



EJCDC is pleased to present **EJCDC® E-505 2020, Agreement Between Owner and Engineer for Professional Services—Task Order Edition**. Earlier this year EJCDC released the most comprehensive update in more than 20 years of EJCDC’s flagship Owner-Engineer document, EJCDC® E-500 2020, Agreement Between Owner and Engineer for Professional Services. Using the updated E-500 as a basis, EJCDC has now also completed a comprehensive update of its Task Order version of the Owner-Engineer agreement.

E-505 includes the same comprehensive range of terms and conditions present in the E-500 Owner-Engineer document but is designed to be used for multiple or recurring assignments (“tasks”), related to one or several projects. The numbering, structure, and content of E-500 and E-505 (including their exhibits) are similar.

The most noteworthy distinguishing feature of E-505 is its use of individual task orders for specific professional assignments. In a task order, the Owner and Engineer agree to task-specific terms, such as scope of services, schedule, and compensation, for a specific assignment. When a task order is issued, no drafting or negotiating is needed for provisions such as indemnification, insurance, claims, dispute resolution, suspension, termination, or the like, because these provisions will have been previously negotiated and set in place, in the E-505 Main Agreement and its exhibits. This format allows individual assignments to be expeditiously made without the need to separately renegotiate the entire Main Agreement (or its exhibits) for each Task Order.

Like E-500, the updated E-505 Task Order version 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 the exhibits to the E-505 Main Agreement and Task Order form, to reflect evolving contract practice and improve ease of use.

The 2020 edition of E-505 is published in four parts (files) to help users better manage the drafting of both the Main Agreement and subsequent Task Orders, and to efficiently organize the topics and exhibits. Each E-505 purchase will result in transmittal (download) to the purchaser of all four files.

- **PART 1: MAIN AGREEMENT.** This controlling agreement form contains the general terms and conditions that apply to all subsequently issued Task Orders. The Main Agreement addresses procedures for issuing Task Orders; general services to be furnished by the Engineer on all tasks; the Owner’s responsibilities; the term (length) of the Owner-Engineer standing contract; invoicing and payment; standard of care; ownership of documents; insurance; suspension and termination; indemnification; definitions; and conflicts of interest. The Main Agreement closes with a signature page.

- **PART 2: EXHIBITS TO MAIN AGREEMENT.** These exhibits are intended to supplement the Main Agreement and as such will have general application to all Task Orders. The exhibits use the lettering of their counterparts in E-500 and include seven topics: Exhibit C—Amendment to Main Agreement (form); Exhibit F—Electronic Documents Protocol; Exhibit G—Insurance; Exhibit H—Dispute Resolution; Exhibit I—Limitations of Liability; Appendix 1—Reimbursable Expenses Schedule; Appendix 2—Standard Hourly Rates Schedule.
- **PART 3: TASK ORDER FORM.** This form is used by Owner and Engineer to define a specific task (scope of services) to be performed by the Engineer, and to specify the Engineer’s compensation for performing the task, and the schedule for completion of the services. The Task Order Form also allows the parties to identify baseline information about the task, and to clarify the relationship of the specific Task Order to other related Task Orders (if any).
- **PART 4: EXHIBITS TO TASK ORDER.** Part 4 contains four exhibits intended for use with specific Task Orders:
 - Exhibit A, Engineer’s Services Under Task Order. Defining the specific scope of the Engineer’s services is a critical element of each Task Order. For limited-scope assignments, the parties may elect to define the Engineer’s scope of services in the body of the Task Order Form. For many assignments, however, EJCDC anticipates that the scope of services will be defined using E-505’s standard Exhibit A, as modified for the specific Task Order.
 - Exhibit B, Deliverables Schedule for Task Order. This new exhibit presents an organized format (in table form) for a schedule of Engineer’s deliverables (for example, completion of a preliminary design report) and for Owner’s review times. For limited-scope assignments the Task Order schedule can also be stated in the Task Order itself, dispensing with the need for Exhibit B.
 - Exhibit D, Duties, Responsibilities, and Limitations of Authority of Resident Project Representative Under Task Order. One of the tasks that might be assigned to the Engineer under a Task Order is providing Resident Project Representative (RPR) services. Such services might be the sole assignment under a Task Order or might be an adjunct service to design work or other services.
 - Exhibit E, EJCDC® C-626, Notice of Acceptability of Work (Form). This form would be included with a specific Task Order if the Engineer’s scope of services under that Task Order will include making a determination of the acceptability of the construction contractor’s Work. By including this form as an exhibit, both Owner and Engineer acknowledge the scope and limitations of this critical determination.

Among the other significant changes to of E-505:

- **TASK ORDER FORM UPDATED.** EJCDC recognizes that many users have their own formats for task orders, but often look to the E-505 form as an outline to describe an assignment. Therefore, the format of the Task Order form has been refreshed, updated and reorganized to make the form more user friendly and better coordinated with the Main Agreement and Exhibits, particularly regarding basis of compensation. Most significantly and in recognition that many users include general assignment background as part of their task orders, the new Task Order form includes guidance and a general outline to prompt the user to include a more detailed project description (“Baseline

Information”), to better define the nature and extent of the facilities covered by the Task Order scope, and to provide context to the engineering services to be provided by Engineer.

- **“OWNER’S RESPONSIBILITIES” PROVISIONS MOVED TO MAIN AGREEMENT FROM EXHIBITS.** The 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 provisions 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-505 features a separate, consolidated schedule form, Exhibit B, for establishing Engineer’s deliverables. 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.
- **UPDATE AND RELOCATION OF PAYMENT EXHIBIT.** In previous versions, compensation was addressed in the Main Agreement, in a separate exhibit (old Exhibit C), as well as in the Task Order. For the 2020 E-505 update, the basis of compensation methods have been consolidated and moved to the Main Agreement. Each Task Order addresses total compensation for each assignment, referencing the applicable payment methods described in the Main Agreement. This change simplifies and reduces the number of places in the agreement where compensation must be addressed. Rate schedules for reimbursable expenses and standard hourly rates are still included as appendices.
- **ELECTRONIC DOCUMENTS PROTOCOL ADDED.** In keeping with EJCDC efforts to facilitate the 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-505 EXHIBITS.** Along the lines of the updates to E-500, 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-505, 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 the narrower engagements typical of many Task Orders, as well as broader, more comprehensive assignments. Similarly, although the E-505 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-505 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-505 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 must be customized by each user for the specifics of the particular assignment and Task Order, 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:

- 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.
- 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. 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® C-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-505. 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-505 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-505 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 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,” E-505 acknowledges 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 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-505 2020 expands the means by which Owner and Engineer may give formal notice under the Agreement.