

UNITED STATES DEPARTMENT OF AGRICULTURE  
Rural Utilities Service  
RUS BULLETIN 1780-26  
**Document ID: Rural Development-GD-2023-001**

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

**TO:** Rural Development State Directors, Rural Utilities Service Program Directors, and State Engineers

**EFFECTIVE DATE:** Date of approval

**OFFICE OF PRIMARY INTEREST:** Engineering Policy Branch, Water and Environmental Programs (WEP), under the Rural Utilities Service (RUS), a part of Rural Development (RD), an Agency within the United States Department of Agriculture (USDA)

**INSTRUCTIONS:** This Bulletin replaces RUS Bulletin 1780-26, Document ID: Rural Development-GD-2020-000# dated June 16, 2020 and removes references to American Iron and Steel (AIS) and adds the Build America, Buy America requirements.

**AVAILABILITY:** This Bulletin, as well as any instructions, regulations, or forms referenced in this Bulletin are available at USDA State Offices. 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 website: <https://www.rd.usda.gov/publications/regulations-guidelines/bulletins/water-and-environmental>.

**PURPOSE:** This Bulletin is to be used by RD staff in providing information and guidance to funding applicants/recipients (Owners) and professional consultants in the development of Bidding and Contract Documents that are legally sufficient, ensure appropriate services are provided at a reasonable fee, and expedite the achievement of the applicant's goals. This Bulletin supports compliance with 7 CFR 1780, 2 CFR 200 and the Build America, Buy America Act requirements under Title IX of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, §§ 70901-70953.

**The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.**

---

STEVEN POLACEK  
Acting Assistant Administrator  
Water and Environmental Programs

Date

## TABLE OF CONTENTS

1	GENERAL	4
2	AVAILABILITY	4
3	PURPOSE	4
4	HOW TO USE THE BULLETIN	4
5	OWNER RESPONSIBILITY	5
6	DESIGN-BID-BUILD CONSTRUCTION CONTRACT DOCUMENTS (EJCDC C-SERIES)	5
7	ENGINEERING CONTRACT DOCUMENTS (EJCDC E-SERIES)	8

## EXHIBITS

### Exhibit A – GENERAL DOCUMENTS

Attachment 1	Certificate of Owner’s Attorney and Agency Concurrence
Attachment 2	<i>De Minimis</i> List Format
Attachment 3	General (Prime) Contractor’s Certification of Compliance
Attachment 4	Manufacturer’s Certification of Compliance
Attachment 5	Engineer’s Construction Certifications

### Exhibit B – CONSTRUCTION CONTRACT DOCUMENTS (EJCDC C-SERIES)

Attachment 1	Contract Document Checklist
Attachment 2	Engineer’s Development of Advertisement for Bids
Attachment 3	Engineer’s Development of Instructions to Bidders
Attachment 4	Engineer’s Development of Bid Form
Attachment 5	Engineer’s Development of Agreement Between Owner and Contractor
Attachment 6	Engineer’s Development of Supplementary Conditions

### Exhibit C – ENGINEERING CONTRACT DOCUMENTS (EJCDC E-SERIES)

Attachment 1	Revisions to EJCDC E-500
Attachment 2	Engineer Agreement Certification

### Exhibit D – PROCUREMENT CONTRACT DOCUMENTS (EJCDC P-SERIES)

[Reserved]

### Exhibit E – SHORT FORM CONTRACT DOCUMENTS

[Reserved]

### Exhibit F – DESIGN-BUILD CONTRACT DOCUMENTS (EJCDC D-SERIES)

[Reserved]

### Exhibit G – CONSTRUCTION MANAGER AT RISK CONTRACT DOCUMENTS (EJCDC CMAR-SERIES)

[Reserved]

## INDEX

EJCDC  
Contract Documents  
Water and Environmental Programs

## **ABBREVIATIONS**

AIS – American Iron and Steel  
BABAA – Build America, Buy America Act  
CFR – Code of Federal Regulations  
EJCDC – Engineers Joint Contract Documents Committee  
EO – Executive Order  
GC – General Conditions of the Construction Contract  
IIJA – Infrastructure Investment and Jobs Act  
ITB - Instructions to Bidders for Construction Contract  
OGC – Office of General Counsel  
PL – Public Law  
RD – Rural Development  
RPR – Resident Project Representative  
RUS – Rural Utilities Service  
SC – Supplementary Conditions of the Construction Contract  
USC – United States Code  
USDA – United States Department of Agriculture  
WEP – Water and Environmental Programs  
WWD – Water and Waste Disposal

## **DEFINITIONS**

Defined terms from EJCDC documents are capitalized in this Bulletin

## 1 GENERAL

- a Approved documents. The Engineers Joint Contract Documents Committee (EJCDC) developed Contract Documents, some of which are approved by Rural Utilities Service (RUS) for procurement of equipment and/or services by loan and grant recipients, subject to the modifications indicated in this Bulletin being incorporated in these documents. Approved documents are listed in the appropriate sections that follow.
- b Alternative documents. Owners not wishing to use these EJCDC documents may submit the alternative contract document(s) and a written justification of the need for its (their) use. Such documents must be modified to meet all federal and state requirements and must be approved for each project by the RD State Engineer (State Engineer) and reviewed by the United States Department of Agriculture (USDA) Office of General Counsel (OGC). When modified as described in this Bulletin, the EJCDC documents listed above have been determined to meet such requirements and do not require OGC approval.
- c Phase-out of previous editions. Only current EJCDC documents should be used for Water and Waste Disposal (WWD) projects. The most recent previous version of EJCDC documents will continue to be accepted for one year after issuance of the corresponding chapter of this Bulletin. This Bulletin does not retroactively change the status of a document already approved.

## 2 AVAILABILITY

The EJCDC documents are available online from any of the sponsoring organizations: the National Society of Professional Engineers ([www.nspe.org](http://www.nspe.org)); American Council of Engineering Companies ([www.acec.org](http://www.acec.org)); and American Society of Civil Engineers ([www.asce.org](http://www.asce.org)); or directly from EJCDC ([www.ejcdc.org](http://www.ejcdc.org)). EJCDC documents are proprietary and include a license agreement. State Offices will not distribute EJCDC documents for use as Contract Documents. For training purposes, or to illustrate the appropriate use of the integrated set of documents on RUS financially assisted Water and Waste Disposal (WWD) projects, the State Office may provide water-marked pdf copies of the documents.

## 3 PURPOSE

The EJCDC has developed Contract Documents that when assembled as described in this Bulletin are acceptable for use on WWD projects funded by RUS. This Bulletin includes a table of all the acceptable documents and instruction for modification and review of these documents. This Bulletin is not intended to make the use of EJCDC documents mandatory. Rather, this Bulletin serves to assist Owners and professional consultants who choose to use EJCDC documents in tailoring certain EJCDC bidding and contract documents for use with WWD projects financed by RUS.

## 4 HOW TO USE THE BULLETIN

- a Assembly of documents. This Bulletin explains the use of EJCDC standard contract documents, and modifications to make them acceptable for use on WWD projects. In addition to these modifications, EJCDC guidance notes must be followed and should be

deleted once the documents are completed.

- b Revising text. This Bulletin may be used in one of three ways:
- (1) The Engineer makes all the edits to the purchased EJCDC documents when these documents will be used for RUS funded WWD projects. Changes to EJCDC standard language, whether the changes are as per this Bulletin or by the Owner and its Engineer, are made using bold type additions and single-line strike-out deletions, showing all revisions.
  - (2) Exhibits are inserted in the Bidding and Contract Documents at the appropriate location.
  - (3) The Engineer requests from EJCDC free, editable copies of the certain documents with WEP-required edits already included, upon proof of purchase of EJCDC documents.
- c Guidance notes. Guidance notes in blue boxes in the EJCDC documents shall be implemented as deemed appropriate by Owner and Engineer and deleted prior to finalization of the documents.

## 5 OWNER RESPONSIBILITY

- a Verify bulletin is current. Before an Owner or their Engineer proceeds with the development of a set of Bidding Documents, they should contact the State Engineer to verify they have the most current information specific to the type of project and state or other jurisdiction where the project is located.
- b Contractual and administrative issues. The Owner is responsible for settling all contractual and administrative issues arising out of procurement as a condition of receiving funding assistance from RUS. 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.
- c Modifications. It is WEP policy that when Owners choose to use the EJCDC documents they do so with minimal modification. However, WEP recognizes each project is unique and that modifications may be necessary to satisfy project requirements or state statutes. If changes must be made to the standard documents and/or the modifications in the attached exhibits to address project-specific issues, they must be made via bold type additions and single-line strike-out deletions showing all revisions. Because the EJCDC documents are fully integrated, when making a modification in one document Owners must ensure that appropriate modifications are made in all affected documents.

## 6 DESIGN-BID-BUILD CONSTRUCTION CONTRACT DOCUMENTS (EJCDC C-SERIES)

- a Use of EJCDC C-series for WWD projects. The Engineers Joint Contract Documents Committee (EJCDC) developed its Construction Contract Documents (C-series), 2018 edition, for use in traditional design-bid-build projects. This Bulletin consists of exhibits and attachments with modifications that, when combined with the standard

EJCDC documents and appropriate Drawings, Specifications and other documents, create a complete set of acceptable Construction Contract Documents for use on WWD projects. Contract packages must be assembled in accordance with the following notes, requirements of Exhibit A, Attachments 2-6, and Exhibit B, Attachments 2-6, and the table later in this Bulletin. EJCDC provides guidance for use of various clauses throughout the documents; those guidance notes must be followed and should be deleted once the documents are completed.

b Approved documents. The following EJCDC 2018 edition C-series documents are approved by WEP for procurement of construction services by loan and grant recipients, subject to the modifications indicated in this Bulletin being incorporated in these documents. The documents are listed in the order of their use:

- (1) ADVERTISEMENT FOR BIDS FOR CONSTRUCTION CONTRACT, EJCDC C-111
- (2) INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACT, EJCDC C-200
- (3) BID FORM FOR CONSTRUCTION CONTRACT, EJCDC C-410
- (4) BID BOND (PENAL SUM FORM), EJCDC C-430
- (5) QUALIFICATIONS STATEMENT, EJCDC C-451
- (6) NOTICE OF AWARD, EJCDC C-510
- (7) AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE), EJCDC C-520
- (8) PERFORMANCE BOND, EJCDC C-610
- (9) PAYMENT BOND, EJCDC C-615
- (10) STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT, EJCDC NO. C-700
- (11) SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT, EJCDC C-800
- (12) NOTICE TO PROCEED, EJCDC C-550
- (13) APPLICATION FOR PAYMENT, EJCDC C-620
- (14) WORK CHANGE DIRECTIVE, EJCDC C-940
- (15) CHANGE ORDER, EJCDC C-941
- (16) FIELD ORDER, EJCDC C-942

(17) CERTIFICATE OF SUBSTANTIAL COMPLETION, EJCDC C-625

(18) NOTICE OF ACCEPTABILITY OF WORK, EJCDC C-626

- c Previous editions. The current (2018) EJCDC C-series documents should be used for WWD projects. This Bulletin does not retroactively change the status of a document already approved.
- d General Conditions. The EJCDC General Conditions (C-700) should not be modified. Changes to C-700 should only be made via the Supplementary Conditions.
- e EJCDC suggested language. The Instructions to Bidders and Supplementary Conditions must be developed by the Engineer based on EJCDC guidance documents and the instructions and exhibits below. The State Engineer must verify that the instructions and exhibits below were followed prior to any advertisement for bids.
- f EJCDC standard language. The Bid Form and the Agreement Between Owner and Contractor are standard documents from EJCDC but must be modified before use on a RUS funded project. The State Engineer must verify that the instructions and exhibits below were followed prior to advertisement for bidding.
- g Project signs. It is customary that project signs identifying the Owner, Contractor, Engineer, and funding agencies be displayed during project construction. The Engineer should contact the State Engineer for specific requirements and include the sign standard in the contract package.
- h Number of copies of Bidding Documents. One copy of the draft Bidding Documents (defined in EJCDC C-700 Article 1.01), which include but are not limited to those listed in the checklist in Exhibit B, Attachment 1 of this Bulletin, must be submitted to the State Engineer for review and acceptance prior to advertisement for bid. One copy of the as-bid Bidding Documents is to be provided to the State Engineer within five days of the advertisement to bid, and one copy must be provided to the RD Area Specialist prior to issuance of the Notice to Proceed. Addenda shall be submitted to the State Engineer for review and acceptance prior to issuance, with a copy provided to the State Engineer and Area Specialist after issuance. Consult with the State Engineer and Area Specialist for the preferred method of submission (electronic vs. paper).
- i State Engineer Acceptance/Approval/Concurrence Prior to Bid, Award and Construction. All Contract Documents must be accepted by the State Engineer prior to advertisement for bids. The State Engineer must concur with the recommendation to award, and the executed Contract Documents must be concurred with by the State Engineer prior to construction. The Certificate of Owner's Attorney and Agency Concurrence document (Exhibit A, Attachment 1) must be used for this purpose.
- j Assembly of Bidding and Contract Documents. Refer to the checklist in Exhibit B, Attachment 1. Acceptable edits to the EJCDC documents C-111, C-200, C-410, C-520, and C-800, are found in Exhibit B, Attachments 2-5.

## 7 ENGINEERING CONTRACT DOCUMENTS (EJCDC E-SERIES)

- a Use of EJCDC E-series for WWD projects. The Engineers Joint Contract Documents Committee (EJCDC) developed its Engineering Family Documents (E-series), 2014 edition, for use in traditional design-bid-build projects. This Bulletin consists of an exhibit and attachments with acceptable modifications that, when combined with the standard EJCDC document, create a complete and acceptable Agreement Between Owner & Engineer for Professional Services (Engineer Agreement) for use on WWD projects. The Engineer Agreement must be assembled in accordance with the following notes and requirements of Exhibit C, Attachments 1 and 2. EJCDC provides guidance for use of various clauses throughout the documents; those guidance notes must be followed and should be deleted once the documents are completed.
- b Approved documents. The following EJCDC 2014 edition E-series document is approved by WEP for procurement of engineering services by loan and grant recipients, subject to the modifications indicated in this Bulletin being incorporated in these documents:
  - (1) AGREEMENT BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES, EJCDC E-500
- c Previous editions. The 2014 EJCDC E-series documents should be used for WWD projects.
- d EJCDC standard language. The Engineer Agreement is a standard document from EJCDC but must be modified before use on each WEP funded project. The State Engineer must verify that the instructions and exhibits below were followed prior to acceptance by the Owner and Engineer.
- e Process. Instructions to modify EJCDC E-500 (2014) prior to use on RUS funded WWD projects are as follows:
  - (1) Engineer must attach the list of “Revisions to the EJCDC E-500 (2014)” (Exhibit C Attachment 1 of this Bulletin) to the Agreement as an addendum or make the specific changes listed using bold-type additions and single-line strike-out deletions.
  - (2) Project-specific requirements may be added to Exhibit J of E-500 (2014).
  - (3) Owner and Engineer must select a payment method from Exhibit C of E-500 (2014) (see below).
  - (4) Owner and Engineer must sign the Agreement on page 19 of EJCDC E-500 and include, complete and sign the RUS Certification Page (Exhibit C Attachment 2 of this Bulletin).
  - (5) Agency must review to ensure changes were made as necessary or revisions were attached and that the certification is attached, completed, and acceptable.
  - (6) Agency completes and signs the RUS Certification page.
- f Seismic acknowledgments. For each applicable structure, borrowers and grant recipients must provide RUS a written acknowledgment from a registered architect or engineer responsible for the design stating that seismic provisions pursuant to 7 CFR 1792 will be used in the design of the structure.



- (1) If Drawings and Specifications are required to be submitted to RUS, this acknowledgement shall be on the title page of the Drawings included with the final Drawings and Specifications. This acknowledgement will include the identification and date of the model code or standard that is used in the seismic design of the structure. The Drawings and Specifications must be dated, signed, and sealed by a registered architect or engineer.
  - (2) For projects in which Drawings and Specifications are not submitted, this acknowledgement shall be in the form of a statement from the architect or engineer responsible for the building design. The statement shall identify the model code or standard identified that is used in the seismic design of the building or buildings and shall be dated and signed.
- g Payment for Services. The standard Exhibit C of E-500 (2014), “Payments to Engineer for Services and Reimbursable Expenses”, should be used along with the E-500 (2014) Engineer Agreement, but only the following Compensation Packets are allowed for use with RUS funded projects (other Compensation Packets should not be used):
- (1) Allowed for Basic Services:  
Lump Sum (Compensation Packet BC-1)  
Standard Hourly Rates (Compensation Packet BC-2)
  - (2) Allowed for RPR Services:  
Lump Sum (Compensation Packet RPR-1)  
Standard Hourly Rates (Compensation Packet RPR-2)
  - (3) Allowed for Additional Services:  
Standard Hourly Rates (Compensation Packet AS-1)
- h Insurance. E-500 (2014) Exhibit G “Insurance” amounts should be established by the Owner based on advice from the Owner’s attorney or a risk manager hired by the Owner.
- i Limits of Liability. E-500 (2014) Exhibit I, “Limitations of Liability”, is permissible to be used on RUS funded projects.
- j Number of copies of Engineer Agreement. One copy of the draft Engineer Agreement will be submitted to the State Engineer for review and preliminary concurrence prior to signing by the Owner and Engineer. Four copies of the signed Engineer Agreement are to be provided to the State Engineer for formal concurrence; one copy each will be sent to the Owner, Engineer, and RD Area Specialist. Amendments shall be submitted to the State Engineer for review and preliminary concurrence prior to signing, with four executed copies provided to the State Engineer for formal concurrence; one copy will be sent to the Owner, Engineer, and RD Area Specialist after the State Engineer concurs. Consult with the State Engineer and Area Specialist for the preferred method of submission (electronic vs. paper).
- k State Engineer Concurrence. The executed Engineer Agreement will be concurred with by the State Engineer prior to Agency concurrence in any payment of RUS funding for engineering services.

- 1 Assembly of Engineer Agreement. Refer to RUS' acceptable edits to EJCDC E-500 (2014), which are found in Exhibit C, Attachments 1 and 2.

**Exhibit A – GENERAL DOCUMENTS**

*Notes to User: This Attachment contains exhibits applicable to most WWD projects.*

CERTIFICATE OF OWNER’S ATTORNEY AND AGENCY CONCURRENCE

*Notes to User: This exhibit consists of two certificates, on a single page, to be attached to the Contract and signed upon execution. The first is a certificate to be signed by the Owner’s attorney and the second is the concurrence to be signed by the State Engineer. This page is to be inserted after the Agreement between Owner and Contractor for Construction Contract (Stipulated Price) (EJCDC C-520, 2018) in the Construction Contract Documents.*

CERTIFICATE OF OWNER’S ATTORNEY

PROJECT NAME:

CONTRACTOR NAME AND CONTRACT NUMBER:

---

I, the undersigned, \_\_\_\_\_, the duly authorized and acting legal representative of \_\_\_\_\_, 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.

---

---

Name

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.

---

Agency Representative

Date

---

Name

DOMESTIC PREFERENCE *DE MINIMIS* LIST FORMAT

*Notes to User: This exhibit is an example format for Contractors to use in maintaining a list of items to document the use of the De Minimis waiver of the Domestic Preference requirements. This list or similar is required to be filled out throughout the construction Contract as needed. The State Engineer may periodically ask to review this information. At the Contract completion, this list, along with all Manufacturers' certifications, are to be given to the Engineer for delivery to the Owner. This list is applicable for projects governed by BABAA. USDA-RD State Office can provide guidance if AIS applies to the project instead.*

**DE MINIMIS COSTING WORKSHEET**

Project Name: \_\_\_\_\_

Contract Name/# (if more than one) \_\_\_\_\_

Contractor (Company Name): \_\_\_\_\_

Representative: \_\_\_\_\_

Date: \_\_\_\_\_

  

Total Project Costs : \_\_\_\_\_ \$

Allowable Total *De Minimis* Costs (5% of project costs) \_\_\_\_\_ \$

Total Cost of all *De Minimis* Items \_\_\_\_\_ \$

Remaining Amount Allowed for Future *De Minimis* Items \_\_\_\_\_ \$

No.	Detailed Description and Manufacturer or Local Source of <i>De Minimis</i> Material	Quantity	Cost Per Item	Total Item Cost
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				

SAMPLE LANGUAGE FOR CONTRACTOR'S  
CERTIFICATION OF COMPLIANCE

*Notes to User: This exhibit provides sample language that the Contractor can use to certify compliance with the Build America Buy America Act requirements. Note that the language can be modified (for example if the project is subject to AIS the BABAA reference should be replaced with language such as "American Iron and Steel (AIS) requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 and subsequent annual appropriations for WWD programs"). A certification is to be provided by Contractor to Engineer for delivery to the Owner and Agency at Substantial Completion. The certification should be on letterhead and should be signed and dated by an authorized company representative.*

Project Name  
Owner / Applicant  
Contract Number

I hereby certify, that to the best of my knowledge and belief, all Iron and Steel products, Manufactured Products, and Construction Materials installed for this project by my company and by any and all subcontractors and Manufacturers my company has contracted with for this project comply with the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953 or are the subject of a waiver approved by the Secretary of Agriculture or designee.

SAMPLE LANGUAGE FOR MANUFACTURER'S CERTIFICATION OF COMPLIANCE

*Notes to User: This exhibit provides sample language for the Manufacturer's Certification of Compliance with Domestic Preference requirements. Contractor should ensure that Engineer has an approved Manufacturers' Certification prior to any domestic preference item being delivered to the project site. The Manufacturer's Certification should be on letterhead and should indicate the project, specific item being certified, reference which domestic preference requirement is being certified and be signed by an authorized company representative. The Manufacturer's Certification may include multiple domestic preference requirements. It is important for the governing domestic preference requirement (whether AIS, BABAA or other) to be clearly included within the certification.*

Date:

Company Name:

Company Address:

Subject: Domestic Preference Requirement Certification for {*Owner's Name and Project Name (City, State)*} Certification for Project (X), Owner's Name, and Contract Number

Sample text:

I hereby certify that the following product(s) and / or material(s) shipped or provided for the subject project are in full compliance with the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.

[List common name of items, products and/or materials]

## ENGINEER'S CERTIFICATIONS

*Notes to User: This exhibit provides sample language for the statements needed for the Engineer of Record's certification; it should be submitted with the bid package to the Agency for concurrence for authorization to bid by Agency. This certification is not intended to be a warranty in any way but rather the designer's professional opinion that to the best of their knowledge the documents comply. This certification does not need to be included in the contract documents. Note that the language can be modified (for example if the project is subject to AIS, the BABAA reference should be replaced with language such as "American Iron and Steel (AIS) requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 and subsequent annual appropriations for WWD programs.").*

The final Drawings and Specifications, construction Contract Documents, Bidding Documents, procurement documents, and any other final design phase deliverables, comply with all applicable federal requirements including the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953, or are the subject of a waiver approved by the Secretary of Agriculture or designee. This includes the following:

- The Engineers Joint Contract Documents Committee (EJCDC) documents have been used, and all acceptable revisions identified in this Bulletin have been made in accordance with the terms of the license agreement, which states in part that the Engineer "will plainly show all changes to the standard EJCDC text, using 'Track Changes' (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions." Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).
- Any building(s) designed for this Project will comply with the requirements of the Architectural Barriers Act (ABA) of 1968, the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, and any federal, state, or local accessibility standards.
- Any building(s) designed for this Project will comply with the Seismic Safety of Federally Assisted New Building Construction requirements of 7 CFR 1792, and any federal, state, or local standards.
- All referenced Products and Construction Materials in the Drawings, Specifications, and Bidding Documents for the Project comply with BABAA.
- All referenced Products and Construction Materials to be referenced in the Addenda, executed Contracts, and Change Orders will comply with BABAA.

Engineer Signature  
Engineer Name and Title

Date  
Engineering Company Name

---



**Exhibit B - CONSTRUCTION CONTRACT DOCUMENTS (EJCDC C-SERIES)**

*Notes to User: This Attachment contains exhibits applicable to WWD projects when using EJCDC Construction Contract Documents (C-series).*

CONTRACT DOCUMENT CHECKLIST

*Notes to User: This exhibit provides a checklist for Owner and Engineer to use to assemble the Bidding Documents for a RUS-funded project. Questions should be directed to the State Engineer.*

Contents	Form
Table of Contents	Prepared by Engineer
Advertisement for Bids for Construction Contract	EJCDC C-111 as modified by RUS Bulletin 1780-26 Exhibit B, Attachment 2
Instructions to Bidders for Construction Contract	EJCDC C-200 as modified by RUS Bulletin 1780-26 Exhibit B, Attachment 3
Bid Form for Construction Contract	EJCDC C-410 as modified by RUS Bulletin 1780-26 Exhibit B, Attachment 4
Bid Bond (Penal Sum Form)	EJCDC C-430
Qualifications Statement	EJCDC C-451
Compliance Statement	Form RD 400-6
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions	Form AD-1048
Certification for Contracts, Grants & Loans	RD Instruction 1940-Q Exhibit A-1
Notice of Award	EJCDC C-510 <b>Note: Owner will obtain concurrence of State Engineer prior to issuing award.</b>
Agreement between Owner and Contractor for Construction Contract (Stipulated Price)	EJCDC C-520 as modified by RUS Bulletin 1780-26 Exhibit B, Attachment 5
Performance Bond	EJCDC C-610. <b>Note: the bond will be at least 100% of the bid amount.</b>
Payment Bond	EJCDC C-615. <b>Note: the bond will be at least 100% of the bid amount.</b>
Certificate of Owner's Attorney / Agency Concurrence	RUS Bulletin 1780-26 Exhibit A, Attachment 1
Standard General Conditions of the Construction Contract	EJCDC C-700. Note: modifications to C-700 should be made in C-800, Supplementary Conditions.
Supplementary General Conditions of the Construction Contract	EJCDC C-800 as modified by RUS Bulletin 1780-26 Exhibit B, Attachment 6
Special Conditions	<b>May be added if desired by Engineer</b>
State Wage Rates	State Wage Rates <b>if required by State Law.</b>
Federal Wage Rates	Davis Bacon Wage Rates. <b>Note: only required if other funding source requires</b>
Davis Bacon 29 CFR 5.5	Rural Development version. <b>Note: only required if Federal Wage Rates have been included</b>
Notice to Proceed	EJCDC C-550
Project Sign (Temporary Construction Sign)	Consult State Engineer for current requirements.
Application for Payment	EJCDC C-620
Work Change Directive	EJCDC C-940
Change Order	EJCDC C-941
Field Order	EJCDC C-942
Sample Language for Contractor's Certification of Compliance	RUS Bulletin 1780-26 Exhibit A, Attachment 3
Sample Language for Manufacturer's Certification of Compliance	RUS Bulletin 1780-26 Exhibit A, Attachment 4
Certificate of Substantial Completion	EJCDC C-625
Notice of Acceptability of Work	EJCDC C-626
Drawings and Specifications	Engineer Submittal

- NOTES:
1. EJCDC documents are available from EJCDC, the National Society of Professional Engineers, the American Council of Engineering Companies, or the American Society of Civil Engineers. RD offices cannot distribute EJCDC documents.
  2. For questions and copies of RD documents please contact State Engineer.

## **ENGINEER'S DEVELOPMENT OF ADVERTISEMENT FOR BIDS**

*Notes to User: This exhibit contains language for Engineer to add to the Advertisement for Bids for Construction Contract (EJCDC C-111, 2018) for compliance with Domestic Preference requirements. The Engineer may either make the changes directly in the Advertisement for Bids or insert this exhibit directly behind the Advertisement for Bids. If the project is subject to AIS instead of BABAA replace the BABAA reference with "This project is subject to the American Iron and Steel (AIS) requirements instituted by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 and subsequent annual appropriations for WWD programs." and delete references to manufactured products and construction materials. Contact the Rural Development State Office for guidance as needed.*

- Add at the end of EJCDC C-111 prior to "This Advertisement is issued by:"

### **Domestic Preference**

This project is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States.

The following waivers apply to this Contract:

**BABAA De Minimis, Small Grants, and Minor Components**

*[add project specific waivers as applicable; If AIS applies instead of BABAA delete the BABAA waiver reference and insert references to the AIS De Minimis and AIS Minor Component waivers].*

## ENGINEER'S DEVELOPMENT OF INSTRUCTIONS TO BIDDERS

*Notes to User: This exhibit contains a list of changes to be made by Engineer to the Instructions to Bidders for Construction Contract (EJCDC C-200, 2018). The Engineer will develop the Instructions to Bidders using EJCDC C-200 (2018) and the instructions provided below. In addition, Engineer will ensure that any applicable state or federal wage rate requirements are added at Article 24. RD does not require the use of Davis Bacon Wage rates in most cases, but other sources of federal funds may. If other funding sources involved in the project require the use of Davis Bacon Wage rates, RD's version of Davis Bacon 29 CFR 5.5 will be added to these construction Contract Documents, as listed in the checklist in Exhibit A. The Engineer may either make the changes below directly to the Instructions to Bidders or insert this exhibit directly behind the Instructions to Bidders. If AIS applies instead of BABAA remove reference to BABAA in 1.01.B and 23.03 and replace it with "American Iron and Steel (AIS) requirements instituted by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 and of 2017 and subsequent annual appropriations for WWD programs." Contact the Rural Development State Office for guidance as needed.*

- Article 1.01.B - Add the following:

1.01.B "Domestic Preference – The Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.

- Article 3.02 – Delete in its entirety and insert "Deleted".
- Article 8.01 – Add to the end of the paragraph "Bid security must be at least 5% of the Bidder's maximum Bid price."
- Article 9.02 – Delete in its entirety and insert "Deleted".
- Article 10.01 – Delete in its entirety and insert "Deleted".
- Article 10.02 – Insert after the sentence that starts "Each such request...": "Each such request shall include the Manufacturers' Certification for Compliance with Domestic Preference requirements. Refer to the suggested Manufacturer's Certification provided in these construction Contract Documents."
- Article 10.02 – Add to the end of this paragraph: "Substitutes and "or-equal" materials and equipment may be proposed by Contractor in accordance with Paragraphs 7.05 and 7.06 of the General Conditions after the Effective Date of the Contract. Each such request shall include Manufacturer's Certification letter to document compliance with Domestic Preference requirements. Refer to Manufacturer's Certification Letter provided in these Contract Documents."
- Article 11.01 – Delete in its entirety and insert "Deleted".
- Article 11.05 – Add the following:

11.05 – The Contractor shall not award work to Subcontractor(s) in excess of the limits stated in SC 7.07A.

- Article 13.04 – Delete in its entirety and insert “Deleted”.
- Article 13.07 – Delete in its entirety and insert “Deleted”.
- Article 18.05.E – Delete in its entirety and insert “Deleted”.
- Article 18.05.F – Delete in its entirety and insert “Deleted”.
- Add the following, renumbering if Articles 21 and/or 22 are not used:

ARTICLE 23 – FEDERAL REQUIREMENTS

- 23.01 If the contract price is in excess of \$100,000, provisions of the Contract Work Hours and Safety Standards Act at 29 CFR 5.5(b) apply.
- 23.02 Federal requirements at Article 19 of the Supplementary Conditions apply to this Contract.

## ENGINEER'S DEVELOPMENT OF BID FORM

*Notes to User: This exhibit contains a list of changes to be made by Engineer to the Bid Form for Construction Contract (EJCDC C-410, 2018). The Engineer may either make the changes directly to the Bid Form or insert this exhibit directly behind the Bid Form.*

- Article 2.01 Delete the “and” at the end of 2.01.F

Delete the existing text for 2.01.G and add the following text and the referenced attachments to the Bidding Documents:

- G. If Bid amount exceeds \$10,000, signed Compliance Statement (RD 400-6). Refer to specific equal opportunity requirements set forth in the Supplementary Conditions of the Construction Contract (EJCDC C-800);
- H. If Bid amount exceeds \$25,000, signed Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions (AD-1048);
- I. If Bid amount exceeds \$100,000, signed RD Instruction 1940-Q Exhibit A-1, Certification for Contracts, Grants, and Loans.”
- J. [List other documents and edit above as pertinent].

- Article 4 – Delete in its entirety and insert “Deleted”.
- Article 5 – Delete in its entirety and insert “Deleted”.
- Article 6.02 – Delete in its entirety and insert “Deleted”.
- Article 6.03 – Delete in its entirety and insert “Deleted”.
- Article 8.01.A.3 – Delete the period at the end of Article 8.018.A.3 and insert the following language: “, including all Domestic Preference requirements.”

## **ENGINEER’S DEVELOPMENT OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

*Notes to User: This exhibit contains a list of changes to be made by the Engineer to the Agreement between Owner and Contractor for Construction Contract (Stipulated Price) (EJCDC C-520, 2018). The Engineer may either make the changes directly to the Agreement or insert this exhibit directly behind the Agreement.*

- Article 4.05.C – Delete in its entirety and insert “Deleted”.
- Article 6.02.A.1.a – Replace “[number]” with “95”.
- Article 6.02.A.1.a(1) – Delete in its entirety and insert “Deleted”.
- Article 6.02.A.1.b – Replace “[number]” with “95”.
- Article 6.02.B – After “Substantial Completion” insert “of the entire construction to be provided under the construction Contract Documents”.

## ENGINEER'S DEVELOPMENT OF SUPPLEMENTARY CONDITIONS

*Notes to User: This exhibit contains a list of changes to be made by Engineer to the Supplementary Conditions of the Construction Contract (EJCDC C-800, 2018). The Engineer may also add other project-specific supplementary conditions as required for the Project.*

*The Supplementary Conditions (SC) document that is developed for a Project is the contractual means by which the Standard General Conditions of the Construction Contract (EJCDC C-700, 2018) are modified and supplemented for the Project. The references in the Supplementary Conditions items below (and in EJCDC C-800 as published) to adding, deleting, amending, or supplementing are referring to the paragraphs of C-700. Thus, the first item below, SC-1.01.A.8, is a contractual provision that adds the stated language ("The Change Order form to be used etc.") to Article 1.01.A.8 of C-700.*

*The Supplementary Conditions items that follow are mandatory for each specific Project, unless noted otherwise. In most cases they are new (supplemental) SC items; in a few cases, they replace or expand on a Supplementary Condition item that is in EJCDC C-800, as published. Guidance notes should not be included in the Bidding Documents.*

*The Engineer (in cooperation with the Owner) should follow the guidance of EJCDC C-800, as published, to develop Project-specific supplementary conditions; as the published guidance indicates, some of the published SC items are mandatory or require additional Project-specific input, such as insurance coverage limits. Other SC items in C-800 as published are optional but, in many cases, will be useful for the specific Project.*

*If the project requires compliance with American Iron and Steel instead of Build America Buy America Act, then SC-1.01.A.52 should remove the BABAA reference and define Domestic Preference as "The American Iron and Steel (AIS) requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 of 2017 and subsequent annual appropriations for WWD programs.". Also, in such cases the BABAA specific waivers listed in SC 19.14 should be removed and replaced with applicable AIS waivers (De Minimis and Small Components). Contact the Rural Development State Office for guidance as needed.*

ARTICLE 1 – Delete the sentence "No suggested Supplementary Conditions in this Article."

SC-1.01.A.8 – Add the following at the end of the Paragraph:

The Change Order form to be used on this Project is EJCDC C-941 (2018). Agency approval is required before Change Orders are effective.

SC-1.01.A.30 – Add the following at the end of the Paragraph:

For the purposes of Rural Development, this term is synonymous with the term "applicant" as defined in 7 CFR 1780.7 (a) (1), (2) and (3) and is an entity receiving financial assistance from the federal programs.

SC-1.01.A.50 – Add the following at the end of the Paragraph:



The Work Change Directive form to be used on this Project is EJCDC C-940 (2018). Agency approval is required before a Work Change Directive is issued.

- SC-1.01.A.51 – Add the following new paragraph immediately after Paragraph 1.01.A.50:

51. Agency - 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.

- SC-1.01.A.52 – Add the following new paragraph with the title “Domestic Preference Definitions” immediately after Paragraph 1.01.A.51:

52.a *Build America, Buy America Act (BABAA)* - Requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953-58 mandating domestic preference that all iron and steel, manufactured products, and construction materials are produced in the United States.

52.b *Construction Materials* - Those articles, materials, or supplies — other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives— that are or consist primarily of: non-ferrous metals, plastic and polymer- based products, glass, lumber or drywall.

52.c *Contractor’s Certification* - Documentation submitted by the Contractor upon Substantial Completion of the Contract that all iron and steel, manufactured products, and construction materials are produced in the United States.

52.d *De Minimis* - Materials and products that represent a small portion of an infrastructure project, specifically no more than 5% of the project costs up to a maximum of \$1,000,000,

52.e *Domestic Preference* - The Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.

52.f *Engineer’s Certification* - Documentation submitted by the Engineer that Drawings, Specifications, and Bidding Documents comply with Domestic Preference requirements.

52.g *Manufactured Product* – Items assembled out of components, or otherwise made or processed from raw materials into finished products. Manufactured products must be manufactured (assembled) in the United States, and the cost of components that were mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the product.

52.h *Manufacturer’s Certification* - Documentation provided by the Manufacturer stating that Domestic Preference requirements have been satisfied for all provided items. If items are purchased via a Supplier, distributor, vendor, etc. from the Manufacturer directly, then the Supplier, distributor, vendor, etc. will be responsible for obtaining and providing these certifications to the parties purchasing the products.

52.i *Minor Components* - Components *within* an iron and/or steel product otherwise compliant with the Domestic Preference requirements. This waiver, typically used by Manufacturers, allows use of non-domestically produced miscellaneous Minor Components comprising up to five percent of the total material cost of an otherwise domestically produced iron and steel product. However, unless a separate waiver for a product has been approved, all other iron and steel components in said product must still meet the Domestic Preference requirements. This waiver does not exempt the whole product from the Domestic Preference requirements only Minor Components within said product and the iron or steel components of the product must be produced domestically.

52.j *Primarily Iron or Steel* - A product is made of greater than 50 percent iron or Steel on a materials cost basis.

- SC-2.02.A – Delete **[number]** and insert in its place “five.”
- SC-4.01.A – Delete the last sentence of paragraph.
- SC-4.05.C.5 – Paragraph is mandatory for WWD projects.
- SC-4.05.C.5.a – Add the following at the end of this paragraph:

Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered abnormal weather conditions. Requests for time extensions due to abnormal weather conditions will be submitted to the Engineer within five days of the end of the abnormal weather condition event. It is the responsibility of the Contractor to provide the information listed in SC 4.05.C.5.b.

- SC-6.01 – Disregard EJCDC Guidance Notes – Performance and Payment Bonds, Note 1. Performance and Payment Bonds are required for WWD projects.
- SC-6.01 – EJCDC Guidance Notes – “Other Bonds,” Warranty Bond, Note 1. RD does not require a Warranty Bond, and RD will not accept a Warranty Bond in place of a Performance and Payment Bond. The decision to include a Warranty Bond is made by the Owner and their counsel. Please refer to EJCDC for guidance.
- SC-7.04.D – Add the following new paragraph immediately after Paragraph 7.04.C:  
  
D. All products must meet Domestic Preference requirements.
- SC-7.04.E – Add the following new paragraph immediately after Paragraph 7.04.D:  
  
E. For projects utilizing a *De Minimis* waiver, Contractor shall maintain an itemized list of non-domestically produced components and ensure that the cost is less than 5% of total project cost for project up to a maximum of \$1,000,000.
- SC-7.05.A – Amend the third sentence of paragraph by striking out the following words:

Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item is permitted,

- SC-7.05.A.1.a.3 – Amend the last sentence of Paragraph a.3 by striking out “and;” and adding a period at the end of Paragraph a.3.
- SC-7.05.A.1.a.4 – Delete paragraph in its entirety and insert “Deleted.”
- SC-7.05.B – Add the following at the end of paragraph:

Contractor shall include a Manufacturer’s Certification or waiver for compliance with Domestic Preference requirements and supporting data, as applicable. Refer to Sample Language for Manufacturer’s Certification provided in these Contract Documents.

- SC-7.06.A.3.a.2 – Remove “and” from the end of paragraph.
- SC-7.06.A.3.a.3 – Add “; and” to the end of paragraph.
- SC-7.06.A.3.a.4 – Add the following new paragraph immediately after Paragraph 7.06.A.3.a.3:

4. Comply with Domestic Preference requirements by providing Manufacturer’s Certification or waiver , as applicable. Refer to Sample Language for Manufacturers’ Certification provided in these Contract Documents.

- SC-7.07.A – Amend by adding the following to the end of the paragraph:

The total amount of work subcontracted by the Contractor shall not exceed fifty percent of the Contract price without prior approval from the Owner, Engineer and Agency.

- SC-7.07.B – Delete paragraph in its entirety and insert ”Deleted”.
- SC-7.07.E – Delete the second sentence of paragraph and insert the following in its place:

Owner may not require that Contractor use a specific replacement.

- SC-7.12.A Amend paragraph by adding the following after “written interpretations and clarifications,”:

Manufacturers’ Certifications,

- SC-7.16.A.1.c – Amend paragraph by deleting the last period and adding:

, including Manufacturer’s Certification, or waiver for any item in the submittal subject to Domestic Preference requirements. Refer to the Sample Language for Manufacturers’ Certification provided in these Contract Documents.

- SC-7.16.C.9 – Add new paragraph immediately after Paragraph 7.16.C.8:

9. Engineer's review and approval of a Shop Drawing or Sample shall include review of Manufacturers' Certifications and any waivers in order to document compliance with Domestic Preference requirements, as applicable.

- SC-7.17.F – Add new paragraph immediately after Paragraph 7.17.E:

F. Contractor shall certify upon Substantial Completion that all Work and Materials have complied with Domestic Preference requirements. Contractor shall provide Certification to Owner and Engineer. Refer to the Sample Language for Contractor's Certification provided in these Contract Documents.

- ARTICLE 11 – Delete the sentence “No suggested Supplementary Conditions in this Article.”
- SC-11.02.C – Add new paragraph immediately after Paragraph 11.02.B:

C. The Engineer or Owner shall contact the Agency for concurrence on each Change Order prior to issuance. All Contract Change Orders must be concurred on (signed) by Agency before they are effective.

- SC-11.03.A.2 - Add new Paragraph 11.03.A.2 immediately after Paragraph 11.03.A, which shall be renamed Paragraph 11.03.A.1:

2. The Engineer or Owner shall contact the Agency for concurrence on each Work Change Directive prior to issuance. Once authorized by Owner, a copy of each Work Change Directive shall be provided by Engineer to the Agency.

- SC-11.05.B – Add the following at the end of this paragraph:

For Owner-authorized changes in the Work, the Contractor will provide the Manufacturer's Certification, or waiver, for materials subject to Domestic Preference requirements except when sole-source is specified, in which case the Engineer will provide the Manufacturer's Certification, or waiver.

- SC-11.09.B.2.c – Add new paragraph immediately after Paragraph 11.09.B.2.b:

c. For change orders involving materials subject to Domestic Preference requirements, Contractor shall include a Manufacturer's Certification or waiver, as applicable. Refer to the Sample Language for Manufacturer's Certification provided in these Contract Documents.

- SC-13.02.C – Delete paragraph in its entirety and insert “Deleted”.
- SC 13.03.E – Delete paragraph in its entirety and replace with SC 13.03.E as shown in the EJCDC C-800 Supplementary Conditions.
- ARTICLE 14 – Delete the sentence “No suggested Supplementary Conditions in this Article.”
- SC-14.03.G – Add new paragraph immediately after Paragraph 14.03.F:

G. Installation of materials that are non-compliant with Domestic Preference requirements shall be considered defective work. Contractor should ensure that Engineer has an approved Manufacturer's Certification, or waiver, prior to any domestic preference compliant item being delivered to the project site.

- SC-15.01.B.4 – Add the following language at the end of paragraph:

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-15.01.B.5 – Add new paragraph immediately after Paragraph 15.01.B.4:

5. The Application for Payment form to be used on this Project is EJCDC® C-620. The Agency must approve all Applications for Payment before payment is made.

- SC-15.01.B.6 – Add new paragraph immediately after Paragraph 15.01.B.5:

6. By submitting an Application for Payment, based in whole or in part on furnishing equipment or materials, Contractor certifies that such equipment and materials are compliant with Domestic Preference requirements. Manufacturer's Certification for material(s) satisfy these requirements. Refer to the Sample Language for Manufacturer's Certification provided in these Contract Documents.

- SC-15.01.C.2.d – Add the following new paragraph immediately after Paragraph 15.01.C.2.c:

d. The materials presented for payment in an Application for Payment comply with Domestic Preference requirements.

- SC-15.01.D.1 – Delete paragraph in its entirety and insert the following in its place:

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 15.01.E will become due twenty (20) days after the Application for Payment is presented to the Owner, and the Owner will make payment to the Contractor.

- SC-15.02.A – Amend paragraph by striking out the following text: "7 days after".

- SC-15.03.A – Modify by adding the following after the last sentence:

Contractor shall also submit the Contractor's Certification of Compliance certifying that to the best of the Contractor's knowledge and belief all Iron and Steel products, Manufactured Products, and Construction Materials proposed in the Shop Drawings, Change Orders, and Partial Payment Estimates, and those installed for the Project, comply with Domestic Preference requirements.

- SC-18.11 – Add new paragraph immediately after Paragraph 18.10:

18.11 *Tribal Sovereignty*

- A. 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-19 – Add the following new Article 19 immediately after Article 18:

#### Article 19 - FEDERAL REQUIREMENTS

##### 19.01 *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.

##### 19.02 *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 "Certificate of Owner's Attorney" before Owner submits the executed Contract Documents to Agency for approval. Refer to Certificate of Owner's Attorney and Agency Concurrence provided in these Contract Documents.
- B. Agency concurrence is required on both the Bid and the Contract before the Contract is effective.

##### 19.03 *Conflict of Interest*

- A. Contractor may not knowingly contract with a Supplier or Manufacturer if the individual or entity who prepared the Drawings 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 or other interest in or a tangible personal benefit from the Contractor. Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractor or subcontractors.

##### 19.04 *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 19.04.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.

19.05 *Small, Minority and Women's Businesses*

- A. If Contractor intends to let any subcontracts for a portion of the work, Contractor will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps will include:
1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

19.06 *Anti-Kickback*

- A. Contractor shall comply with the Copeland Anti-Kickback Act (40 USC 3145) 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.

19.07 *Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended*

- A. Contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

19.08 *Equal Employment Opportunity*

- A. The Contract is considered a federally assisted construction contract. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339),



as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

19.09 *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*

- A. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification (RD Instruction 1940-Q Exhibit A-1). The Contractor certifies to the Owner and every subcontractor certifies to the Contractor 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, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining the Contract if it is covered by 31 U.S.C. 1352. The Contractor and every subcontractor must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

19.10 Environmental Requirements

- A. When constructing a Project involving trenching and/or other related earth excavations, Contractor shall comply with the following environmental conditions:
  1. Wetlands – When disposing of excess, spoil, or other Construction Materials on public or private property, Contractor shall not fill in or otherwise convert wetlands.
  2. 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 (Standard Flood Hazard Area) delineated on the latest Federal Emergency Management Agency Floodplain Maps, or other appropriate maps, e.g., alluvial soils on NRCS Soil Survey Maps.
  3. Historic Preservation - Applicants shall ensure that Contractors maintain a copy of the following inadvertent discovery plan onsite for review:
    - a. If during the course of any ground disturbance related to any Project, any post review discovery, including but not limited to, any artifacts, foundations, or other indications of past human occupation of the area are uncovered, shall be protected by complying with 36 CFR § 800.13(b)(3) and (c) and shall include the following:
      - i. All Work, including vehicular traffic, shall immediately stop within a 50 ft. radius around the area of discovery. The Contractor shall ensure barriers are established to protect the area of discovery and notify the Engineer to contact the appropriate RD personnel. The Engineer shall engage a Secretary of the Interior (SOI) qualified professional archeologist to quickly assess the nature and scope of the discovery; implement interim measures to protect the discovery from looting and vandalism; and establish broader barriers if further historic and/or precontact properties, can reasonably be expected to occur.
      - ii. The RD personnel shall notify the appropriate RD environmental staff member,

the Federal Preservation Officer (FPO), and State Historic Preservation Office (SHPO) immediately. Indian tribe(s) or Native Hawaiian Organization (NHOs) that have an interest in the area of discovery shall be contacted immediately. The SHPO may require additional tribes or NHOs who may have an interest in the area of discovery also be contacted. The notification shall include an assessment of the discovery provided by the SOI qualified professional archeologist.

- iii. When the discovery contains burial sites or human remains, the Contractor shall immediately notify the appropriate RD personnel who will contact the RD environmental staff member, FPO, and the SHPO. The relevant law enforcement authorities shall be immediately contacted by onsite personnel to reduce delay times, in accordance with tribal, state, or local laws including 36 CFR Part 800.13; 43 CFR Part 10, Subpart B; and the Advisory Council on Historic Preservation's Policy Statement Regarding treatment of Burial Sites, Human Remains, or Funerary Objects (February 23, 2007).
  - iv. When the discovery contains burial sites or human remains, all construction activities, including vehicular traffic shall stop within a 100 ft. radius of the discovery and barriers shall be established. The evaluation of human remains shall be conducted at the site of discovery by a SOI qualified professional. Remains that have been removed from their primary context and where that context may be in question may be retained in a secure location, pending further decisions on treatment and disposition. RD may expand this radius based on the SOI professional's assessment of the discovery and establish broader barriers if further subsurface burial sites, or human remains can reasonably be expected to occur. RD, in consultation with the SHPO and interested tribes or NHOs, shall develop a plan for the treatment of native human remains.
  - v. Work may continue in other areas of the undertaking where no historic properties, burial sites, or human remains are present. If the inadvertent discovery appears to be a consequence of illegal activity such as looting, the onsite personnel shall contact the appropriate legal authorities immediately if the landowner has not already done so.
  - vi. Work may not resume in the area of the discovery until a notice to proceed has been issued by RD. RD shall not issue the notice to proceed until it has determined that the appropriate local protocols and consulting parties have been consulted.
  - vii. Inadvertent discoveries on federal and tribal land shall follow the processes required by the federal or tribal entity.
4. 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.

5. Mitigation Measures – The following environmental mitigation measures are required on this Project: *[Insert mitigation measures from the Letter of Conditions here]*.

19.11 *Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)*

- A. Where applicable, for contracts awarded by the Owner in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor will comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Contractor will compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic will be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

19.12 *Debarment and Suspension (Executive Orders 12549 and 12689)*

- A. A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

19.13 *Procurement of recovered materials*

- A. The Contractor will comply with 2 CFR Part 200.322, “Procurement of recovered materials.”

19.14 *Domestic Preference*

- A. Build America, Buy America Act (BABAA). All Iron and Steel Products, Manufactured Products, and Construction Materials used in this project must comply with the Build America, Buy America Act (BABAA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953. Aggregates such as stone, sand, or gravel do not apply to BABAA
- B. The following waivers apply to this Contract:
1. BABAA *De Minimis, Small Grants and Minor Components*
  2. *[add project specific waivers as applicable]*.

**Exhibit C – ENGINEERING CONTRACT DOCUMENTS (EJCDC E-SERIES)**

*Note to User: This Attachment contains exhibits applicable to most WWD projects. If the project requires compliance with American Iron and Steel instead of Build America Buy America Act, the Domestic Preference definition in Article 7.01.A should be adjusted by replacing the BABAA reference with “The American Iron and Steel (AIS) requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 of 2017 and subsequent annual appropriations for WWD program.”*

## REVISIONS TO EJCDC E-500 (2014)

### Modifications to the Main Body of the Agreement

- Article 4.01.A – Insert the following text after the first sentence:

Invoices will include a breakdown of services provided.

- Article 5.01.A – Add the following:

Opinions of Probable Cost and any revisions thereof should reflect compliance with Domestic Preference requirements.

- Article 5.03.A – Add the following:

Opinions of Total Project Costs and any revisions thereof should reflect compliance with Domestic Preference requirements.

- Article 6.04.B – Delete “shall” and insert in its place “may”.

- Article 7.01.A.25 – Delete “, as an Additional Service”.

- Article 7.01.A – Add the following:

38. Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.

39. Build America, Buy America Act (BABAA) – Requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953 mandating domestic preference that all iron and steel, manufactured products, and construction materials are produced in the United States.

40. Contractor’s Certification - Documentation submitted by the Contractor upon Substantial Completion of the Contract that all iron and steel, manufactured products, and construction materials are installed were produced in the United States.

41. Construction Materials - Those articles, materials, or supplies — other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives— that are or consists primarily of: non-ferrous metals, plastic and polymer- based products, glass, lumber or drywall.

42. Domestic Preference – The Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.

43. Manufactured Product – Items assembled out of components, or otherwise made or processed from raw materials into finished products. Manufactured products must be manufactured (assembled) in the United States, and the cost of components that were mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the product.

44. Manufacturer's Certification - Documentation provided by the Manufacturer stating that Domestic Preference requirements have been satisfied for all provided items.

- Article 8.05 – Add the following:

#### 8.05 Federal Requirements

A. Agency Concurrence. Signature of a duly authorized representative of the 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. 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.

#### Modifications to Exhibit A of the Agreement

- Article A1.01.A.1.b - Replace with:

In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.

- Article A1.01.A.1.c. – Delete.

- Article A1.01.A.8 – Insert the following at the end of the paragraph:

The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency.

- Article A1.01.A.10 – Modify by inserting “and approved by the Agency” after “When mutually agreed”.

- Article A1.01.A.14 – Add the following immediately after paragraph:

Provide an Environmental Report as defined in 7 CFR 1970. The Environmental Report must be concurred in by the Agency.

- Article A1.01.A.16 – Delete the entire paragraph and insert the following:

Revise the Report and any other Study and Report Phase deliverables in response to Owner’s and Agency’s comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within [*fill in with # of days*] days of receipt of Owner’s and Agency’s comments.

- Article A1.02.A – Modify by inserting “and concurrence by Agency” after the words “acceptance by Owner”.

- Article A1.02.A.2 – Modify by inserting “and Agency” after “authorized by Owner”.

- Article A1.02.A.8 – Add the following to the end of paragraph:

Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.

- Article A1.03.A.9 – Add the following immediately after paragraph:

The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards.

- Article A1.03.A.10 – Modify by adding the “and Agency” after the word “counsel”.

- Article A1.03.A.12 – Insert the following:

Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. ”

- Article A.1.03.A.13 – Add paragraph:

Services required to determine and certify that to the best of the Engineer’s knowledge and belief all Iron and Steel Products, Manufactured Products, and Construction Material referenced in engineering analysis, the Plans, Specifications, and Bidding Documents requiring design revisions comply with all federal requirements including Domestic Preference requirements.

- Article A1.03.B – Modify by deleting the period at the end of the paragraph and adding: “and all final design phase deliverables have been accepted by Owner”.

- Article A1.04.A.2 – Add the following to the end of paragraph:

Obtain Agency concurrence on any Addenda that modify the Bidding Documents. Obtain prior concurrence where possible.

- Article A1.04.A.6.a – Replace with the following:

a. The Engineer shall evaluate and determine the acceptability of “or equals” and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved “or equals” and substitutes. Review of substitutes and “or equals” shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

- Article A1.04.A.6.b – Insert the following:

b. Services required to determine and certify that to the best of the Engineer’s knowledge and belief all iron and steel products, Manufactured Products, and Construction Materials referenced in Bid Addenda requiring design revisions are compliant with Domestic Preference requirements or are the subject of an approved waiver.

- Article A1.04.A.9 – Add the following sentence immediately after paragraph:

Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.

- Article A.1.04.A.10 – Add the following:

Provide copies of Manufacturers’ Certifications or copies of waivers, if applicable, to the Bidders on any products specified as sole-source in the Plans, Specifications and Bidding Documents. Manufacturers’ Certifications and waivers are to be included in the Bidding Documents and must be kept in the Engineer’s project file and on-site during construction.



- Article A.1.04.A.11 – Add the following:

Provide copies of Manufacturers' Certifications, and any waivers, to the Contractor on any products specified as sole-source in the Plans, Specifications, Bidding Documents including any Bid Addenda and Change Orders. Manufacturers' Certifications and waivers are to be included in the Bidding Documents and must be kept in the Engineer's project file and on-site during construction."

- Article A1.05.A.4 - Insert "and chair" after "Participate in" regarding the preconstruction conference.
- Article A1.05.A.6 – Delete "If requested by Owner to do so" and capitalize "maintain".

- Article A1.05.A.9.c – Insert the following:

The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.

- Article A.1.05.A.17 – Add the following prior to the first sentence:

Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, including Applications for Payment, to ensure compliance with Domestic Preference requirements. Any iron and steel products, Manufactured Products, and Construction Materials included in any submittal by the General Contractor, must include a Manufacturers' Certification letter, or waiver, to verify Domestic Preference requirements . Copies of said documentation must be kept in the Engineer's project file and on-site during construction. In the event the Engineer requires an item to be sole-source, the Engineer must furnish the Manufacturer's Certification, or waiver, to the Contractor for said item.

- Article A1.05.A.18 – Add the following at the end of paragraph:

Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Contract and applicable Agency regulations. Prior to approval of any substitute "or equal" review Manufacturers' Certifications, or waiver, provided by the Contractor to verify the product(s) meet Domestic Preference requirements. Manufacturers' Certifications and waivers must be kept in the Engineer's project file and on-site during construction.

- Article A.1.05.A.19.d – Add the following:

As part of the approval process for payment applications, Engineer confirms that Manufacturers' Certifications, or waivers, meeting Domestic Preference requirements have been received for all items requested for payment. By recommending for payment, Engineer certifies that they have reviewed the documentation for items included in the payment application and determined it is adequate for compliance with domestic preference requirements. Engineer must keep Manufacturers' Certifications and waivers in the project file and on-site during construction.

- Article A.1.05.A.20 – Add the following to the end of the paragraph: Review Change Proposals to ensure compliance with Domestic Preference requirements.

- Article A1.05.A.22 – Modify by deleting the following:

Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.

And insert in its place:

Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings and furnish such Record Drawings to Owner.

Article A1.05.A.24.a – Insert the following:

a. Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.

Article A.1.05.A.25.a – Insert the following:

a. Obtain the Contractors' Certification letter and copies of Manufacturers' Certifications and waivers from the Contractor for all products used in the project. Upon Substantial Completion, provide copies of Contractors' and Manufacturers' Certifications to the Owner and Agency.

Article A2.01.A.1 – Insert "not including preparation of the Environmental Report defined under Basic Services." after "preparation or review of environmental assessments and impact statements".

Article A2.01.A.4 – Delete the period at the end of the paragraph, and insert ", but only if the Owner's request is made after completion of the Study and Report Phase."

Article A2.01.A.17 – Delete paragraph and insert "Deleted".

Article A2.02.A.2 – Delete paragraph and insert with the following:

Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the construction Contract.

#### Modifications to Exhibit B of the Agreement

Article B.2.02 – Add the following:

B.2.02 Owners are ultimately responsible for compliance with Domestic Preference requirements and will be responsible for the following:

- A. Sign loan resolutions, grant agreements and letters of intent to meet conditions which include Domestic Preference language, accepting Domestic Preference requirements in those documents and in the letter of conditions.
- B. Sign agreements for engineering services, construction contracts, and all other appropriate and necessary documents which include domestic preference language.

- C. Acknowledge responsibility for compliance with Domestic Preference requirements by signing change orders (EJCDC C-941), work change directives (EJCDC C-940), field orders (C-942) and partial payment applications (EJCDC C-620).
- D. Obtain the certification letters and waivers from the Contractor and Engineer upon Substantial Completion of the project and maintain this documentation for the life of the loan.
- E. If the project is seeking a waiver of Domestic Preference requirements, provide any requested information to assist the Agency in processing the waiver request.
- F. Where the Owner directly procures products,
  - 1. Include Domestic Preference clauses in the procurement contracts;
  - 2. Obtain Manufacturers' Certifications and any waivers; and
  - 3. Provide copies to Engineer, Contractor.

#### Modifications to Exhibit C of the Agreement

- Compensation Packet BC-1 – Modify paragraph C2.01.A.2 by adding “and Agency” after “approved in writing by the Owner”.
- Compensation Packet BC-1 – Modify paragraph C2.01.B.8 by inserting “, with concurrence of the Owner and Agency” after “the compensation amount for Engineer’s services shall be appropriately adjusted”.
- Compensation Packet BC-2 – Modify paragraph C2.01.A.5 by inserting “and Agency” after “approved in writing by Owner”.
- Compensation Packet BC-2 – Modify paragraph C2.01.A.8 by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Compensation Packet BC-2 – Modify paragraph C2.03.C.2 by inserting “and Agency” after Owner in “Engineer shall give Owner written notice thereof.”
- Compensation Packet RPR-1 – Modify C2.04.A.3 by adding the following at the end of the paragraph “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Compensation Packet RPR-2 – Modify C2.04.A.2 by adding the following text to the end of the paragraph.

If rate(s) for RPR services is not indicated in Appendix Two to Exhibit C, “Standard Hourly Rates Schedule”, the Standard Hourly Rate for RPR services is \$\_\_\_\_\_ per hour.

- Compensation Packet RPR-2 – Modify 2.04.B.4 by inserting the following at the end of the paragraph: “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Compensation Guide RPR-2 – Modify 2.04.C.3.B by inserting “and Agency” after Owner in “Engineer shall give Owner written notice thereof.”

- Compensation Packet RPR-2 – Modify C2.04.C.4 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.
- Compensation Packet AS-1 – Modify C2.05.B.4 by inserting the following text at the end of the paragraph: “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Compensation Packet AS-1 - Modify C2.05.C.3 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.

Modifications to Exhibit D of the Agreement

- Article D1.01.A – Add the following to the end of the paragraph: “Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.”
- Article D.1.01.C.11.g – Add the following after D.1.01.C.11.f:  
  
g. Maintain all Manufacturers’ Certifications and waivers in the project file and on-site during construction to ensure compliance with Domestic Preference requirements, as applicable.
- Article D1.01.C.12.b – Delete paragraph and insert “Deleted”.

Modifications to Exhibit F of the Agreement

- Article F5.02.D – Add the following to the end of the paragraph:  
  
Engineer’s determinations on types and quality of materials, equipment, and component systems to be included in the Drawings and Specifications are subject to approval by Agency in accordance with requirements of 7 CFR 1780, including open and free competition, and Domestic Preference requirements.

**ENGINEER AGREEMENT CERTIFICATION**

PROJECT NAME: \_\_\_\_\_

The Engineer and Owner hereby concur in the Funding Agency acceptable revisions to E-500 identified in RUS Bulletin 1780-26. In addition, Engineer certifies to the following:

All modifications to E-500 have been made in accordance the terms of the license agreement, which states in part that the Engineer “must plainly show all changes to the Standard EJCDC Text, using ‘Track Changes’ (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions.” Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).

**SUMMARY OF ENGINEERING FEES**

Note that the fees indicated on this table are only a summary and if there is a conflict with any provision of Exhibit C, the provisions there overrule the values on this table. Fees shown in will not be exceeded without the concurrence of the Agency.

Basic Services	\$ _____
Resident Project Observation	\$ _____
Additional Services	\$ _____
<b>TOTAL:</b>	\$ _____

Any adjustments to engineering fees or changes to maximum estimated values must be approved by the Agency and must include a table of what specific category or categories of fees are being changed, what fees were before and after the change, and the resulting total fee.

---

Engineer \_\_\_\_\_ Date \_\_\_\_\_

---

Name and Title \_\_\_\_\_

---

Owner \_\_\_\_\_ Date \_\_\_\_\_

---

Name and 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.

---

Agency Representative \_\_\_\_\_ Date \_\_\_\_\_

---

Name and Title \_\_\_\_\_