



EJCDC is pleased to present **EJCDC® E-570, Agreement Between Engineer and Subconsultant for Professional Services, 2020 Edition**. This is a comprehensive update of the standard EJCDC professional services subagreement. E-570 2020 is closely coordinated with the recently published **EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services, 2020 Edition**, both in terms of substantive content and structure/organization.

NEW TERMINOLOGY: SUBCONSULTANT. Previous editions of E-570 were titled “Agreement Between Engineer and Consultant for Professional Services,” using the term “Consultant” to refer to an engineering (or other A/E) firm retained by the Engineer to undertake a portion of the overall professional services. The 2020 edition uses the term “Subconsultant” rather than “Consultant.” The term Subconsultant is in widespread use in the engineering profession, and provides a stronger distinction between the Engineer (itself a consulting firm or “consultant” in common industry parlance)—the prime design professional—and the lower-tier firms retained by Engineer to assist with professional services.

NOTEWORTHY FEATURES OF E-570 2020, ENGINEER-SUBCONSULTANT AGREEMENT:

- **COORDINATION AND CONSISTENCY WITH E-500, OWNER-ENGINEER AGREEMENT.** As with past editions of E-570, the contents and structure of the document are rigorously coordinated with the provisions of the prime engineering agreement, E-500. The two documents use consistent terminology and wording whenever possible. Despite this strong linkage, however, it is possible to use E-570 as an Engineer-Subconsultant subagreement even when the prime agreement is not E-500 or other EJCDC document.
- **E-570 IS NOW PACKAGED IN TWO PARTS: (1) THE MAIN AGREEMENT AND (2) THE EXHIBITS.** As with E-500, the 2020 edition of E-570 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 Engineer-Subconsultant contract, and each E-570 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-570 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.

- **OWNERSHIP AND USE OF DOCUMENTS.** To ensure consistency for Engineer and Subconsultant, the 2020 edition of E-570 expressly emphasizes the controlling role of the prime agreement with respect to setting the rules for ownership and use of the design documents that Subconsultant prepares and furnishes to Engineer. E-570 2020 also includes its own provisions that will apply if the prime agreement is silent regarding ownership, copyright, or use of the design documents. At a minimum, Subconsultant grants right of use to Owner and Engineer, subject to stated conditions.

E-570 also includes language to assure that any Subconsultant grant or transfer of ownership, copyright, or license to the Engineer is absolute, and not limited by the status of disputes in such a manner that would prevent the Engineer from meeting its obligation to grant corresponding rights to the Owner under the prime agreement, if such is required. Any unresolved disputes would be resolved under the terms of the Agreement.

- **ENGINEER'S RESPONSIBILITIES.** The standard provisions regarding Engineer's Responsibilities were formerly located in an exhibit (Exhibit B). As of 2020 these provisions have been moved into the Main Agreement. Although the Engineer's Responsibilities in E-570 may be more variable by project than the Owner's Responsibilities in E-500, EJCDC elected to make the same organizational change in E-570 and E-500, for consistency between these two closely related forms, and recognizing also that traditionally engineer-subconsultant contracts have addressed the engineer's responsibilities in the main body of the form, or by reference to the prime agreement, rather than in an exhibit.
- **NEW DELIVERABLES SCHEDULE EXHIBIT.** The 2020 edition of E-570 features a separate, consolidated schedule form, Exhibit B, for establishing Subconsultant's deliverables. In prior editions of E-500, the Subconsultant's schedule and deliverables obligations were interspersed throughout the Subconsultant's scope of services (Exhibit A). The new Deliverables Schedule form (Exhibit B) is in table format and includes guidance for use. The sample entries track the Subconsultant's deliverables commitments in Exhibit A, as published, and include sample entries for Engineer's related obligations to review and return the deliverables with comments, within a specified number of days of receipt.
- **RELOCATION OF PAYMENT EXHIBIT.** The payment exhibit of E-570 presents the options for compensation of the Subconsultant (for example, standard hourly rates, or a lump sum), and in addition provides guidance and options for contractually addressing the situation in which the Owner has failed to pay the Engineer (pay-when-paid and pay-if-paid clauses). Although in general the E-570 payment exhibit is shorter and simpler than its counterpart in E-500, for consistency with the 2020 restructuring of E-500, the E-570 payment exhibit has been moved to the end of E-570 (as Exhibit J). As with prime engineering agreements, many users prefer to place specific compensation and fee attachments at the very end of the subconsultant contract, often by directly attaching the subconsultant's fee proposal or submittal.
- **COST LIMIT EXHIBIT ELIMINATED.** As noted with respect to E-500, 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, in parallel with changes made in E-500, EJCDC has removed the paragraph in the E-570 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 Engineer and Subconsultant 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, and is essentially the same as that added to E-500, but it is recognized that customization will likely be needed for certain exchanges directly between the Engineer and Subconsultant.
- **OTHER E-570 EXHIBITS.** Exhibit A, Subconsultant'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 Subconsultant's Resident Representative (SRR)(Exhibit D), Subconsultant's 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, SUBCONSULTANT'S SERVICES. In addition to the general reorganization of E-570, the most significant changes in content were made to Exhibit A, Subconsultant's Services, closely following the updates made to the scope of services in E-500. A description of the Exhibit A update is also provided in EJCDC's information release for E-500 2020.

Among the important changes made to Exhibit A relative to E-570 are:

- EJCDC recognizes that Exhibit A, as developed for E-500, is much broader than the scope of services usually required for a Subconsultant, which typically is involved in only a small part of the overall breadth of professional services. Therefore, **new guidance has been added to E-570 to assist the user in adapting E-570 to the user's specific needs.** This may involve substantial editing of Exhibit A, or replacing Exhibit A with a specialty-specific scope of services. Often, the parties will choose to incorporate scope documents directly from the Subconsultant's proposal. It is hoped that the new guidance will make E-570 less daunting for inexperienced users, and empower all users with the flexibility to best adapt Exhibit A for their needs.
- Following the E-500 update, guidance and a general outline have been added to the beginning of E-570 Exhibit A to prompt the user to include a project description ("**Baseline Information**") to Exhibit A, to better define the nature and extent of the facilities covered by the Subconsultant's scope, and to provide context to the engineering or other A/E services to be provided by Subconsultant.
- For ease of use and cross-references between a prime and subconsultant agreement, EJCDC has matched **Exhibit A item numbering between E-500 and E-570,** to the extent practical.

- Exhibit A now recognizes Subconsultant’s **Management of Engineering Services** as an important part of the Subconsultant’s standard scope of services, by assigning it a specific section under Basic Services. Among other functions, basic CAD and specification standards, as applicable, are identified in this section.
- Prior versions of E-500 and E-570 have addressed the **Preliminary Design Phase** as resulting in development of various initial design documents, without specific guidance for content, and minimal description of the preliminary design process itself. The E-500 update recognizes that the Preliminary Design Phase is an essential part of the Project in which the final design criteria are most often formalized; and, hence, establishes a more complete process for developing and presenting the design criteria. E-570 follows that process for the portion of the design assigned to the Subconsultant.
- E-500 and E-570 have traditionally NOT specified a rigid **interim submittal protocol** based on 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-570’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 2020 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. For Subconsultants whose services do not include any interaction with utilities, the user would of course delete these provisions during the Exhibit A drafting process.
- Exhibit A now clarifies the various parties’ obligations regarding **identification of permits** during the phases.
- The 2020 edition 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. For some Subconsultants these provisions will be unnecessary and can be deleted.
- The 2020 Exhibit A continues with the approach to **sustainability** added in our 2014 edition of E-570. 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 (and its Subconsultants) as described in **EJCDC® E-700, Standard General Conditions of the Construction Contract**.

- **Additional Services in E-570 as compared with E-500.** Like its E-500 counterpart, the E-570 Additional Services section has been updated and closely correlated with specific items in Exhibit A that can generate additional services. All Additional Services under E-570 must be supported by written authorization from Engineer; by contrast E-500 recognizes a limited category of Additional Services that Engineer may undertake without advance authorization from Owner.

MAIN AGREEMENT UPDATE. As noted, the basic content and philosophy of the Main Agreement portion of E-570 remain consistent with prior editions of E-570. Routine edits have been made in the Main Agreement to enhance readability, clarity, conciseness, coordination with the exhibits, and consistency with similar clauses in E-500. In addition, a few notable changes were made in E-500 to address evolving practice trends and contemporary contracting matters; these have been carried forward into E-570 2020:

- “**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 by Subconsultant of **Patents** and other intellectual property applicable to the Documents that Subconsultant provides is now addressed.
- **Conflict of Interest** is newly addressed, establishing a mechanism to address conflicts that may arise, and clarifying the licensed professional’s paramount obligation to the public health, safety, and welfare.
- The Main Agreement now includes a standard statement regarding the venue (location) requirements for any legal proceedings that arise from the Agreement.
- E-570 2020 expands the means by which Engineer and Subconsultant may give formal notice under the Agreement.