows:
 - a. A sum which equals 30 percent of the Lump Sum compensation payable under C.2.01.A.2, above, after the Preliminary Design Phase documents are revised and submitted to Owner (and Agency if required).
 - b. A sum which, together with the compensation payable under paragraph C.2.01.A.3.a, equals 50 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2 after the Final Design Phase documents are completed and submitted to Owner and Agency.
 - c. A sum which, together with the compensation provided under paragraph C.2.01.A.3.a and b, equals 70 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, after Final Design Phase services are considered complete as defined in Exhibit A.

- d. A sum which, together with the compensation provided in paragraphs C.2.01.A.3.a, b, and c, equals 80 percent of the Lump Sum payable under paragraph C.2.01.A.2, after Bidding or Negotiating Phase services are considered complete as defined in Exhibit A.
 - e. A sum equal to 15 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2 will be paid for general engineering review of the Contractor's Work during the construction period on percentage ratios identical with those approved by the Engineer as a basis upon which to make partial payments to the Contractor(s). Payments will be made on a monthly basis. However, payment under this paragraph will be in an amount such that the aggregate of the sums paid to the Engineer under paragraphs C.2.01.A.3.a through C.2.01.A.3.e will equal 95 percent of the Lump Sum amount stipulated in paragraph C.2.01.A.2.
 - f. A final payment which together with the compensation provided in paragraphs C.2.01.A.3.a through C.2.01.A.3.e equals 100 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, shall be made when it is determined that all services required under paragraphs A.1.02 through A.1.05 have been completed. Such payment includes payment for Post-Construction Phase services under paragraph A.1.06. Engineer remains responsible to Owner for the technical adequacy and completeness of such services.
4. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
- B. Period of Service. The compensation amount stipulated in paragraph C.2.01.A.2 is conditioned on a period of service not exceeding _____ months. Should such period of service be extended, the compensation amount for Engineer's services shall be appropriately adjusted.

C.2.03 *[Not Used]*

C.2.04 *[Not Used]*

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This is EXHIBIT C, consisting of _____ pages, referred to in part of the Agreement between Owner and Engineer For Professional Services dated _____,_____.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET RUS-2: Basic Services – Standard Hourly Rates

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C.2.01 Compensation for Basic Services (other than Resident Project Representative Services) – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultant’s charges, if any.
2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
3. The total compensation for services under paragraph C.2.01 is estimated to be \$_____ based on the following assumed distribution of compensation:
 - a. Study and Report Phase \$ _____
 - b. Preliminary Design Phase \$ _____
 - c. Final Design Phase \$ _____
 - d. Bidding or Negotiating Phase \$ _____
 - e. Construction Phase \$ _____
 - f. Post Construction \$ _____
4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner, with Agency concurrence.
5. The total estimated compensation for Engineer’s services included in the breakdown by phases as noted in paragraph C.2.01.A.3 incorporates all labor,

overhead, profit, Reimbursable Expenses and Engineer's Consultant's charges.

6. The amounts billed for Engineer's services under paragraph C.2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant's charges.
7. The Standard Hourly Rates and Reimbursable Expenses Schedule may be adjusted annually by Amendment to the Agreement (as of _____) to reflect equitable changes in the compensation payable to Engineer.

C.2.02 Compensation for Reimbursable Expenses

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a Factor of _____. External expenses are limited to sub-consultant or subcontracted services.

C.2.03 Other Provisions Concerning Payment

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a Factor of _____.
- B. Factors. The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. Estimated Compensation Amounts

1. Engineer's estimate of the amounts that will become payable for specified

services are only estimates for planning purposes, are not binding on the parties,
and are not the minimum or maximum amounts payable to Engineer under the Agreement.

2. Engineer is responsible for monitoring charges being generated under this Agreement. When estimated amounts for total compensation or individual phases of the work have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter
Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. Modifications to fees shall be made by Amendment.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

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Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET RUS-3: Resident Project Representative Services – Standard
Hourly Rates

C.2.04 *Compensation for Resident Project Representative Services – Standard Hourly Rates
Method of Payment*

A. Owner shall pay Engineer for Resident Project Representative Services as follows:

1. *Resident Project Representative Services.* For services of Engineer's Resident Project Representative, if any, under paragraph A.1.05A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$ _____ based upon Contract Times as set forth herein.

B. Compensation for Reimbursable Expenses

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under paragraph C.2.01, and are directly related to the provision of Resident Project Representative Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a Factor of _____. External expenses are limited to sub-consultant or subcontracted services.

4. The Reimbursable Expenses Schedule will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Engineer. Modifications to fees shall be made by Amendment.

C. Other Provisions Concerning Payment Under this Paragraph C.2.04

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a Factor of _____.
2. Factors. The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. Estimated Compensation Amounts
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. Engineer is responsible for monitoring charges generated under this Agreement. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. Modifications to fees shall be made by Amendment only.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

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Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET RUS-4: Additional Services

C.2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General.* For services of Engineer's employees engaged directly on the Project pursuant to paragraph A.2.01 or A.2.02 of Exhibit A, except for services as a consultant or witness under paragraph A.2.01.A.20, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$_____ and this amount shall not be exceeded without written approval of Owner and concurrence of Agency. An itemized estimate of this amount shall be attached to this Agreement.

B. Compensation for Reimbursable Expenses

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under paragraph C.2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items
in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a Factor of _____. External expenses are limited to sub-consultant or subcontract services.

4. The Reimbursable Expenses Schedule will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Engineer. Modifications to fees shall be made by Amendment.

C. Other Provisions Concerning Payment For Additional Services

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a Factor of _____.
2. Factors. The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is a sample of an **Appendix 1 to EXHIBIT C**, consisting of ____ pages, referred to in and part of the **Agreement Between Owner and Engineer for Professional Services** dated _____. The Engineer will develop the Appendix 1 and attach it to the Agreement.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

FAX	\$	/page
8½"x11" Copies/Impression	\$	/page
Blue Print Copies	\$	/sq. ft.
Reproducible Copies (Mylar)	\$	/sq. ft.
Reproducible Copies (Paper)	\$	/sq. ft.
Mileage (auto)	\$	/mile
Field Truck Daily Charge	\$	/day
Mileage (Field Truck)	\$	/mile
Field Survey Equipment	\$	/day
Confined Space Equipment	\$	/day plus expenses
Resident Project Representative		/month
Equipment	\$	
Computer CPU Charge	\$	/hour
Specialized Software	\$	/hour
Personal Computer Charge	\$	/hour
CAD Charge	\$	/hour
CAE Terminal Charge	\$	/hour
VCR and Monitor Charge	\$	/week, or \$ /month
Video Camcorder	\$	/day, plus \$ /tape
Electrical Meters Charge	\$	/week, or \$ /month
Flow Meter Charge	\$	/week, or \$ /month
Rain Gauge	\$	/week, or \$ /month
Sampler Charge	\$	/week, or \$ /month
Dissolved Oxygen Tester Charge	\$	/week
Fluorometer	\$	/week
Laboratory Pilot Testing Charge	\$	/week, or \$ /month
Soil Gas Kit	\$	/day
Submersible Pump	\$	/day
Water Level Meter	\$	/day, or \$ /month
Soil Sampling	\$	/sample
Groundwater Sampling	\$	/sample
Health and Safety Level D	\$	/day
Health and Safety Level C	\$	/day
Electronic Media Charge	\$	/hour
Long Distance Phone Calls		at cost
Mobile Phone	\$	/day
Meals and Lodging		at cost

This is a sample of an **Appendix 2 to EXHIBIT C**, consisting of ____ pages, referred to in and part of the **Agreement Between Owner and Engineer for Professional Services** dated _____. The Engineer will develop the Appendix 1 and attach it to the Agreement.

Standard Hourly Rates Schedule

A. Standard Hourly Rates

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Engineer. Modifications to fees shall be made by Amendment.
3. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule

Hourly rates for services performed on or after the date of Agreement are:

Billing Class 9	Senior Associate	\$	_____/hour
Billing Class 8	Staff Manager	\$	_____/hour
Billing Class 7	Professional VI	\$	_____/hour
Billing Class 6	Professional V	\$	_____/hour
Billing Class 5	Professional IV	\$	_____/hour
Billing Class 4	Professional III	\$	_____/hour
Billing Class 3	Professional II	\$	_____/hour
Billing Class 2	Technician II	\$	_____/hour
Billing Class 1	Technician I	\$	_____/hour
Principal		\$	_____/hour
Support Staff		\$	_____/hour

The Engineer and Owner hereby concur in the Funding Agency required revisions to E-500 detailed above.

Engineer: _____ Date _____

Attest: _____

Type Name: _____

Title: _____

Owner: _____ Date _____

Attest: _____

Type Name: _____

Title: _____

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

By: _____ Date _____

Type Name: _____

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Owner-Contractor Agreement Document List

The EJCDC has developed a 2007 edition of the Owner-Contractor Agreement that when assembled as described in this Bulletin is acceptable for use on water and waste projects funded by RUS. The Owner-Contractor Agreement must be approved by the USDA, Rural Development State Engineer prior to advertisement for bids and the executed contract documents must be approved by the USDA, Rural Development State Engineer or other official prior to Agency concurrence in any payment of RUS funding for construction services.

It is Rural Utilities Service (RUS) policy that applicants use the EJCDC documents with minimal modification. However, RUS recognizes each project is unique and that modifications may be required to satisfy specific project requirements or State statutes that do not conflict with federal statutes or regulations. Because the EJCDC documents are fully integrated, when making a modification in one document applicants must ensure that appropriate modifications are made in all affected documents.

Before applicants or consultants proceed with the development of a set of contract documents, they should contact the Rural Development State Office to verify they have the most current information specific to the type of project and State or other jurisdiction where the project is located.

It is customary that project signs identifying the Owner, Contractor, Engineer, and Funding Agencies be displayed during project construction. The sign requirements are not included in the Supplementary Conditions, but should be a part of the specifications prepared by the Engineer. These sign requirements may vary by state, therefore, the Engineer should contact the Rural Development State Engineer for the specific requirements in the State or other jurisdiction where the project will be constructed. Multiple contractors or funding agencies may be listed on one project sign.

At least five complete sets of the executed Construction Contract Documents (two for Agency, one for Engineer, one for Contractor, and one for Owner) must be submitted to Rural Development for review and acceptance before issuance of the Notice to Proceed. .

This table lists guidance documents and forms needed for compilation of a complete set of contract documents and RUS Notes on their use.

Title	Form	Notes
Advertisement for Bids	RUS Bulletin 1780-26, Attachment E, Advertisement for Bids	<ul style="list-style-type: none"> • Use Attachment E, “Advertisement for Bids”, from this Bulletin.
Instructions to Bidders	RUS Bulletin 1780-26, Attachment F	<ul style="list-style-type: none"> • Use Attachment F, “Instructions to Bidders”, from this Bulletin. • Do not use EJCDC document C-200 on RUS funded projects • If the evaluation of bids involves anything other than checking the contractor’s qualifications and calculation of unit prices, such as additive alternates, life-cycle costs, etc., the evaluation process must be clearly stated in the Instructions to Bidders. Given the submitted bids, a hypothetical third party should be able to recommend the same successful bidder as the Engineer. Article 14 - Basis of Bid, Evaluation of Bids may need to be modified if unusual bid evaluation practices are followed.

Title	Form	Notes
Bid Form	RUS Bulletin 1780-26, Attachment G	<ul style="list-style-type: none"> • Use Attachment G, “Bid Form”, from this Bulletin. • Do not use EJCDC form C-410 on RUS funded projects. • 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; noncompetitive practices between firms; organizational conflicts of interest; specifying only a brand name product instead of either allowing an equal product to be offered, or describing the performance of the relevant requirements of the procurement; and unnecessary experience and bonding requirements. • To meet requirements of maximum open and free competition at 7 CFR 1780.70(b), materials and brand names must not be listed on bid schedule unless approved by Agency.
Bid Bond	C-430 (07)	<ul style="list-style-type: none"> • Use EJCDC form C-430 (07), “Bid Bond” or certified check. • Must be at least 5% of Bid amount.
Notice of Award	C-510 (07)	<ul style="list-style-type: none"> • Use EJCDC form C-510 (07), “Notice of Award.” • Owner will not announce award of contract without consultation with Agency.

Title	Form	Notes
Agreement Between Owner and Contractor	C-520 (07)	<ul style="list-style-type: none"> • Use EJCDC, form C-520 (07), “Suggested Form of Agreement Between Owner and Contractor (Stipulated Price).” • Read Introduction and Notes to User within document and make appropriate modifications. • 5% retainage must be used until substantial completion. “95” must be added to blanks in Article 6.02.A. • Blanks in 6.02.B should be 100%. • 4.03, The amount entered for liquidated damages should cover all the Owner’s additional costs for the project not being operational: interest, professional fees, administrative costs, etc. (see Attachment B, item 17 of this bulletin). Calculation of this amount should be documented. • 7.01, Interest rate comparable to short term lending rate or State law. • In addition to copies customarily provided for Owner, Contractor, Engineer, and others, two executed copies will be provided for Rural Development use.
Standard General Conditions of the Construction Contract	C-700 (07)	Use EJCDC C-700 (07), “Standard General Conditions of the Construction Contract.”
Supplementary Conditions	RUS Bulletin 1780-26, Attachment H, Supplementary Conditions.	<ul style="list-style-type: none"> • Use Attachment H, “Supplementary Conditions” from this Bulletin. • Special attention should be focused on the types and amounts of insurance, and those to be listed as additional insureds under paragraph 5.04. These should be reviewed for each project in terms of the specific conditions associated with that project and the risks involved, and then the paragraphs in the Supplementary Conditions drafted accordingly. • RUS does not support unfair allocation of risk or the burden of excessive insurance coverage. • Certificate of Owner’s Attorney - Exhibit GC-A, to be completed by Owner’s attorney prior to submittal to Rural Development for concurrence in Agreement. • Any additional special conditions added by Engineer must be added in a separate section.

Title	Form	Notes
Performance Bond	C-610 (07)	<ul style="list-style-type: none"> • Use EJCDC form C-610 (07), “Performance Bond.” • Must be full amount of Contract. • Surety must be listed in TC-570, have adequate bonding capacity, and be licensed to do business in the State or other jurisdiction where project is located.
Payment Bond	C-615 (07)	<ul style="list-style-type: none"> • Use EJCDC form C-615 (07), “Payment Bond” or alternate payment bond prepared by EJCDC, including C-615-A. • Must be full amount of Contract. • Surety must be listed in TC-570, have adequate bonding capacity, and be licensed to do business in the State or other jurisdiction where project is located.
Application for Payment	C-620 (07)	<ul style="list-style-type: none"> • Use EJCDC form C-620 (07), “Application for Payment.” • Must retain signature blocks for Owner’s Approval and Agency Concurrence. C-620 is pre-approved for use under 7 CFR 1780.76 (e). • It is anticipated that an attachment to the Application for Payment for the detailed tracking of quantities, materials stored, etc. will be developed by the Engineer and Contractor. • Work added by Change Order will not be considered for payment until Change Order has Agency concurrence. • Quantity Completed on Final Application for Payment must equal final adjusted contract quantities on unit price contracts. • In addition to copies customarily provided for Owner, Contractor, Engineer, and others, an executed copy with all attachments will be provided for Rural Development use.
Change Order	C-941 (07)	<ul style="list-style-type: none"> • Use EJCDC form C-941 (07), “Change Order.” • Must retain signature block for Agency Concurrence. C-941 is pre-approved for use under 7 CFR 1780.76 (h) (2). • In addition to copies customarily provided for Owner, Contractor, Engineer, and others, two executed copies will be provided for Rural Development use.

Title	Form	Notes
Notice to Proceed	C-550 (07)	<ul style="list-style-type: none"> • Use EJCDC form C-550 (07), “Notice to Proceed.” • Executed copy will be provided to Rural Development.
Certificate of Substantial Completion	C-625 (07)	<ul style="list-style-type: none"> • Use EJCDC form C-625 (07), “Certificate of Substantial Completion.” • Executed copy will be provided to Rural Development.

In the following attachments, text enclosed in { } indicates a choice is necessary or information must be inserted. This information must be provided and the { } eliminated prior to submittal to Rural Development for review.

Advertisement for Bids

Owner

Address

Separate sealed Bids for the construction of (briefly describe nature, scope, and major elements of the Work)

will be received by _____

at the office of _____

until _____, (Local Time) _____, _____(year), and then at said office publicly opened and read aloud.

The Contract Documents may be examined at the following location(s):

Copies of the Contract Documents may be obtained at the Issuing Office, _____,

located at _____ upon payment of \$ _____
for each set.

Date

This page intentionally left blank.

Instructions to Bidders

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ARTICLE 1 - DEFINED TERMS

1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:

- A. Issuing Office--The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.

ARTICLE 2 - COPIES OF BIDDING DOCUMENTS

2.01 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement for Bids may be obtained from the Issuing Office. The deposit will be refunded to each document holder of record who returns a complete set of Bidding Documents in good condition within 30 days after opening of Bids.

- 2.02 Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

ARTICLE 3 - QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate Bidder's qualifications to perform the Work, within five days of Owner's request, Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for below.

{A. _____}

{B. _____}

{If a bidder's qualification form is to be completed and submitted by bidders, it should be listed here and included in the Project Manual. ConsensusDOCS 220, "Contractor's Qualification Statement for Engineered Construction," may be used.}

ARTICLE 4 - EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

4.01 Subsurface and Physical Conditions

A. The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Bidding Documents.
2. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in paragraph 4.01.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.02 of the General Conditions has been identified and established in paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.02 Underground Facilities

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

4.03 Hazardous Environmental Condition

- A. The Supplementary Conditions identify those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that ENGINEER has used in preparing the Bidding Documents.
- B. Copies of reports and drawings referenced in paragraph 4.03.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in paragraph 4.06 of the General Conditions has been identified and established in paragraph 4.06 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated conditions appear in paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in paragraph 4.06 of the General Conditions.

4.05 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to locating of excavation and utility.

4.06 Additional Owner Provided Information:

- A. Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request, Owner will provide to each Bidder for examination access to or copies of Contract Documents (other

than portions thereof related to price) for such other work.

- B. Paragraph 6.13.C of the General Conditions states that if an Owner safety program exists it will be noted in the Supplementary Conditions.

4.07 It is the responsibility of each Bidder before submitting a Bid to:

- A. Examine and carefully study the Bidding Documents, the other related data identified in the Bidding Documents, and any Addenda;
- B. Visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. Become familiar with and satisfy Bidder as to all Federal, State, and local Laws and Regulations that may affect cost, progress, or performance of the Work;
- D. Carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and (2) reports and drawings of Hazardous Environmental Conditions at the Site which have been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions;
- E. Obtain and carefully study (or accept consequences for not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;
- F. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;
- G. Become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
- H. Correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents,

and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;

- I. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
 - J. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 5 - PRE-BID CONFERENCE

- 5.01 A pre-Bid conference will be held at {_____} {a.m.}{p.m.} on {_____} at {_____}. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are {encouraged}{required} to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 6 - SITE AND OTHER AREAS

- 6.01 The Site is identified in the Bidding Documents. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

ARTICLE 7 - INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to

all parties recorded by Engineer as having received the Bidding Documents. Questions received less than five days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.

ARTICLE 8 - BID SECURITY

8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 % of Bidder's maximum Bid price and in the form of a certified check or a Bid bond (EJCDC No. C-430, 2007 Edition) issued by a surety meeting the requirements of paragraphs 5.01 and 5.02 of the General Conditions.

8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within { 15 days } after the Notice of Award, Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Agreement or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

8.03 Bid security of other Bidders whom OWNER believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 9 - CONTRACT TIMES

9.01 The number of days within which, or the dates by which, the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

ARTICLE 10 -LIQUIDATED DAMAGES

10.01 Provisions for liquidated damages are set forth in the Agreement.

ARTICLE 11 - SUBSTITUTE AND "OR-EQUAL" ITEMS

11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or "or-equal" materials and equipment as defined in paragraph 6.05 of the General Conditions, or those substitute materials and equipment approved by the Engineer and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type,

function and quality to be met by any proposed substitute or “or-equal” item. Request for Engineer’s clarification of materials and equipment considered “or-equal” prior to the Effective Date of the Agreement must be received by the Engineer at least 5 days prior to the date for receipt of Bids. No item of material or equipment will be considered by Engineer as a substitute unless written request for approval has been submitted by Bidder and has been received by Engineer at least 15 days prior to the date for receipt of Bids. Each request shall conform to the requirements of paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon the Bidder. Engineer’s decision of approval or disapproval of a proposed item will be final. If Engineer approves any proposed substitute item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

ARTICLE 12 - SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 12.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to Owner a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, without an increase in the Bid.
- 12.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest responsible Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner and Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in paragraph 6.06 of the General Conditions.
- 12.03 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.
- 12.04 The Contractor shall not award work to Subcontractor(s) in excess of the limits stated in SC 6.06.

ARTICLE 13 - PREPARATION OF BID

- 13.01 The Bid form is included with the Bidding Documents. Additional copies may be obtained from Engineer.
- 13.02 All blanks on the Bid form shall be completed in ink and the Bid signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each *{section, Bid item, alternative, adjustment unit price item, and unit price item}* listed therein, or the words “No Bid,” “No Change,” or “Not Applicable” entered.
- 13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be provided on the Bid Form.
- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be provided on the Bid Form.
- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 13.06 A Bid by an individual shall show the Bidder’s name and business address.
- 13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid form. The official address of the joint venture must be provided on the Bid Form.
- 13.08 All names shall be printed in ink below the signatures.
- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers and dates of which shall be filled in on the Bid form.
- 13.10 The postal and email addresses and telephone number for communication regarding the Bid shall be shown.
- 13.11 The Bid shall contain evidence of Bidder’s authority and qualification to do business in the state or locality where the Project is located or Bidder shall covenant in writing to obtain such qualification prior to award of the Contract and attach such covenant to the Bid. Bidder’s state contractor license number, if any, shall also be shown on the Bid Form.

ARTICLE 14 - BASIS OF BID; COMPARSION OF BIDS

{Owner and Engineer must choose the applicable items under this article and delete the remaining paragraphs}

14.01 Lump Sum

A. Bidders shall submit a Bid on lump sum basis as set forth in the Bid Form.

{or}

B. Bidders shall submit a Bid on a lump sum basis for the Bid and include a separate price for each alternate described in the Bidding Documents as provided for in the Bid Form. The price for each alternate will be the amount added to the Bid if OWNER selects the alternate. In the comparison of Bids, alternates will be applied in the same order as listed in the Bid Form.

{or}

14.01 Unit Price

A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.

B. The total of all bid prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with paragraph 11.03 of the General Conditions.

C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

14.02 Allowances

A. For cash allowances the Bid price shall include such amounts as the Bidder deems proper for Contractor's overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 11.02.B of the General Conditions.

ARTICLE 15 - SUBMITTAL OF BID

15.01 With each copy of the Bidding Documents, a Bidder is furnished one separate unbound copy of the Bid Form, and the Bid bond form. The unbound copy of the Bid Form is

to be completed and submitted with all the attachments outlined in Article 7 of the Bid Form.

- 15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Advertisement for Bids and shall be enclosed in an opaque sealed envelope plainly marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED." When using the mail or other delivery system, the Bidder is totally responsible for the mail or other delivery system delivering the Bid at the place and prior to the time indicated in the Advertisement for Bid. A mailed Bid shall be addressed to Owner at address in Article 1.01 of Bid Form.

ARTICLE 16 - MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 16.02 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid or negotiated, that Bidder will be disqualified from further bidding on the Work. This provision to withdraw a Bid without forfeiting the Bid security does not apply to Bidder's errors in judgment in preparing the Bid.

ARTICLE 17 - OPENING OF BIDS

- 17.01 Bids will be opened at the time and place indicated in the Advertisement for Bids and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 18 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, at its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 - EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.
- 19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 19.03 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 19.04 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.
- 19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the contract Documents.
- 19.06 If the Contract is to be awarded, Owner will award the Contract to the responsible Bidder whose Bid, conforming with all the material terms and conditions of the Instructions to Bidders, is lowest, price and other factors considered. If detailed in the bid form, factors such as discounts, transportation costs, and life cycle costs may be used to determine which bidder, if any, is to offered the award.

ARTICLE 20 - CONTRACT SECURITY AND INSURANCE

- 20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by such bonds.

ARTICLE 21 - SIGNING OF AGREEMENT

- 21.01 When Owner gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents which are identified in the Agreement as attached

thereto. Within 15 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within ten days thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

21.02 This Contract is expected to be funded in part with funds provided by the United States Department of Agriculture, Rural Utilities Service (RUS). Refer to Supplementary General Conditions for Federal requirements.

21.03 Concurrence by RUS in the award of the Contract is required before the Contract is effective.

{Additional Articles - It is often necessary to add additional articles to address such issues as Owner's special tax exemption and pre-purchasing by Owner and subsequent assignment of procurement contracts to Contractor. If any funding source requires the contractor to comply with wage standards, the Information to Bidders and Supplementary Conditions language will be provided by that funding agency. The following articles are examples that may be used to address these issues. Delete those articles that do not apply and renumber as necessary.}

ARTICLE 22 - SALES AND USE TAXES

22.01 OWNER is exempt from _____ State sales and use taxes on materials and equipment to be incorporated in the Work; Exemption No. _____. Said taxes shall not be included in the Bid. Refer to paragraph 6.10 of the Supplementary Conditions for additional information.

ARTICLE 23 - CONTRACTS TO BE ASSIGNED

23.01 Owner as "buyer" [has executed] [will execute] a contract with _____ as "seller" for the procurement of goods and special services for _____. The materials and equipment provided for in the procurement contract are to be furnished and delivered to the Site [or other location] for installation by Contractor. The said procurement contract will be assigned by Owner to Contractor as set forth in the Agreement. Contractor will accept the assignment and assume responsibility for the "seller," who will become a Subcontractor to Contractor.

23.02 Bidders may examine the contract documents for the procurement of goods and special services for _____ at _____.

ARTICLE 24 – WAGE RATE REQUIREMENTS

24.01 The prevailing wage rates of the State of {_____} {apply/do not apply} to this contract

as do any requirements of the State of { _____ } associated with the use of these State Prevailing wages.

- 24.02 The prevailing wage rates of the Department of Labor { apply/do not apply } to this project. The Labor Standards Provisions found at 29 CFR 5.5(a) apply to this project if
if
the prevailing wage rates of the Department of Labor apply. If the contract cost is in excess of \$100,000, provisions of the Contract Work Hours and Safety Standards Act at 29 CFR 5.5(b) also apply.

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Bid Form

Project Identification: *{Project or portion of Project to which Bid applies}*

Contract Identification and Number: *{Title, Number, etc. that appears elsewhere in Bidding Documents}*

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ARTICLE 1 - BID RECIPIENT

1.01 This Bid Is Submitted To: *{Name and Address of OWNER}*

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in the Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 - BIDDER'S ACKNOWLEDGMENTS

2.01 Bidder accepts all of the terms and conditions of the Advertisement and Instructions to Bidders, including without limitations those dealing with the dispositions of Bid security. The Bid will remain subject to acceptance for {60 days} after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 - BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

Addendum No.	Addendum Date
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all Federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in SC-4.02, and (2) reports and drawings of Hazard Environmental Conditions, if any, at the Site that have been identified in SC-4.06 as containing reliable “technical data.”
- E. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder’s safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 3.01.E above, Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of the Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.

- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- J. Bidder will submit written evidence of its authority to do business in the State or other jurisdiction where the Project is located not later than the date of its execution of the Agreement.

ARTICLE 4 - BIDDER'S CERTIFICATION

4.01 Bidder further represents that:

- A. This Bid is genuine and not made in the interest of or on the behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 - BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

[SUGGESTED FORMAT FOR LUMP SUM BID]

Lump Sum Bid Price _____ (\$ _____)
(use words) (numerals)

{OR}

Lump Sum Bid Price for Section I Only _____ (\$ _____)
(use words) (numerals)

Lump Sum Bid Price for Section II Only _____ (\$ _____)
(use words) (numerals)

Lump Sum Bid Price for Sections I and II _____ (\$ _____)
(use words) (numerals)

All specified cash allowances are included in the price(s) set forth above, and have been computed in accordance with Paragraph 11.02 of the General Conditions.

[SUGGESTED FORMAT FOR UNIT PRICE BID]

Attached Itemized Unit Price Sheets

{Using a format similar to the following layout:}

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>	<u>Total Estimated</u>
_____	_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	_____	\$ _____	\$ _____

Total of All Bid Prices (\$ _____)

Unit Prices have been computed in accordance with paragraph 11.03.B of the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities, determined as provided in the contract Documents.

[END OF SUGGESTED BID FORMATS]

ARTICLE 6 - TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damage.

ARTICLE 7 - ATTACHEMENTS TO THIS BID

7.01 The following documents are attached to and made a condition of the Bid:

- A. Required Bid security in the form of a Bid Bond (EJCDC No. C-430) or Certified Check (circle type of security provided);
- B. List of Proposed Subcontractors;
- C. List of Proposed Suppliers;
- D. List of Project References;
- E. Evidence of authority to do business in the state or jurisdiction of the Project; or a written covenant to obtain such license within the time frame for acceptance of Bids;
- F. *[If applicable]* Contractor's License No.: _____ *[or]* Evidence of Bidder's ability to obtain a State Contractor's License and a covenant by Bidder to obtain said license within the time for acceptance of Bids;
- G. Required Bidder Qualification Statement with Supporting Data; and
- H. If Bid amount exceeds \$10,000, signed Compliance Statement (RD 400-6). Refer to specific equal opportunity requirements set forth in paragraph 18.10 of the General Conditions;
- I. If Bid amount exceeds \$25,000, signed Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions (AD-1048);
- J. If Bid amount exceeds \$100,000, signed RD Instruction 1940-Q, Exhibit A-1, Certification for Contracts, Grants, and Loans.
- K. *[List other documents as pertinent]*

ARTICLE 8 - DEFINED TERMS

8.01 The terms used in this Bid with the initial capitol letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 - BID SUBMITTAL

9.01 This Bid is submitted by:

If Bidder is:

An Individual

Name (typed or printed): _____

SEAL,
if required
by State

By: _____

(Individual's signature)

Doing business as:

A Partnership

Partnership Name: _____

SEAL,
if required
by State

By: _____

(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed):

A Corporation

Corporation Name:

State or Jurisdiction of Incorporation: _____

Type (General Business, Profession, Service, Limited Liability):

By: _____

(Signature -- attach evidence of authority to sign)

Name (typed or printed):

Title: _____

CORPORATE
SEAL,
if required by State

Attest _____
(Signature of Corporate Secretary)

Date of Qualification to do business in _____ [State or other jurisdiction where
Project is located] is ___/___/_____

A Joint Venture

Name of Joint Venture:

First Joint Venture Name:

SEAL,
if required
by State

By: _____
(Signature of joint venture partner -- attach evidence of authority to sign)

Name (typed or printed):

Title: _____

Second Joint Venture Name:

SEAL,
if required
by State

By: _____
(Signature of joint venture partner -- attach evidence of authority to sign)

Name (typed or printed):

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership,
and corporation that is party to the venture should be in the manner indicated above.)

Bidder's Business address: _____

Business Phone No. (_____) _____

Business FAX No. (_____)_____

Business E-Mail Address

State Contractor License No. _____ . (If applicable)

Employer's Tax ID No. _____

Phone and FAX Numbers, and Address for receipt of official communications, if different from Business contact information:

9.02 Bid submitted on _____, 20____.

Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. C-700, 2007 Edition) and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions will have the meanings indicated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

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SC-1.01.A.2. Add the following new Paragraph after Paragraph 1.01.A.1:

The Project is financed in whole or in part by USDA Rural Utilities Service pursuant to the Consolidated Farm and Rural Development Act (7 USC Section 1921 et seq.). The Rural Utilities Service programs are administered through the USDA Rural Development offices; therefore, the Agency for these documents is USDA Rural Development. *{add other funding sources and modify when necessary.}*

SC-1.01.A.3. Add the following language to the end of Paragraph 1.01.A.3:

The Application for Payment form to be used on this Project is EJCDC No. C-620. The Agency must approve all Applications for Payment before payment is made.

SC-1.01.A.9. Add the following language to the end of Paragraph 1.01.A.9:

The Change Order form to be used on this Project is EJCDC No. C-941. Agency approval is required before Change Orders are effective.

SC-1.01.A.19. Add the following language to the end of Paragraph 1.01.A.19:

The Engineer's Consultants on this project are: *{list all consultants}*.

{If the use of electronic data, electronic media, or electronic project monitoring is planned for this Project, then CONCENSUS DOCS form 200.2 may be added to the Construction Contract as an Exhibit. If so, add the following language to the Supplementary Conditions.

SC – 3.06.A.1. Add the following new Paragraph immediately after Paragraph 3.06.A

1. Special requirements for electronic data apply to this Project. See attached Exhibit entitled "Electronic Communications Protocol Addendum," Consensus DOCS form # 200.2.}

SC-4.02. Add the following new paragraphs immediately after Paragraph 4.02.B:

- C. In the preparation of Drawings and Specifications, Engineer relied upon the following reports of exploration and tests of subsurface conditions at the Site:
 1. See EJCDC No.C-800 for examples.
- D. In the preparation of Drawings and Specifications, Engineer relied upon the following drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the Site:
 1. See EJCDC No. C-800 for examples.
- E. Copies of reports and drawings itemized in SC-4.02.C and SC-4.02.D that are not included with Bidding Documents may be examined at _____ during regular business hours. These reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which the Contractor may rely as identified and established above are incorporated therein by reference. Contractor is not entitled to rely upon other information and data utilized by Engineer in the preparation of the Drawings and Specifications.

OR

SC-4.02. Delete Paragraphs 4.02.A and 4.02.B in their entirety and insert the following:

- A. No reports or explorations or tests of subsurface conditions at or contiguous to the Site are known to the Owner or Engineer. }

{SC-4.06. Add the following new paragraphs immediately after Paragraph 4.06.A:

1. In the preparation of Drawings and Specifications, Engineer relied upon the following reports of Hazardous Environmental Conditions at the Site:
 - a. See EJCDC No.C-800 for examples.
2. In the preparation of Drawings and Specifications, Engineer relied upon the following drawings of Hazardous Environmental Conditions which are at or contiguous to the Site:
 - a. See EJCDC No. C-800 for examples.
3. Copies of reports and drawings itemized in SC-4.06.A.1 and SC-4.06.A.2 that are not included with Bidding Documents may be examined at _____ during regular business hours. These reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which the Contractor may rely as identified and established above are incorporated therein by reference. Contractor is not entitled to rely upon other information and data utilized by Engineer in the preparation of the Drawings and Specifications.

OR

SC-4.06. Delete Paragraphs 4.06.A and 4.06.B in their entirety and insert the following:

- A. No reports or drawings of Hazardous Environmental Conditions at or contiguous to the Site are known to the Owner or Engineer.
- B. Not used.

SC-5.04. Add the following new paragraph immediately after Paragraph 5.04.B:

- C. The limits of liability for insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
 1. Workers’ Compensation, and related coverages under Paragraphs 5.04.A.1 and A.2 of the General Conditions:

- a. State: Statutory
 - b. Applicable Federal (e.g., Longshoremen's) Statutory
 - c. Employer's Liability *{\$ 500,000}*
2. Contractor's General Liability under Paragraphs 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody, and control of the Contractor:
- a. General Aggregate *{\$ 2,000,000}*
 - b. Products - Completed Operations Aggregate *{\$ 1,000,000}*
 - c. Personal and Advertising Injury *{\$ 1,000,000}*
 - d. Each Occurrence (Bodily Injury and Property Damage) *{\$ 1,000,000}*
 - e. Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable.
 - f. Excess or Umbrella Liability
 - 1) General Aggregate *{\$ 5,000,000}*
 - 2) Each Occurrence *{\$ 5,000,000}*
3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:
- a. Bodily Injury:
 - Each Person *{\$ 1,000,000}*
 - Each Accident *{\$ 1,000,000}*
 - b. Property Damage:
 - Each Accident *{\$ 1,000,000}*
 - c. Combined Single Limit of *{\$ 1,000,000}*
4. The Contractual Liability coverage required by paragraph 5.04.B.4 of the General Conditions shall provide coverage for not less than the following amounts:
- a. Bodily Injury:
 - Each Person *{\$ 2,000,000}*
 - Each Accident *{\$ 2,000,000}*
 - b. Property Damage:
 - Each Accident *{\$ 2,000,000}*
 - Annual Aggregate *{\$ 2,000,000}*

{5. List additional types and amounts of insurance that may be required by Owner.}

{6. List by name other persons or entities to be included on policy as additional insureds.}

SC-6.05.C. Amend the paragraph by making two subparagraphs under the title C. Engineer's Evaluation. The paragraph text is retitled, 6.05.C.2 After Effective Date of Agreement. A new paragraph is added before this paragraph to read as follows:

1. During Bidding. The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or "or-equal" materials and equipment as defined in paragraph 6.05 of the General Conditions, or those substitute materials and equipment approved by the Engineer and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function, and quality to be met by any proposed substitute or "or-equal" item. Request for Engineer's clarification of materials and equipment considered "or-equal" prior to the Effective Date of the Agreement must be received by the Engineer at least 5 days prior to the date for receipt of Bids. No item of material or equipment will be considered by Engineer as a substitute unless written request for approval has been submitted by Bidder
and
has been received by Engineer at least 15 days prior to the date for receipt of Bids. Each request shall conform to the requirements of Paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon the Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approves any proposed substitute item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

SC-6.06 Add a new paragraph immediately after Paragraph 6.06.G:

The Contractor shall not award work valued at more than fifty (50%) percent of the Contract Price to Subcontractor(s), without prior written approval of the Owner.

{If OWNER qualifies for sales or use tax exemptions, language similar to the following should be inserted here and coordinated with the language of Article 22 of the Instructions to Bidders.}

SC-6.10. Add a new paragraph immediately after Paragraph 6.10.A:

- B. Owner is exempt from payment of sales and compensating use taxes of the [State] and of cities and counties thereof on all materials to be incorporated into the Work.
 1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.

2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

{SC-7.01.A. If the Owner is planning to have Work performed by more than one prime contractor, by Owner, or others, it should be specifically stated here.}

{When multiple prime contractors are working on a single Site, the following modification should be made.}

SC-7.02.A.1. Delete paragraphs 7.02.A.1-3 in their entirety and insert the following:

1. The _____ Contractor shall have the authority and be responsible for coordination of the activities among the other prime contractors and subcontractors on the Site to ensure a safe, efficient working environment. This authority covers scheduling delivery of materials, storage of materials, sequencing of construction involving different crafts, resolving interface issues between crafts, scheduling testing, and all other aspects of the Work that do not impact the design or function of the Work.

SC-9.03.A. Add the following language at the end of paragraph 9.03.A:

The Engineer will provide Resident Project Representative services for this project. The Duties, Responsibilities, and Limitations of Authority of the Resident Project Representative will be as stated in Exhibit D of the Agreement Between Owner and Engineer, E-500, 2008 Edition, as amended and executed for this specific Project. *{If anyone other than the Engineer is providing the Resident Project Representative, this language must be modified.}*

SC-14.02.A.3. Add the following language at the end of paragraph 14.02.A.3:

No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage, or invest the retainage for the benefit of the Contractor.

SC-14.02.A.4. Add the following new Paragraph after Paragraph 14.02.A.3:

The Application for Payment form to be used on this Project is EJCDC No. C-620. The Agency must approve all Applications for Payment before payment is made.

SC-14.02.C.1. Delete Paragraph 14.02.C.1 in its entirety and insert the following in its place:

1. The Application for Payment with Engineer's recommendations will be presented to the Owner and Agency for consideration. If both the Owner and Agency find the Application for Payment acceptable, the recommended amount less any reduction under the provisions of Paragraph 14.02.D will become due ten days after the Application for

Payment is presented to the Owner, and the Owner will make payment to the Contractor.

{If the Project Owner is a Tribe, it is important to clarify that this agreement does not modify any relationships that the Tribe may have outside this Project, by adding this language.}

SC-17.07. Add the following new paragraph after Paragraph 17.06:

Tribal Sovereignty. No provision of this Agreement will be construed by any of the signatories as abridging or debilitating any sovereign powers of the _____(insert name of Tribe)_____ (Tribe); affecting the trust-beneficiary relationship between the Secretary of the Interior, Tribe, and Indian landowner(s); or interfering with the government-to-government relationship between the United States and the Tribe.

SC-18 Add a new Article 18, “Federal Requirements,” after Article 17.

SC-18.01 Add the following language at the beginning of Article 18 with the title “Agency Not a Party.”

- A. This Contract is expected to be funded in part with funds provided by Agency. Neither Agency, nor any of its departments, entities, or employees is a party to this Contract.

SC-18.02 Add the following language after Article 18.01.A with the title “Contract Approval.”

- A. Owner and Contractor will furnish Owner’s attorney such evidence as required so that Owner’s attorney can complete and execute the following “Certificate of Owner’s Attorney” (Exhibit GC-A) before Owner submits the executed Contract Documents to Agency for approval.
- B. Concurrence by Agency in the award of the Contract is required before the Contract is effective.

SC 18.03 Add the following language after Article 18.02.B with the title “Conflict of Interest.”

- A. Contractor may not knowingly contract with a supplier or manufacturer if the individual or entity who prepared the plans and specifications has a corporate or financial affiliation with the supplier or manufacturer. Owner’s officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest in Contractor. Owner’s officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractor or subcontractors.

SC-18.04 Add the following language after Article 18.03.A with the title “Gratuities.”

- A. If Owner finds after a notice and hearing that Contractor, or any of Contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of Owner or Agency in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, Owner may, by written notice to Contractor, terminate this Contract. Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.
- B. In the event this Contract is terminated as provided in paragraph 18.04.A, Owner may pursue the same remedies against Contractor as it could pursue in the event of a breach of this Contract by Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, Owner may pursue exemplary damages in an amount (as determined by Owner) which shall not be less than three nor more than ten times the costs Contractor incurs in providing any such gratuities to any such officer or employee.

SC-18.05 Add the following language after Article 18.04.B with the title "Audit and Access to Records."

- A. Owner, 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 Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

SC-18.06 Add the following language after Article 18.05.A with the title "Small, Minority and Women's Businesses."

- A. If Contractor intends to let any subcontracts for a portion of the work, Contractor shall take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services. Affirmative steps shall consist of: (1) including qualified small, minority and women's businesses on solicitation lists; (2) assuring that small, minority and women's businesses are solicited whenever they are potential sources; (3) dividing total requirements when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses; (4) establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority and women's businesses; (5) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; (6) requiring each party to a subcontract to take the affirmative steps of this section; and (7) Contractor is encouraged to procure goods and services from labor surplus area firms.

SC-18.07 Add the following after Article 18.06.A with the title "Anti-Kickback."

- A. Contractor shall comply with the Copeland Anti-Kickback Act (18 USC 874 and 40 USC 276c) as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States”). The Act provides that Contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. Owner shall report all suspected or reported violations to Agency.

SC-18.08 Add the following after Article 18.07.A with the title “Clean Air and Pollution Control Acts.”

- A. If this Contract exceeds \$100,000, Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h) and 42 USC 7401et. seq.), section 508 of the Clean Water Act (33 U.S.C. 1368) and Federal Water Pollution Control Act (33 USC 1251 et seq.), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15) is required. Contractor will report violations to the Agency and the Regional Office of the EPA.

SC-18.09 Add the following after Article 18.08 with the title “State Energy Policy.”

- A. Contractor shall comply with the Energy Policy and Conservation Act (P.L. 94-163). Mandatory standards and policies relating to energy efficiency, contained in any applicable State Energy Conservation Plan, shall be utilized.

SC-18.10 Add the following after Article 18.09 with the title “Equal Opportunity Requirements.”

- A. If this Contract exceeds \$10,000, Contractor shall comply with Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- B. Contractor’s compliance with Executive Order 11246 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4 and its efforts to meet the goals established for the geographical area where the Contract is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting Contractor’s goals shall be a violation of the Contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- C. Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the Contract is to be performed.

SC-18.11 Add the following after Article 18.10.C with the title “Restrictions on Lobbying.”

- A. Contractor and each subcontractor shall comply with Restrictions on Lobbying (Public Law 101-121, Section 319) as supplemented by applicable Agency regulations. This Law 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, Contractor must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Contract. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

SC-18.12 Add the following after Article 18.11.A with the title “Environmental Requirements.”

When constructing a project involving trenching and/or other related earth excavations, Contractor shall comply with the following environmental constraints:

- A. Wetlands – When disposing of excess, spoil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert wetlands.
- B. Floodplains – When disposing of excess, spoil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert 100 year floodplain areas delineated on the latest Federal Emergency Management Agency Floodplain Maps, or other appropriate maps, i.e., alluvial soils on NRCS Soil Survey Maps.
- C. Historic Preservation – Any excavation by Contractor that uncovers an historical or archaeological artifact shall be immediately reported to Owner and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the State Historic Preservation Officer (SHPO).
- D. Endangered Species – Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat.

Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of Contractor, Contractor will immediately report this evidence to Owner and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the U.S. Fish and Wildlife Service.

- E. Mitigation Measures – If the project had an Environmental Report, Environmental Assessment, or Environmental Impact Statement to meet the requirements of the National Environmental Policy Act, compliance with the mitigation measures, if any, in that document are hereby included as a condition of this contract. {These mitigation measures are as follows: Insert mitigation measures if any. }

EXHIBIT GC-A

Certificate of Owner's Attorney

I, the undersigned, _____, the duly authorized and acting legal representative _____, do hereby certify as follows:

I have examined the attached Contract(s) and performance and payment bond(s) and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements is adequate and has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with the terms, conditions, and provisions thereof.

Date: _____

AGENCY CONCURRENCE

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

By: _____ Date _____

-

Type Name: _____