



EJCDC is pleased to present **EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services, 2020 Edition**. This is the most comprehensive update of EJCDC's flagship Owner-Engineer agreement in more than 20 years. Project owners and engineering firms have relied on E-500's overall content, risk allocations, and philosophical approach over the years, and the 2020 edition remains consistent with prior standards. In addition, the 2020 E-500 Agreement contains focused improvements, more options, better guidance and instructions, and an improved structure. In particular, EJCDC has made a substantial effort to enhance and re-organize E-500's exhibits, to reflect evolving contract practice and improve ease of use.

Among the significant changes to the overall structure of E-500:

- **E-500 IS NOW PACKAGED IN TWO PARTS: (1) THE MAIN AGREEMENT AND (2) THE EXHIBITS .**
The E-500 2020 Owner-Engineer Agreement is published as two separate Word files, one file containing the Main Agreement form and the second file containing the Exhibits (A through J). Both files contain integral building blocks of an Owner-Engineer contract, and each E-500 purchase will result in transmittal (download) to the purchaser of both of the two files. As the agreement and exhibit options for the engineering contract documents have grown over the years, it made sense to split E-500 into two manageably sized files for ease of use and project customization.

The Main Agreement and the Exhibits have somewhat different formatting foundations—the split into two separate parts allowed EJCDC to tighten the underlying formatting in each part, which will make revisions and supplementations by the user easier. EJCDC recommends leaving the documents as two separate Word files throughout the drafting process. Merging the two files into a single Word file could result in formatting clashes and other problems. The recommended practice is as follows: After all editing has been completed (in Word) in each of the two separate files, each of the two files can be converted to a PDF, and as the final step the two PDF files can then be merged into a single contract document, in PDF.

- **OWNER'S RESPONSIBILITIES MOVED TO MAIN AGREEMENT FROM EXHIBITS.** General feedback to EJCDC has been that, unlike the Engineer's scope of services, the Owner's responsibilities typically remain constant from project to project. EJCDC also noted that many public owners have preferred to place the owner's responsibilities in the main agreement itself, reserving exhibits for specific scope of services, schedule, insurance, and pricing issues. Following this trend, EJCDC has moved the contents of what was formerly Exhibit B, Owner's Responsibilities, directly into Article 2 of the Main Agreement.

- **NEW DELIVERABLES SCHEDULE EXHIBIT.** The 2020 edition of E-500 features a separate, consolidated schedule form, Exhibit B, for establishing Engineer’s deliverables. In prior editions of E-500, the Engineer’s schedule and deliverables obligations were interspersed throughout the Engineer’s scope of services (Exhibit A). The new Deliverables Schedule form is in table format and includes guidance for use. The sample entries track the Engineer’s deliverables commitments in Exhibit A, as published, and include sample entries for Owner’s related obligations to review and return the deliverables with comments, within a specified number of days of receipt.
- **UPDATE AND RELOCATION OF PAYMENT EXHIBIT.** E-500 contains a very comprehensive payment exhibit, offering the user six standard compensation methods, five options for Resident Project Representative compensation, three options for Additional Services compensation, and related schedules and appendices. The user has the option of selecting any combination of these payment methods for any given project. In prior versions, this very flexible but lengthy set of options was designated as Exhibit C, located in the middle of the exhibits. EJCDC found that many public and private users prefer to address specific compensation and fee matters as the last attachment to their agreements, often appending the Engineer’s fee forms to the very end of the contract. Therefore, in addition to updating the content of the payment exhibit to reflect current practices and establish consistency among the compensation methods, EJCDC has moved the payment provisions to the end of E-500 2020, as Exhibit J. Based on user comments, we believe this change will improve the usability and efficiency of the overall document.
- **COST LIMIT EXHIBIT ELIMINATED.** From user feedback, EJCDC determined that the practice of designing to a construction cost limit (especially on public infrastructure and facilities projects) is so seldom used as to no longer warrant specific treatment in EJCDC’s standard documents. As a result, EJCDC has removed the paragraph in the Main Agreement invoking an optional construction cost process for the design, as well as the specific exhibit detailing the process (former Exhibit F, Construction Cost Limit). Redesign and related compensation are addressed suitably elsewhere in the 2020 agreement, and if in a rare case the Owner and Engineer desire to implement a construction cost limit, the document can be edited appropriately.
- **ELECTRONIC DOCUMENTS PROTOCOL ADDED.** In keeping with EJCDC efforts to facilitate use of electronic documents, an Electronic Documents Protocol (EDP) has been added as Exhibit F. The EDP exhibit allows users to specify formats for exchange of electronic information and customize responsibilities for managing project communications. This exhibit parallels the basic EDP language used in the EJCDC 2018 Construction Series for Owner-Contractor contracts, but has been customized for the specifics of the Owner-Engineer relationship.
- **OTHER E-500 EXHIBITS.** Exhibit A, Engineer’s Services, has been substantially upgraded, as discussed in the next section. The general content for the other Exhibits—the Amendment form (now Exhibit C), duties of the Resident Project Representative (RPR)(Exhibit D), Notice of Acceptability of Work (Exhibit E), Insurance (Exhibit G), Dispute Resolution (Exhibit H), and Limitation of Liability (Exhibit I)—has been updated and reformatted, but remains substantively unchanged.

SIGNIFICANT CHANGES TO EXHIBIT A, ENGINEER’S SERVICES. In addition to the general reorganization of E-500, the most significant changes in content have been made to Exhibit A, Engineer’s Services. Exhibit A serves as an industry resource for contractually describing a comprehensive scope of engineering services, from the planning stage through design, contractor selection, and construction, to

post-construction services. Although presented in linear fashion and well suited to traditional design-bid-build project delivery, the scope of services exhibit is flexible and can be modified to suit narrower engagements, fast-tracking, multi-prime, CM, or RFP/proposal projects. Similarly, although the E-500 2020 Exhibit A services and terminology are closely coordinated with the contents of EJCDC®C-700 2018, Standard General Conditions of the Construction Contract, Exhibit A (and E-500 generally) can also be used in conjunction with non-EJCDC construction contract documents.

As design practice evolves, it is important that Exhibit A also be updated to reflect industry changes. As EJCDC's update of E-500 proceeded, EJCDC recognized that several key scope issues would benefit from being covered in greater specificity and detail. The 2020 Exhibit A update adds meaningful detail to many engineering service categories, and contractually articulates evolving industry practices, some for the first time in a standard design industry contract document.

As always, Exhibit A is intended to be customized by each user for the specifics of the particular project, but EJCDC is confident that this 2020 edition provides an improved and more robust starting point for creating a good scope of Engineer's Services.

Among the important changes made to Exhibit A are:

- Guidance and a general outline have been added to the beginning of Exhibit A to prompt the user to include a more detailed project description (**Baseline Information**) in Exhibit A, to better define the nature and extent of the facilities covered by the scope, and to provide context to the engineering services to be provided by Engineer.
- Exhibit A now formally recognizes **Management of Engineering Services** as an important part of the standard scope of services, by assigning it a specific section under Engineer's Basic Services. Essential engineering-project management needs (such as scheduling of tasks, internal team coordination, project record-keeping and file maintenance, pre- and post-project meeting coordination, and documentation) have mostly been implied as part of other tasks in prior versions of Exhibit A. By expressly addressing project management functions, the parties recognize the value of good engineering-project management, without needing to redundantly itemize these activities in connection with each of the many engineering tasks within the scope of services. The Management section is clearly drafted to apply only to project-specific management activities, as opposed to general overhead and firm management functions.
- The **Preliminary Design Phase** is an essential part of design services in which the final design criteria are formalized, in most cases requiring an actual formal report and almost always resulting in key deliverables to guide the final design. The 2020 update expands guidance for the content of this phase of the design, adding a general list of matters to be considered in completing the preliminary design and addressing the project goals. EJCDC also formally uses the term "**Preliminary Design Phase Report**" to encompass the agreed-upon deliverables for this phase. Since the precise form of the report (and/or individual deliverables) is determined by the users, it can vary from the less defined compilation described in prior versions of E-500 to the much more formal reporting needed for large, complex, or multi-discipline facilities.
- E-500 has traditionally NOT specified a rigid **interim submittal protocol** based on design completion percentages (such as 30, 60, 90, 100% completion). EJCDC defers to the users to define their own submittal needs. The 2020 update, however, includes Guidance Notes that more clearly explain

E-500's approach to submittal schedules, for example by comparing the Preliminary Design Report submittal to roughly a 30% design. Also, in addition to the Final Design submittal, the Final Design Phase now provides, as a default, two interim draft design submittals during the Final Design Phase—as with all elements of Exhibit A, this multi-step process can be revised at the user's discretion.

- Acknowledging the growing complexity of utility coordination needs on projects, EJCDC has added a more extensive process for **above ground and underground utility coordination**. With the updates, formal utility coordination commences in the Study and Report Phase and continues through the Preliminary and Final Design Phases with progressively more detailed identification, communication, and mitigation activities. The process expands the requirements from prior versions and parallels, in outline, the coordination process used by many DOTs and public agencies.
- The 2020 Exhibit A clarifies the Engineer's role in identifying and analyzing requirements of authorities having jurisdiction to approve design, construction, or operation of the facilities, and for maintaining a comprehensive list of **permits** during design to help track approval processes and responsibilities of the parties.
- The update provides a reorganized and somewhat more detailed and proactive approach to development of the Construction Contract Documents, particularly relative to the **Owner's procurement process** for the bidding/proposal process and the construction contract.
- The 2020 Exhibit A continues with the approach to **sustainability** added in the 2014 edition of E-500. This update includes a task to review design criteria with the Owner, and address Owner requests for additional studies and services to enhance **resilience** of the project.
- **Construction Phase Services** have been reviewed for conformance with the EJCDC 2018 Construction Series updates, with particular attention to the authority of the Engineer as described in EJCDC® E-700, Standard General Conditions of the Construction Contract.

MAIN AGREEMENT UPDATE. As noted, the basic content and philosophy of the Main Agreement remain consistent with prior editions of E-500. But, in addition to routine edits for readability, clarity, conciseness, and coordination with the exhibits, a few notable changes have been made to address evolving practice trends and contemporary contracting matters:

- E-500 2020 users will note one obvious change that varies from a long-standing EJCDC convention—EJCDC has adopted the widespread industry practice of referring to an engineering or other A/E firm retained by the (prime) Engineer as a “Subconsultant,” rather than as a “Consultant.” Recognizing that the “Engineer” being engaged by the Owner under E-500 is normally itself a consulting firm or “consultant” in common parlance, EJCDC believes that use of the term “Subconsultant” will serve to better distinguish Engineer from the firms it retains, and eliminate potential confusion, especially in the subagreements used by Engineer to retain Subconsultants.
- To address the needs of some Owners, the Main Agreement's section on **Ownership and Use of Documents** now presents two options regarding ownership of project documents: 1) following prior E-500 practice, under the first option the Engineer retains all ownership of Project Documents but grants the Owner a fully functional limited license for use of the Project Documents; or 2) upon

Owner request, under the second option the Engineer grants to Owner all ownership rights to the design documents, subject to provisions regarding re-use and recognition of Engineer's retention of rights to Engineer's Previously/ Independently Created Works.

- “**Documents**” are now defined as expressly identified **deliverables**, rather than broadly including all data loosely related to the Project. This modification meshes with a more rigorous process for identification of deliverables in Exhibits A and B.
- Identification of **Patents** and other intellectual property is now addressed, with allocation of the risk to defend, settle, and pay IP infringement claims.
- Owner's consent, subject to limits, is now required for **release of publicity** by Engineer related to the project.
- **Conflicts of Interest** are addressed by establishing a mechanism to address conflicts that may arise, and clarifying the licensed professional's paramount obligation to the public health, safety, and welfare.
- In addition to the previously noted general adoption of the term “Subconsultant,” the Agreement and its Exhibits acknowledge that the Engineer may engage not only Subconsultants (design professionals; A/Es) but also in some situations other technical or general subcontractors (Engineer's Subconsultants”). The Main Agreement now coordinates the terminology “**Engineer's Subcontractors and Subconsultants**” where appropriate. EJCDC® E-562 “Labor and Materials Subcontract Between Engineer and Engineer's Subcontractor” (2017) was developed previously for engaging such general and non-professional services subcontractors.
- The new edition clarifies Owner's responsibility for the final content of the bidding/proposal documents used by Owner to select the construction contractor.
- E-500 2020 features a compensation summary in the Main Agreement, intended as a user-friendly “at a glance” reference for the provisions stated in considerably more detail in Exhibit J.
- The document features added specificity regarding the insurance obligations of both parties.
- The Main Agreement now includes a standard statement regarding the venue (location) requirements for any legal proceedings that arise from the Agreement.
- E-500 2020 expands the means by which Owner and Engineer may give formal notice under the Agreement.