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Design and Construction Related Documents
Instructions and License Agreement**

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The license is effective until terminated. You may terminate it at any time by destroying **EJCDC Design and Construction Related Documents** altogether with all copies, modifications and merged portions in any form. It will also terminate upon conditions set forth elsewhere in this Agreement or if

you fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy **EJCDC Design and Construction Related Documents** along with all copies, modifications and merged portions in any form.

Limited Warranty:

EJCDC warrants the CDs and diskettes on which **EJCDC Design and Construction Related Documents** is furnished to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

There is no other warranty of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

EJCDC does not warrant that the functions contained in **EJCDC Design and Construction Related Documents** will meet your requirements or that the operation of **EJCDC Design and Construction Related Documents** will be uninterrupted or error free.

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EJCDC's entire liability and your exclusive remedy shall be:

1. the replacement of any document not meeting EJCDC's "Limited Warranty" which is returned to EJCDC's selling agent with a copy of your receipt, or
2. if EJCDC's selling agent is unable to deliver a replacement CD or diskette which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

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Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

General:

You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
General Counsel
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nsppe.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES
FUNDING AGENCY EDITION**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES



ASCE American Society
of Civil Engineers

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a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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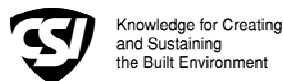
This document has been approved and endorsed by

The Associated General Contractors of America



and the

Construction Specification Institute



This document has been accepted by the
United States Department of Agriculture
Rural Utilities Services, Water and Waste Programs

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract, Funding Agency Edition (No. C-710, 2002 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other.

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**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between _____ (“Owner) and _____ (“Engineer”).

Owner intends to _____ (“Project”)

Financial assistance for this Project is expected to be provided by _____ (“Agency), a governmental entity. Nothing herein creates any contractual relationship between Agency and Engineer.

Owner and Engineer agree as follows

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C, and in a manner acceptable to Owner. Engineer shall submit its invoices to Owner no more than once per month. Invoices are due and payable within 60 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within 60 days after receipt of Engineer's invoice and funds are available for the Project, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said sixtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be

applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator as provided in Exhibit B.

5.02 Designing to Construction Cost Limit

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 Opinions of Total Project Costs

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 Standards of Performance

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner. The retention of such Consultants shall not reduce the Engineer's obligations to Owner under this Agreement.
- D. Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Engineer and Owner shall comply with applicable Laws and Regulations. Engineer shall comply with Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.

- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract, Funding Agency Edition" as prepared by the Engineers Joint Contract Documents Committee (No. C-710, 2002 Edition) unless both parties mutually agree to use other General Conditions by specific reference in Exhibit I.
- H. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not be responsible for the acts or omissions of any Contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.
- K. All Contract Documents and Applications for Payment shall be subject to Agency concurrence.

6.02 *Design without Construction Phase Services*

- A. If Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, then (1) Engineer's services under this Agreement shall be deemed complete no later than the end of the Bidding or Negotiating Phase; (2) Engineer shall have no design or shop drawing review obligations during construction; (3) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services; and (4) Owner waives any claims against the Engineer that may be connected in any way thereto.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

- D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project or on any other project without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to Engineer's Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and Engineer's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the requirements of paragraph 5.04 of the "Standard General Conditions of the Construction Contract, Funding Agency Edition," (No. C-710, 2002 Edition) as prepared by the Engineers Joint Contract Documents Committee and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.
- F. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. *Suspension.*

1. By Owner: Owner may suspend the Project upon seven days written notice to Engineer.

2. By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement.
- B. *Termination.* The obligation to provide further services under this Agreement may be terminated:
1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 2. For convenience,
 - a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination.* The terminating party under paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination.*
1. In the event of any termination under paragraph 6.05, Engineer will be entitled to invoice Owner and to receive payment for all acceptable services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.
- E. *Delivery of Project Materials to Owner.* Prior to the effective date of termination, the Engineer will deliver to Owner copies of all completed Documents and other Project materials for which Owner has compensated Engineer. Owner's use of any such Documents or Project materials shall be subject to the terms of Paragraph 6.03.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state in which the Project is located, its conflict of laws provisions excepted.

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants.
- B. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.
- C. *Environmental Indemnification.* In addition to the indemnity provided under paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence.* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damage caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual,

shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- E. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; in the following provisions; or in the "Standard General Conditions of the Construction Contract, Funding Agency Edition," prepared by the Engineers Joint Contract Documents Committee (No. C-710, 2002 Edition):
 1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.
 2. *Agency* – The Federal or state agency named on page 1 of this Agreement.
 3. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 1, of this Agreement.
 4. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

5. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
6. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates, consultants, subcontractors, or vendors.
7. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
8. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
9. *Effective Date of the Agreement* – The date indicated in this Agreement on which it becomes effective. If no such date is indicated it means the date on which Agency concurs with the Agreement.
10. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
11. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
12. *Resident Project Representative* – The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer’s agent or employee and under Engineer’s supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
13. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
14. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

- A. Exhibit A, “Engineer’s Services,” consisting of _____ pages.
- B. Exhibit B, “Owner’s Responsibilities,” consisting of _____ pages.

- C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of ____ pages.
- D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of ____ pages.
- E. Exhibit E, "Notice of Acceptability of Work," consisting of ____ pages.
- F. Exhibit F, "Construction Cost Limit," consisting of ____ pages.
- G. Exhibit G, "Insurance," consisting of ____ pages.
- H. Exhibit H, "Dispute Resolution," consisting of ____ pages.
- I. Exhibit I, "Special Provisions," consisting of ____ pages.
- J. Exhibit J, "Amendment to Standard Form of Agreement," consisting of ____ pages.

8.02 *Total Agreement*

- A. This Agreement (consisting of pages 1 to E inclusive, together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer for the Project and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, or modified by a duly executed written instrument based on the format of Exhibit J to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

8.04 *Federal Requirements*

- A. *Agency Concurrence.* Signature of a duly authorized representative of Agency in the space provided on the signature page hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements
- B. *Audit and Access to Records.* For all negotiated contracts and negotiated modifications (except those of \$10,000 or less), Owner, Agency, the Comptroller General, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- C. *Restrictions on Lobbying.* Engineer and each Consultant shall comply with Restrictions on Lobbying (Public Law 101-121, Section 319) as supplemented by applicable Agency regulations. This Law applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

D. *Suspension and Debarment.* Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Owner:

Engineer:

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

Engineer License or Certificate No. _____

State of: _____

Address for giving notices:

Address for giving notices:

Designated Representative (see paragraph 8.03.A):

Designated Representative (see paragraph 8.03.A):

Title: _____

Title: _____

Phone Number: _____

Phone Number: _____

Facsimile Number: _____

Facsimile Number: _____

E-Mail Address: _____

E-Mail Address: _____

AGENCY CONCURRENCE

Agency: _____

By (Signature): _____

Typed Name: _____

Title: _____

Date: _____

Rural Development -- RUS Training Use Only

SUGGESTED FORMAT
(for use with E-510, 2002 Edition)

This is **EXHIBIT A**, consisting of pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Owner's Consultant's Services

PART 1 – BASIC SERVICES

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Basic and Additional Services as set forth below.

A.1.01 *Study and Report Phase*

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate *[insert specific number or list here]* all reasonable alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.
5. In accordance with Agency guidance, prepare a preliminary engineering report (the "Report") which will, as appropriate, contain schematic layouts, sketches, operation and maintenance costs, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.
6. Perform or provide the following additional Study and Report Phase tasks or deliverables: *[here list any such tasks or deliverables]*
 - a. Environment Report in accordance with Agency requirements.
 - b. Provide engineering information for applications and supporting documents for private or governmental grants, loans, or advances in connection with the Project.
 - c. Prepare feasibility studies and preliminary ranges of rate schedules if required for the Project.
 - d. _____ *[List others]*
7. Furnish _____ review copies of the Report and any other deliverables to Owner and Agency within _____ calendar days of authorization to begin services and review it with Owner.

8. Revise the Report and any other deliverables in response to Owner's and Agency's comments, as appropriate, and furnish _____ copies of the revised Report and any other deliverables to the Owner and Agency within _____ calendar days of receipt of all such comments.

B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to and accepted by Owner and Agency, as appropriate.

A.1.02 *Preliminary Design Phase*

A. After acceptance by Owner and Agency of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
3. Provide to Owner three copies of maps showing the general location of required construction easements and permanent easements and the land to be acquired.
4. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
5. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.
6. Perform or provide the following additional Preliminary Design Phase tasks or deliverables: [here list any such tasks or deliverables]
7. Furnish _____ review copies of the Preliminary Design Phase documents and any other deliverables to Owner (and Agency, if required) within _____ calendar days of authorization to proceed with this phase, and review them with Owner.
8. Revise the Preliminary Design Phase documents and any other deliverables in response to comments from Owner (and Agency), as appropriate, and furnish to Owner (and Agency) _____ copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within _____ calendar days after receipt of all such comments.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner (and Agency, if required).

A.1.03 *Final Design Phase*

A. After acceptance by Owner (and by Agency, if required) of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. If appropriate, Specifications shall conform to the 16-division format of the Construction Specifications Institute.

2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
 3. Advise Owner of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer.
 4. Perform or provide the following additional Final Design Phase tasks or deliverables: [here list any such tasks or deliverables]
 5. Prepare and furnish Bidding Documents for review by the Owner, its legal counsel, its other advisors, regulatory agencies, and Agency, within _____ calendar days of authorization to proceed with this phase, and assist Owner in the preparation of other related documents. Bidding documents will comply with Agency's requirements in effect as of the date of Owner authorizing work in this phase.
 6. Revise the Bidding Documents in accordance with comments and instructions from the Owner and Agency, as appropriate, and submit _____ final copies of the Bidding Documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner and Agency within _____ calendar days after receipt of all such comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by paragraph A.1.03.A.6 have been delivered to and accepted by Owner and Agency.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is _____. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A.1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner and Agency of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process contractor deposits or charges for the Bidding Documents.
 2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
 4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the Bidding Documents.

5. Determine the acceptability of substitute materials and equipment proposed when substitution is necessary because the specified item is incompatible with the Project or fails to comply with applicable codes.
 6. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: [here list any such tasks or deliverables]
 7. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A.1.05 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract.* Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing.
 2. *Resident Project Representative (RPR).* Unless otherwise notified in writing by Owner, Engineer shall provide the services of Resident Project Representative (RPR) at the Site to assist Engineer and to provide more continuous observations of such work on a full-time basis unless part-time services are expressly approved by Agency and this Agreement is amended accordingly. Engineer will, prior to the pre-construction conference, submit a resume of the RPR's qualifications for approval by Owner and Agency. The duties, responsibilities, and limitations of authority of the RPR are as set forth in Exhibit D. The furnishing of such Resident Project Representative service will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
 3. *Selecting Independent Testing Laboratory.* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, paragraph B.2.01.O.
 4. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site. If RPR services are provided by Engineer, ensure RPR attends Pre-Construction Conference.
 5. *Schedules.* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
 6. *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
 7. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, but at least monthly, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond

the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
8. *Defective Work.* Recommend to Owner that Contractor's Work be rejected while it is in progress if, on the basis of Engineer's observations, Engineer believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
9. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Orders authorizing minor variations in the Work from the requirements of the Contract Documents.
10. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
11. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
12. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A.2.01.A.23 of this Exhibit A.
13. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.

14. *Disagreements between Owner and Contractor.* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
15. *Applications for Payment.* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
 - By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
16. *Contractor's Completion Documents.* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A.1.05.A.11, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in paragraph A.1.05.A.11.
17. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner, the Agency's representative, and Contractor, conduct a pre-final inspection to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner, Agency, and Contractor.
18. *Record Drawings.* Prepare and furnish to Owner a set of reproducible Project Record Drawings showing appropriate record information based on Record Drawing information from Contractor and Project documentation received from RPR.

19. *Additional Tasks.* Perform or provide the following additional Construction Phase tasks or deliverables: [here list any such tasks or deliverables].
20. *Final Notice of Acceptability of the Work.* In company with Owner's and Agency's representative, conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of paragraph A.1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.
- B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in paragraph A.1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction-Phase services are required after the original date for final completion of the Work as set forth in the construction Contract.
- C. *Limitation of Responsibilities.* Engineer shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A.1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner, Engineer, during the Post-Construction Phase, shall:
1. Provide assistance in connection with the adjusting of Project equipment and systems.
 2. Assist Owner in training Owner's staff to operate and maintain Project equipment and systems.
 3. Assist Owner in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.
 4. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
 5. Perform or provide the following additional Post-Construction Phase tasks or deliverables:
 6. [here list any such tasks or deliverables].
 7. In company with Owner or Owner's representative, provide an inspection of the Project within one month before the end of the Correction Period for Contractor's Work to ascertain whether any portion of the Work is subject to correction.
- B. The Engineer shall provide a total of _____ hours of assistance and necessary reimbursable expenses in providing services during the Post-Construction Phase.
- C. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Construction Contract's Correction Period.

PART 2 – ADDITIONAL SERVICES

A.2.01 *Additional Services Requiring Owner's Advance Written Authorization and Agency's Concurrence*

- A. If authorized in writing by Owner, with Agency concurrence, Engineer shall furnish or obtain from others Additional Services of the types listed below.
1. Preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project (which are not part of Basic Services).
 2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control. Redesign to reduce Project costs to within the funds available as stated in Exhibit F shall not be considered Additional Services.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in paragraph A.1.01.A.4.
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 6. Providing renderings or models for Owner's use.
 7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
 8. Furnishing services of Engineer's Consultants for other than Basic Services.
 9. Services attributable to more prime construction contracts than specified in paragraph A.1.03.C.
 10. Services (which are not part of Basic Services) during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
 11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
 12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
 13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.

14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F. Rebidding or renegotiating contracts to reduce the contract costs to funds available as stated in Exhibit F shall not be considered Additional Services.
15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A.1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
16. Providing Construction Phase services beyond the Contract Times set forth in Exhibit C.
17. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
18. Preparation of operation and maintenance manuals.
19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
21. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.
22. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner so as to make compensation commensurate with the extent of the Additional Services rendered.
23. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
24. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) the presence at the Site of any Constituent of Concern, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
25. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
26. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

SUGGESTED FORMAT
(for use with E-510, 2002 Edition)

This is **EXHIBIT B**, consisting of pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.

- B.2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:
- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
 - B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
 - C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas, if not part of Engineer's services.
 - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
 - D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
 - E. Furnish as appropriate other services or authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
 - F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Provide, as required for the Project:
1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
 4. Placement and payment for advertisement for Bids in appropriate publications.
- J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- L. If Resident Project Representative services are not to be provided pursuant to paragraph A.1.05.A.2 or otherwise, provide a qualified representative to observe the progress and quality of the Work.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- P. Provide inspection or monitoring services by an individual or entity other than Engineer (and disclose the identity of such individual or entity to Engineer) as Owner determines necessary to verify:
1. that Contractor is complying with any Laws or Regulations applicable to Contractor's performing and furnishing the Work; or
 2. that Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to paragraphs B.2.01.O and P.
- R. Perform or provide the following additional services: [here list any such tasks or deliverables].

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**COMPENSATION DECISION GUIDE
FOR USE WITH EXHIBIT C TO EJCDC E-510, 2002 EDITION**

1. Compensation for Basic Services (not including Resident Project Representative Services)

Decision Question: Which method of compensation is to be used?

	Lump Sum	Standard Hourly Rates	Percent of Construction Costs
Use These Sheets	Sheets C-2 and C-3	Sheets C-4 and C-5	Sheets C-6 and C-7
Use This Appendix	N/A	Appendices 1 (C-13) and 2 (C-14)	N/A

2. Compensation for Resident Project Representative Services

Decision Question: Which method of compensation is to be used?

	Lump Sum	Standard Hourly Rates	Percent of Construction Costs
Use These Sheets	Sheet C-8	Sheets C-9 and C-10	Sheet C-11
Use This Appendix	N/A	Appendices 1 (C-13) and 2 (C-14)	N/A

3. Compensation for Additional Services

Compensation for Additional Services shall be based on standard hourly rates.

	Standard Hourly Rates
Use These Sheets	Sheet C-12
Use This Appendix	Appendices 1 (C-13) and 2 (C-14)

Example: If Basic Services (other than RPR Services) will be compensated using Lump Sum; RPR Services using Percent of Construction Costs; and Additional Services using Standard Hourly Rates; then use only Sheets C-2 and C-3; C-11; C-12; Appendix 1 (Sheet C-13), and Appendix 2 (Sheet C-14) to form Exhibit C.

SUGGESTED FORMAT
(for use with E-510, 2002 Edition)

This is **EXHIBIT C**, consisting of ____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C.2.01 Compensation for Basic Services (other than Resident Project Representative Services) – Lump Sum Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. For services performed or furnished under paragraph A.1.01, the Lump Sum amount of _____ Dollars (\$____) after the Study and Report Phase Services are considered complete as defined in Exhibit A.
 2. For services performed or furnished under paragraphs A.1.02 through A.1.06 (excluding the services of the Resident Project Representative), the Lump Sum amount of _____ Dollars (\$____).
 3. The Lump Sum compensation for services performed or furnished under paragraphs A.1.02 through A.1.06 shall be payable as follows:
 - a. A sum which equals 30 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, above, after the Preliminary Design Phase documents are revised and submitted to Owner (and Agency, if required).
 - b. A sum which, together with the compensation provided under paragraph C.2.01.A.3.a, equals 50 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, after the Final Design Phase documents are completed and submitted to Owner and Agency.
 - c. A sum which, together with the compensation provided under paragraph C.2.01.A.3.a and b, equals 70 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, after Final Design Phase services are considered complete as defined in Exhibit A.
 - d. A sum which, together with the compensation provided in paragraphs C.2.01.A.3.a, b, and c, equals 80 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2, after Bidding or Negotiating Phase services are considered complete as defined in Exhibit A.
 - e. A sum equal to 15 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2 will be paid for general engineering review of the Contractor's Work during the construction period on percentage ratios identical to those approved by the Engineer as a basis upon which to make partial payments to the Contractor(s). Payments will be made on a monthly basis. However, payment under this paragraph will be in an amount such that the aggregate of the sums paid to the Engineer under paragraphs C.2.01.A.3.a through C.2.01.A.3.e will equal 95 percent of the Lump Sum amount stipulated in paragraph C.2.01.A.2.

(Exhibit C – Compensation for Basic Services (other than Resident Project Representative Services) –
Lump Sum Method of Payment

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- f. A final payment which, together with the compensation provided in paragraphs C.2.01.A.3.a through C.2.01.A.3.e, equals 100 percent of the Lump Sum compensation payable under paragraph C.2.01.A.2. shall be made when it is determined that all services required under paragraphs A.1.02 through A.1.05 have been completed. Such payment includes payment for Post-Construction Phase services under paragraph A.1.06. Engineer remains responsible to Owner for the technical adequacy and completeness of such services.
4. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
- B. Period of Service. The compensation amount stipulated in paragraph C.2.01.A.2 is conditioned on a period of service not exceeding _____ months. Should such period of service be extended, the compensation amount for Engineer's services shall be appropriately adjusted.

C.2.02 [Not Used]

C.2.03 [Not Used]

(Exhibit C – Compensation for Basic Services (other than Resident Project Representative Services) –
Lump Sum Method of Payment

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SUGGESTED FORMAT
(for use with E-510, 2002 Edition)

This is **EXHIBIT C**, consisting of ____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C.2.01 Compensation for Basic Services (other than Resident Project Representative Services) – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultant’s charges, if any.
2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
3. The total compensation for services under paragraph C.2.01 is estimated to be \$_____ based on the following assumed distribution of compensation:

a. Study and Report Phase	\$ _____
b. Preliminary Design Phase	\$ _____
c. Final Design Phase	\$ _____
d. Bidding or Negotiating Phase	\$ _____
e. Construction Phase	\$ _____
f. Post Construction	\$ _____
4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner, with Agency concurrence.
5. The total estimated compensation for Engineer’s services included in the breakdown by phases as noted in paragraph C.2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer’s Consultant’s charges.
6. The amounts billed for Engineer’s services under paragraph C.2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer’s Consultant’s charges.
7. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Engineer.

C.2.02 Compensation for Reimbursable Expenses

A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.

(Exhibit C – Compensation for Basic Services (other than Resident Project Representative Services) –
Standard Hourly Rates Method of Payment

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- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a Factor of _____.

C.2.03 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a Factor of _____.
- B. Factors. The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. Estimated Compensation Amounts
 - 1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - 2. Engineer is responsible for monitoring charges being generated under this Agreement. When estimated amounts for total compensation or individual phases of the work have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

SUGGESTED FORMAT
(for use with E-510, 2002 Edition)

This is **EXHIBIT C**, consisting of ____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C.2.01 Compensation for Basic Services (other than Resident Project Representative Services) – Percentage of Construction Cost Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. For services performed or furnished under paragraph A.1.01, the Lump Sum amount of _____ Dollars (\$____) after the Study and Report Phase Services are considered complete as defined in Exhibit A.
 2. For services performed or furnished under paragraphs A.1.02 through A.1.06 (excluding the services of the Resident Project Representative), an amount equal to ____ percent of the Construction Cost. Accordingly the estimated total compensation will be \$_____.
 3. The Percent of Construction Cost compensation for services performed or furnished under paragraphs A.1.02 through A.1.06 shall be payable as follows:
 - a. A sum which equals 30 percent of the total compensation payable under paragraph C.2.01.A.2, after the Preliminary Design Phase documents are revised and submitted to Owner (and Agency, if required).
 - b. A sum which, together with the compensation provided under paragraph C.2.01.A.3.a, equals 50 percent of the total compensation payable under paragraph C.2.01.A.2, after the Final Design Phase documents are completed and submitted to Owner and Agency.
 - c. A sum which, together with the compensation provided under paragraph C.2.01.A.3.a and b, equals 70 percent of the total compensation payable under paragraph C.2.01.A.2, after Final Design Phase services are considered complete as defined in Exhibit A.
 - d. A sum which, together with the compensation provided in paragraphs C.2.01.A.3.a, b, and c, equals 80 percent of the total compensation payable under paragraph C.2.01.A.2, after Bidding or Negotiating Phase services are considered complete as defined in Exhibit A.
 - e. A sum equal to 15 percent of the total compensation payable under paragraph C.2.01.A.2 will be paid for general engineering review of the Contractor's Work during the construction period on percentage ratios identical to those approved by the Engineer as a basis upon which to make partial payments to the Contractor(s). Payments will be made on a monthly basis. However, payment under this paragraph and of such additional sums as are due the Engineer by reason of any necessary adjustments in the payment computations will be in an amount so that the aggregate of the sums paid to the Engineer under paragraphs C.2.01.A.3.a through C.2.01.A.3.e will equal 95 percent of the total compensation payable under paragraph C.2.01.A.2 as appropriately adjusted to reflect the actual Construction Cost incurred by Owner.

(Exhibit C – Compensation for Basic Services (other than Resident Project Representative Services) –
Percentage of Construction Cost Method of Payment

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- f. A final payment which, together with the compensation provided in paragraphs C.2.01.A.3.a through C.2.01.A.3.e, equals 100 percent of the total compensation payable under paragraph C.2.01.A.2, shall be made when it is determined that all services required by this Agreement under paragraphs A.1.02 through A.1.05 have been completed. Such payment includes payment for Post Construction phase services under paragraph A.1.06. Engineer remains responsible to Owner for the technical adequacy and completeness of such services.
4. Progress invoicing prior to award of the Construction Agreement shall be based on Engineer's most recent estimate of probable Construction Cost for the Project, with appropriate adjustment upon award of the Construction Agreement(s). The initial construction award amount shall set the percentage figure to be applied in making such adjustments, and shall remain constant thereafter regardless of the impact of Change Orders. Final invoicing shall be based on final Construction Cost, including all Change Orders.
5. As a basis for payment to Engineer, Construction Cost will be based on one or more of the following determinations with precedence in the order listed for Work designed or specified by Engineer:
- a. For Work designed or specified and incorporated in the completed Project, the actual final cost of the work performed by Contractor and paid by Owner.
 - b. For Work designed or specified but not constructed, the lowest bona fide Bid received from a qualified bidder for such Work; or, if the Work is not bid, the lowest bona fide negotiated proposal for such Work.
 - c. For Work designed or specified but not constructed upon which no such Bid or proposal is received, Engineer's most recent opinion of probable Construction Cost.
 - d. Labor furnished by Owner for the Project will be included in the Construction Cost at current market rates including a reasonable allowance for overhead and profit. Materials and equipment furnished by Owner will be included at current market prices.
 - e. No deduction is to be made from Engineer's compensation on account of any penalty, liquidated damages, or other amounts withheld from payments to Contractor(s).

C.2.02 [Not used]

C.2.03 [Not used]

SUGGESTED FORMAT
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C.2.04 *Compensation for Resident Project Representative Services – Lump Sum Method of Payment*

A. Owner shall pay Engineer for Resident Project Representative Services as follows:

1. *Resident Project Representative Services.* For services of Engineer's Resident Project Representative, if any, under paragraph A.1.05 of Exhibit A, the Lump Sum amount of \$____. The Lump Sum includes compensation for the Resident Project Representative's services, and for the services of any direct assistants to the Resident Project Representative. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses related to the Resident Project Representative's Services.
2. The total compensation for Resident Project Representative services is predicated on the Contract Times not exceeding ____ months and such compensation shall not be exceeded without written approval of Owner and concurrence of Agency.
3. Payment for Resident Project Representative Services shall be on a monthly basis prorated according to the number of months stated in C.2.04.A.2.

SUGGESTED FORMAT
(for use with E-510, 2002 Edition)

C.2.04 *Compensation For Resident Project Representative Services – Standard Hourly Rates Method of Payment*

A. Owner shall pay Engineer for Resident Project Representative Services as follows:

1. *Resident Project Representative Services.* For services of Engineer's Resident Project Representative, if any, under paragraph A.1.05A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$_____ based upon Contract Times as set forth herein.

B. Compensation for Reimbursable Expenses

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under paragraph C.2.01, and are directly related to the provision of Resident Project Representative Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a Factor of _____.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Engineer.

C. Other Provisions Concerning Payment Under this Paragraph C.2.04

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a Factor of _____.
2. Factors. The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. Estimated Compensation Amounts
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. Engineer is responsible for monitoring charges generated under this Agreement. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed

and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed.

4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

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SUGGESTED FORMAT
(for use with E-510, 2002 Edition)

C.2.04 *Compensation for Resident Project Representative Services – Percentage of Construction Cost Method of Payment*

A. Owner shall pay Engineer for:

1. *Resident Project Representative Services.* For services of Engineer's Resident Project Representative, if any, under paragraph A.1.05 of Exhibit A of the Agreement, an amount equal to ____ percent of the Construction Cost. This amount includes compensation for Resident Project Representative's services, and those of any assistants to the Resident Project Representative. The percentage of Construction Cost noted herein accounts for labor, overhead, profit, and Reimbursable Expenses.
2. The total compensation for Resident Project Representative services is predicated on the Contract Times not exceeding ____ months and such compensation shall not be exceeded without written approval of Owner and concurrence of Agency.
3. Payment for Resident Project Representative Services shall be on a monthly basis prorated according to the number of months stated in C.2.04.A.2.
4. As a basis for payment to Engineer, Construction Cost will be based on one or both of the following determinations. No deduction is to be made from Engineer's compensation on account of any penalty, liquidated damages, or other amounts withheld from payments to Contractor(s).
 - a. For Work incorporated in the completed Project but not limited to that furnished by Owner itself, the current market value of the labor material, and equipment furnished.
 - b. For other Project construction, including but not limited to that furnished by Owner itself, the current market value of the labor, materials, and equipment furnished.

SUGGESTED FORMAT
(for use with E-510, 2002 Edition)

C.2.05 *Compensation for Additional Services – Standard Hourly Rates Method of Payment*

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General.* For services of Engineer's employees engaged directly on the Project pursuant to paragraph A.2.01 or A.2.02 of Exhibit A, except for services as a consultant or witness under paragraph A.2.01.A.20, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$_____ and this amount shall not be exceeded without written approval of Owner and concurrence of Agency.

B. Compensation for Reimbursable Expenses

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under paragraph C.2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a Factor of _____.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Engineer.

C. Other Provisions Concerning Payment For Additional Services

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a Factor of _____.
2. *Factors.* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of ____ pages, referred to in and part of the **Agreement Between Owner and ENGINEER for Professional Services** dated _____.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

FAX	\$ _____/page
8½"x11" Copies/Impression	\$ _____/page
Blue Print Copies	\$ _____/sq. ft.
Reproducible Copies (Mylar)	\$ _____/sq. ft.
Reproducible Copies (Paper)	\$ _____/sq. ft.
Mileage (auto)	\$ _____/mile
Field Truck Daily Charge	\$ _____/day
Mileage (Field Truck)	\$ _____/mile
Field Survey Equipment	\$ _____/day
Confined Space Equipment	\$ _____/day plus expenses
Resident Project Representative Equipment	\$ _____/month
Computer CPU Charge	\$ _____/hour
Specialized Software	\$ _____/hour
Personal Computer Charge	\$ _____/hour
CAD Charge	\$ _____/hour
CAE Terminal Charge	\$ _____/hour
VCR and Monitor Charge	\$ _____/week, or \$ _____/month
Video Camcorder	\$ _____/day, plus \$ _____/tape
Electrical Meters Charge	\$ _____/week, or \$ _____/month
Flow Meter Charge	\$ _____/week, or \$ _____/month
Rain Gauge	\$ _____/week, or \$ _____/month
Sampler Charge	\$ _____/week, or \$ _____/month
Dissolved Oxygen Tester Charge	\$ _____/week
Fluorometer	\$ _____/week
Laboratory Pilot Testing Charge	\$ _____/week, or \$ _____/month
Soil Gas Kit	\$ _____/day
Submersible Pump	\$ _____/day
Water Level Meter	\$ _____/day, or \$ _____/month
Soil Sampling	\$ _____/sample
Groundwater Sampling	\$ _____/sample
Health and Safety Level D	\$ _____/day
Health and Safety Level C	\$ _____/day
Electronic Media Charge	\$ _____/hour
Long Distance Phone Calls	at cost
Mobile Phone	\$ _____/day
Meals and Lodging	at cost

(Appendix 1 to Exhibit C – Reimbursable Expenses Schedule)

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This is **Appendix 2 to EXHIBIT C**, consisting of ____ pages, referred to in and part of the **Agreement Between Owner and Engineer for Professional Services** dated _____.

Standard Hourly Rates Schedule

A. Standard Hourly Rates

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Engineer.
3. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule

Hourly rates for services performed on or after the date of Agreement are:

Billing Class 9	Senior Associate	\$ _____/hour
Billing Class 8	Staff Manager	\$ _____/hour
Billing Class 7	Professional VI	\$ _____/hour
Billing Class 6	Professional V	\$ _____/hour
Billing Class 5	Professional IV	\$ _____/hour
Billing Class 4	Professional III	\$ _____/hour
Billing Class 3	Professional II	\$ _____/hour
Billing Class 2	Technician II	\$ _____/hour
Billing Class 1	Technician I	\$ _____/hour
Principal		\$ _____/hour
Support Staff		\$ _____/hour

(Appendix 2 to Exhibit C – Standard Hourly Rates Schedule)

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This is **EXHIBIT D**, consisting of pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Note to User: Delete this Exhibit D if Engineer will not be providing Resident Project Representative Services under paragraph A.1.05.

Duties, Responsibilities and Limitations of Authority of Resident Project Representative

Paragraph 1.01.A of the Agreement is amended and supplemented to include the following agreement of the parties:

D.1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative (“RPR”), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D shall provide full time representation unless representation to a lesser degree is approved by Agency.
- B. Through such additional observations of Contractor’s work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor’s work in progress, supervise, direct, or have control over the Contractor’s work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor’s work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor’s performing and furnishing the Work, or responsibility for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in section A.1.05 of Exhibit A of the Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR is Engineer’s agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions. RPR’s dealings in matters pertaining to the Contractor’s work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary. RPR’s dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 - 4. *Liaison:*
 - a. Serve as Engineer’s liaison with Contractor, working principally through Contractor’s superintendent, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner’s liaison with Contractor when Contractor’s operations affect Owner’s on-Site operations.

- c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. *Inspections, Tests, and System Startups:*
 - a. Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
 - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.
10. *Records:*
 - a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and

interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.


- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
 - c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
 - d. Maintain records for use in preparing Project documentation.
 - e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
11. *Reports:*
- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
 - b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
 - d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
12. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
14. *Completion:*
- a. Participate in a Substantial Completion (pre-final) inspection, and assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
 - b. Observe Contractor-arranged inspections required by Laws and Regulations applicable to the Work, including but not limited to those performed by public agencies having jurisdiction over the Work.
 - c. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
 - d. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including “or-equal” items).
2. Exceed limitations of Engineer’s authority as set forth in the Agreement or the Contract Documents.
3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor’s superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor’s work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

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This is **EXHIBIT E**, consisting of  pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT: _____

OWNER: _____

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION: _____

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT: _____

CONSTRUCTION CONTRACT DATE: _____

ENGINEER: _____

To: _____
OWNER

And To: _____
AGENCY

And To: _____
CONTRACTOR

The Engineer hereby gives notice to the above Owner, Agency, and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, and the terms and conditions set forth on the reverse side of this Notice.

By: _____

Title: _____

Dated: _____

(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work (“Notice”) on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer’s knowledge, information, and belief as of the date hereof.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor’s work) under Engineer’s Agreement with Owner and under the Construction Contract referred to on the front side of this Notice, and applies only to facts that are within Engineer’s knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor’s performance under the Construction Contract referred to on the front side of this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

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This is **EXHIBIT F**, consisting of pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Construction Cost Limit

Paragraph 5.02 of the Agreement is amended and supplemented to include the following agreement of the parties:

F.5.02 Designing to Construction Cost Limit

- A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of Dollars (\$_____).
- B. A bidding or negotiating contingency of _____ percent will be added to any Construction Cost limit established.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit.
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit.
- G. All services of Engineer in respect of paragraph F.5.02.F shall be at the sole expense of Engineer. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost.

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This is **EXHIBIT G**, consisting of _____ pages, referred to in and part of the
Agreement between Owner and Engineer for Professional Services
dated _____.

Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties:

G.6.04 *Insurance*

A. The limits of liability for the insurance required by paragraph 6.04 and 6.04.B of the Agreement are as follows:

1. By Engineer:

- | | |
|--|-----------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability – | |
| 1) Each Accident: | \$ _____ |
| 2) Disease, Policy Limit: | \$ _____ |
| 3) Disease, Each Employee: | \$ _____ |
| c. General Liability – | |
| 1) Each Occurrence (Bodily Injury and
Property Damage): | \$ _____ |
| 2) General Aggregate: | \$ _____ |
| d. Excess Umbrella Liability – | |
| 1) Each Occurrence: | \$ _____ |
| 2) General Aggregate: | \$ _____ |
| e. Automobile Liability | |
| 1) Bodily Injury: | |
| a) Each Accident | \$ _____ |
| 2) Property Damage | |
| a) Each Accident | \$ _____ |
| | [or] |
| 1) Combined Single Limit
(Bodily Injury and Property Damage): | |
| a) Each Accident | \$ _____ |
| f. Professional Liability Insurance | \$ _____ |
| 1) Each Claim Made: | \$ _____ |
| 2) Annual Aggregate: | \$ _____ |
| g. Other (specify): | \$ _____ |
| _____ | |

2. By Owner:

- a. Workers' Compensation: Statutory
 - b. Employer's Liability –
 - 1) Each Accident: \$ _____
 - 2) Disease, Policy Limit: \$ _____
 - 3) Disease, Each Employee: \$ _____
 - c. General Liability –
 - 1) General Aggregate: \$ _____
 - 2) Each Occurrence (Bodily Injury and Property Damage): \$ _____
 - d. Excess Umbrella Liability –
 - 1) Each Occurrence: \$ _____
 - 2) General Aggregate: \$ _____
 - e. Automobile Liability –
 - 1) Bodily Injury:
 - a) Each Accident \$ _____
 - 2) Property Damage
 - a) Each Accident \$ _____
- [or]*
- 3) Combined Single Limit (Bodily Injury and Property Damage):
 - a) Each Accident \$ _____
 - f. Other (specify): \$ _____

B. Additional Insureds.

1. The following persons or entities are to be listed on Owner's general liability and property policies of insurance as additional insureds, as provided in paragraph 6.04.B:
 - a. _____
Engineer
 - b. _____
Engineer's Consultant
 - c. _____
Engineer's Consultant
2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in paragraph 6.04.A.

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This is **EXHIBIT H**, consisting of _____ pages, referred to in and part of the
Agreement between Owner and Engineer for Professional Services
dated _____.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

H.6.08 *Dispute Resolution*

- A. Mediation. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by _____ *[insert name of mediator, or mediation service]*.

If such mediation is unsuccessful in resolving a Dispute, then (1) all dispute in which more than \$200,000 is in controversy may be resolved only by a court of competent jurisdiction, (2) for disputes of less than \$200,000, the parties may mutually agree to a dispute resolution method of their choice, including but not limited to arbitration pursuant to the terms of paragraph H.6.08.B or (3) in any case either party may seek to have the Dispute resolved by a court of competent jurisdiction.

- B. Arbitration. If the parties mutually agree, and the amount in controversy is less than \$200,000 the Disputes between Owner and Engineer shall be settled by arbitration in accordance with the _____ *[here insert the name of a specified arbitration service or organization]* rules effective at the Effective Date of the Agreement, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this paragraph H.6.08.A will be specifically enforceable under prevailing law of any court having jurisdiction.

1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the _____ *[specified arbitration service or organization]*. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$_____ (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$_____ (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$_____ (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.
3. The award rendered by the arbitrators shall be in writing, and shall include: (a) a precise breakdown of the award; and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.
4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.

5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, subcontractor, or consultants to the Owner or Engineer (each a “Joinable Party”), either Owner or Engineer may join each Joinable Party as a party to the arbitration between Owner and Engineer hereunder, and Engineer or Owner, as appropriate, shall include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between Owner and Engineer involving the work of such Joinable Party. Nothing in this paragraph H.6.08.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.

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This is **EXHIBIT I**, consisting of  pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.


Initial: _____
Owner _____
Owner's Consultant _____

Special Provisions

Paragraph(s) _____ of the (is) (are) amended to include the following agreement(s) of the parties:

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This is **EXHIBIT J**, consisting of  pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

AMENDMENT TO OWNER-ENGINEER AGREEMENT

1. Background Data

- a. Effective Date of Owner-Engineer Agreement:
- b. Owner:
- c. Engineer:
- d. Project:

2. Nature of Amendment *[Check those that are applicable and delete those that are inapplicable.]*

- Additional Services to be performed by Engineer
- Modifications to Services of Engineer
- Modifications to Responsibilities of Owner
- Modifications to Payment to Engineer
- Modifications to Time(s) for rendering Services
- Modifications to other terms and conditions of the Agreement

3. Description of Modifications

Attachment 1, "Modifications"

[List other Attachments, if any]

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:

ENGINEER:


By: _____
Title: _____
Date Signed: _____

By: _____
Title: _____
Date Signed: _____

AGENCY CONCURRENCE

Agency: _____
By (Signature): _____
Typed Name: _____
Title: _____
Date: _____

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This is **Attachment 1**, consisting of  pages, to Amendment No. _____, dated _____.

Modifications

[Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

1. Engineer shall perform the following Additional Services:

2. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:

3. The responsibilities of Owner are modified as follows:

4. For the additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

5. The schedule for rendering services is modified as follows:

6. Other portions of the Agreement (including previous amendments, if any) are modified as follows: