



October 26, 2015

Summary of Changes to:

- **EJCDC[®] E-560 Standard Form of Agreement Between Engineer and Land Surveyor**
- **EJCDC[®] -564 Standard Form of Agreement Engineer and Geotechnical Engineer**
- **EJCDC[®] E-568 Standard Form of Agreement Engineer and Architect**
- **EJCDC[®] E-530 Standard Form of Agreement Owner and Geotechnical Engineer**

A. General Summary of Previously Adopted “Flow-Through” Changes to the Agreements.

(The EJCDC[®] E-500 Owner-Engineer Agreement and E-570 Engineer-Subconsultant Agreement have been previously updated and summaries of changes were provided. Because the current four documents generally follow E-500 and E-570, changes in those cornerstone documents are reflected in the updates for E-530, E-568, E-564 and E-568.)

- From a document format and layout perspective, all documents will follow latest practices in fonts and formatting for EJCDC documents.
- As with prior submittals, the revised construction change process in the 2013 C series has had a relatively minor impact on the E-series documents. Changes have been made addressing Change Proposals, treatment of Defective Work, and establishing a C-700 compatible Notice of Acceptability exhibit.
- Current document definitions conform to C Series definitions, except where there is a need to avoid confusion between the tiers (Owner-Engineer, Engineer-Consultant and Owner-Contractor) of agreements, or to recognize a special situation (for example, the possibility that a multiple potential “Sites” may be involved in land surveyor or geotechnical services.
- Current updates follow the E-500 concept of “Constructor” as a broad, catch-all term for all who participate in the construction at the site. This allows us to more clearly

define/organize Engineer's and its consultants' obligations relative to all Constructors (beyond just Contractor). The C-700 relationship between the Engineer and Contractor is still described separately where appropriate. Clarification is added, as needed, in those specific instances where geotechnical engineer or other consultant roles require those parties to take on the role of a "constructor."

- C-700 requires prior to final payment that the "Engineer will also give written notice to Owner and Contractor that the Work is acceptable" and refers to a notice of acceptability. This obligation flows through to Engineer's Consultants and a compatible Notice of Acceptability of Work form has included as Exhibit E in E-564 and E-568. Because the anticipated scope for a Land Surveyor and for the Geotechnical Engineer working directly for the Owner normally do not include such notice, Exhibit E is excluded from E-560 and E-530.
- C-700 - 2013 defines "defective work" in 1.02.D in an objective manner focused on compliance with the Contract Documents, and that does not directly link to design concept, intent, or compatibility. In accordance with E-570, proposed revisions to E-564 and E-568 separately address in Exhibits A and D the obligation of Geotechnical Engineer and Architect, as consultants, relative to defective work (pursuant to C-700) and to non-compatibility of Work with the design.
- Professional liability carriers will normally not provide a defense to Owner and other indemnitees. In light of confusing and changing court rulings that infer a defense duty despite no such duty being stated, the proposed documents include an explicit clause that excludes any defense obligation, except when such is expressly required in the Engineer's Prime Agreement associated with E-560, E564 and E-568.
- The enhancements made in 2010 relative to "Time for Engineer's Payment of Invoices" (i.e. "Pay When Paid" conditional, "Pay When Paid", "Pay If Paid", and unconditional obligation to pay) have been preserved in this update of the three specialty consultant agreements.
- In addition to previous limitations on the Geotechnical Engineer's and Consultant's responsibility regarding legal, accounting, insurance and surety related services, Exhibit B of all the documents has been revised to exclude services as a "municipal advisor" under the requirements of the Dodd-Frank Act and related SEC rules.
- "Reimbursable Expenses" has been removed as a defined term in the Main Agreements and this subject is addressed separately in Exhibit C, recognizing that such expenses may be handled differently depending upon the form of compensation.
- ASCE 38 "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" is used as a resource for consultant agreements E-560, E-564 and E-568. ASCE 38 is particularly integral as a resource in defining the Land Surveyor's scope in E-560 Exhibit A.

- Exhibit A in E-564 and E-568 confirms the expectation that for design work the consultant Geotechnical Engineer and Architect will visit the project site, unless a visit is not applicable to the assignment. On-site work is understood to be integral to the work of the Geotechnical Engineer in E-530 and Land Surveyor in E-560 and, therefore, part of the basic scope.
- Following E-570, Exhibit D better defines the role of GRR (Geotechnical Resident Representative) in E-564 and the ARR (Architect's Resident Representative) in E-568 as well as directly following E-500 on safety compliance, defective Work, and other matters. No resident project representative (RPR) provisions existed in prior versions of E-560 nor was this topic added to the update of E-560. See the specific discussion later in this summary regarding treatment of the GRR in E-530.
- Additional guidance has been added to Exhibit I, Limitations of Liability, in each of the submitted documents to clarify for users that LOL clauses are optional, normally a product of agreement between the parties, and should be coordinated with Prime Agreements. This guidance will be added to E-500 and E-570 with the next administrative or formal update.

B. Summary of Specific Changes to the Individual Agreements: Although, as noted, all of the agreements have been updated to conform to the general form and content of the latest versions of E-500 and E-570, significant effort also has been spent in reviewing the specialty scopes and related exhibits for all of the submitted documents. Various practice and technology issues to address were identified in each specific document, as were prospective changes in the structure of the document scoping to improve flexibility and functionality of the individual documents.

E-530 and E-564 Specific Changes: Most significant of document structural changes, the former structure of Exhibit A scoping for Geotechnical Engineer's services in E-530 appeared to promote broader use of the Geotechnical Engineer than most Owners typically desire, including, for example, a substantial design role and provisions for a Geotechnical Resident Representative and Notice of Acceptability exhibits. Conversely, the former structure of E-564 did not coordinate closely with E-500 when the Geotechnical Engineer was engaged by the Engineer to provide or support detailed design and construction phase services.

As a result, Exhibit A scoping for the Geotechnical Agreements was modified with the following guidance:

- E-530 Owner-Geotechnical Engineer Agreement Exhibit A focuses on use of the Geotechnical Engineer for investigation of the site and preparing a geotechnical report. The proposed scope also includes limited geotechnical support services **for the owner** during design and construction. Construction testing services for the

owner can be included. Detailed design, full construction administration of construction of geotechnical design and GRR type services are seldom engaged through the owner and are not basic services in E-530. Both Exhibit D for GRR services and Exhibit E Notice of Acceptability of Work have been removed from this version.

- E-530 recommends that, if detailed geotechnical engineering design through the owner is desired, the parties can refer to the more detailed geotechnical engineering scope for E-564 Engineer-Geotechnical Engineer Agreement. E-564 has been updated to include a broad scope of design and construction services following the scope of E-570, while retaining the scope for Site Exploration and Geotechnical Testing provided through the Engineer. Both Exhibit D for GRR services and Exhibit E Notice of Acceptability of Work are included in E-564. E-564 Exhibit A is intended to be a very versatile scoping document, whether used to as provided to describe services of a consultant to the Engineer or modified and incorporated into E-530 for engagement directly by Owner.
- E-564 (and E-568 Engineer-Architect) provide guidance recommending that, if the parties desire that the specialty consultant provide RPR services for work beyond that designed by the specialty consultant, then the parties should use E-570. A similar recommendation is made in E-530 relative to use of E-500 for use of Geotechnical Consultant as RPR for work not designed by the Geotechnical Engineer.
- Exhibit A in both E-530 and E-564 recognize that changes in the scope for site investigations and testing services may be necessary depending on actual site conditions encountered after initial scoping or based on the actual final design (by others) and construction scope. The exhibit provides a process for addressing these scope modifications. Modifications to a proposed construction-related testing scope resulting from design and construction conditions are also addressed.
- Exhibit A in both E-530 and E-564 (NTU on pages 1 and 2) provides some added guidance for types of geotechnical analyses that might be considered for inclusion in the scope as well as recommending that specific basis of compensation (lump sum, reimbursable, unit price, etc.) for individual tests or analyses be addressed. Exhibit C also includes guidance and updated list of individual reimbursable or unit price services.

E-560 Specific Changes: The general content of E-560, Engineer-Land Surveyor Agreement, Exhibit A, remains fundamentally the same as the earlier versions. However, several substantive revisions have been made focusing on improved coordination of survey methodologies and technologies and utility location processes.

Most significant revisions to E-560 are described as follows:

- It was recognized that Land Surveyors are often engaged without considering potential survey issues or capabilities. Today, there are many different and evolving survey technologies, ranging from traditional tape and theodolite methods to robotic data collectors, GPS systems, terrestrial and mobile laser scanning and beyond that can improve project efficiencies and add to the information available to designers and other project participants, often reducing delivery times and site interference. Following a more open scoping approach similar to that used in our geotechnical documents, the updated language in E-560 encourages direct engagement of the Land Surveyor in finalizing the specific survey methodologies and technologies appropriate for the project.
- In Exhibit A 1.01, a means is provided to bring the Land Surveyor into the project planning, allowing early input on methodologies and accuracies. Provisions are made to revise delivery times and cost if the parties agree to modify survey methods from those anticipated in the development of the original documents.
- Of additional concern for E-560 was clarification of the Land Surveyor's obligations relative to location of utilities and coordination of such work with applicable local requirements. Utility location often means widely varying things to the project participants. Exhibit A1.01 facilitates use of ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" to guide delivery of utility mapping.
- Exhibit A.103.C separately addresses location of utilities and underground structures, clarifying location standards for additional classes of improvements. The section provides a default standard for utility locations if the parties have not specifically defined a process. Of additional importance, final mapping deliverables are required to include a statement summarizing the methodology used for collection and depiction of utility and underground structure information.

E-568 Specific Changes: E-568, Engineer-Architect Agreement, Exhibit A very closely parallels E-570. In many instances, Engineers are engaging Architects to provide planning, design and construction phase administration and related construction services for the building portions of engineered improvements, particularly those building portions of the project subject to public occupancy codes and requirements. For the most part, E-568 represents a supervised delegation of the Engineer's technical design and construction tasks for the building or other architectural aspects of the project.

The 2010 version of E-568 Exhibit A was a very close duplicate of E-500 and E-570, with the Architect's services paralleling those of the Engineer for delegated portions of the improvements. The most recent changes to E-570 have been carried forward into E-568. A few services, commonly completed by a project architect, have been added to E-568, including coordination of matters relating to building, fire, accessibility, and similar codes. E-568 also recognizes the expertise of the Architect in addressing "Project Strategies, Technologies, and Techniques" relating to building information management (BIM).