



FOR IMMEDIATE RELEASE

**The Engineers Joint Contract Documents Committee
Releases 2014 edition of the
EJCDC® Owner—Engineer Professional Services Agreement**

ALEXANDRIA, Va., January 2, 2014—The Engineers Joint Contract Documents Committee today released the new 2014 edition of EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

EJCDC® E-500 is a comprehensive standard contract for engaging an engineering firm to provide design services and related construction-phase engineering and administrative services. E-500 is drafted with the intent that it can be used without major editing, or be readily customized while still preserving the primary elements of the document.

The terms and content of the 2014 edition of EJCDC® E-500 are coordinated with the recently published 2013 edition of EJCDC's Construction (C-series) documents, including EJCDC® C-700, the Standard General Conditions of the Construction Contract. E-500's scope of services recognizes the Engineer's role in the new C-series Change Proposal process, and also acknowledges limits on the Engineer's construction phase role. For example, the Engineer does not review disputes between the owner and contractor on non-technical issues such as insurance. Updates were also made to E-500 to address C-700's treatment of Defective Work, and to establish a Notice of Acceptability exhibit that is functionally compatible with C-700 provisions regarding completion of the work and final payment of the contractor.

Following is a brief list of issues and topics updated in E-500.

- The definitions in E-500 conform with the definitions used in the 2013 C Series documents. An exception is where there is a need to avoid confusion between the Owner-Engineer Agreement (contract) and the Owner-Contractor Contract. The latter is specifically defined in E-500 as the "Construction Contract," and that theme is carried through in the E-500 terms Construction Contract Documents, Construction Contract Price, and Construction Contract Time.

- Recognizing the difficulty in efficiently distinguishing and describing the Owner's and Engineer's roles relative to the many on-site individuals and entities having some construction role, EJCDC has introduced the concept of "Constructor" as a broad, catch-all term for all who participate in the construction at the site—the prime construction contractor, all subcontractors, the workforce, shipping and delivery personnel, and others. Among other benefits this allows more clarity in defining and organizing the Engineer's obligations relative to all Constructors (beyond just the prime contractor). The C-700 relationship between the Engineer and Contractor is still described separately where appropriate, but uncertainties about whether "Contractor" references extended to individual employees, subcontractors, and so on, for example with respect to safety provisions, are largely avoided through the use of the new term. .
- Recent federal legislation and related Securities and Exchange Commission rulemaking has placed restrictions and requirements on firms that provide financing advice to municipalities. In most cases the engineering firms that are engaged to design and administer construction projects are not municipal financial advisors. E-500 clarifies the engineer's role in project planning and establishes a scope of work that does not include regulated municipal financial advisor activities.
- C-700 requires that prior to final payment the "Engineer will also give written notice to Owner and Contractor that the Work is acceptable" and refers to a notice of acceptability. No form is mandated in the C Series, but such a Notice of Acceptability of Work form has been part of E-500 as Exhibit E. EJCDC has updated Exhibit E with particular attention to offering a standard notice form that meets construction administrative needs while maintaining the Contractor's contractual responsibility for its work. . The form has been rearranged to make the conditions of the notice integral to the signed form (rather than an easily detached second page).
- The new C-Series concept of Change Proposal has been added to E-500 Exhibit A, as has been discussion of "non-reviewable matters."
- C-700--2013 has clearly defined "defective work" in an objective manner focused on compliance with the Contract Documents, and that does not directly link to design concept, intent, or compatibility. E-500 has, for some time, linked Engineer's obligations relative to "work that (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents." The 2014 revisions to E-500 address Engineer's obligations relative to rejection of

defective work (pursuant to C-700) and Engineer's separate obligations relative to non-compatibility of Work with the design intent. This brings E-500 into conformance with the approach taken in C-700.

- E-500 clarifies the right of Engineer to suspend work for non-payment and presence of Constituents of Concern (rights that were given but not clearly itemized). The Engineer's right to terminate remains for delays of more than 90 days, or in response to the presence of undisclosed Constituents of Concern that affect Engineer's performance.
- E-500 has never included a defense obligation in its indemnification terms. Professional liability carriers will not provide a defense to Owners or other indemnitees. In light of confusing and changing court rulings that imply a defense duty despite no such duty being stated, the E-500 update includes an explicit clause that refutes any defense obligation.
- Because E-500 is often executed before the full extent of all project options and alternatives are known, Exhibit A now provides an opportunity for re-visiting and fine-tuning the project scope and Engineer's compensation/schedule, as the professional services transition from study/analysis to design of a specific selected option. This reflects common industry practice, particularly on complex projects.
- In acknowledgment of changing and emerging design and construction technologies, the Engineer's scope of services (E-500's Exhibit A) includes language allowing the Owner and Engineer to agree to consider BIM, geotechnical baselining, innovative design and contracting, sustainability and other techniques in the project development.
- ASCE 38 "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" is required to be used as a resource.
- Exhibit A confirms the expectation for each phase of work that the Engineer will visit the project site, unless a visit is not applicable to the assignment.
- Exhibit A clarifies the process to be used in developing the Construction Contract Documents if the Owner does not use EJCDC® C-700 and how changes in Engineer's obligations during the construction process from those identified previously would be addressed.
- E-500 includes many enhanced notes to user, to aid in completing the document for use on a specific project. As an example, the instructions regarding selection and final assembly of the specific compensation exhibits has been improved. .

The 2014 E-500 will remain in the legacy format and delivery system. Formatted in easy-to-use Microsoft Word, there is no software to install or learn, saving users precious time and money. The documents are downloaded at the time of purchase and saved directly to the user's computer. They can be customized easily to suit each project's unique goals and regulatory requirements.

EJCDC documents are the highest quality standard documents specifically written for infrastructure projects in the United States.

The Engineers Joint Contract Documents Committee (EJCDC®) is a joint venture of major organizations of professional engineers and contractors:

- the American Society of Civil Engineers (ASCE);
- the National Society of Professional Engineers (NSPE);
- and the American Council of Engineering Companies (ACEC).

Since 1975, EJCDC has developed and updated fair and objective standard documents that represent the latest and best thinking in contractual relations between all parties involved in engineering design and construction projects.

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