UNITED STATES DEPARTMENT OF AGRICULTURE
Rural Utilities Service RUS
Iowa Rural Development
Supplement to RUS Bulletin 1780-26, dated 4/11/14

SUBJECT: Guidance for the use of Engineers Joint Contract Documents Committee (EJCDC) documents Water and Waste Disposal Projects with RUS Financial Assistance.

TO: Applicants and Project Engineers

EFFECTIVE DATE: July 21, 2014

AVAILABILITY: This Supplement and related documents are available on the Iowa Rural Development website at http://www.rurdev.usda.gov/IA_we_ContractDocs.html

PURPOSE: The attached Bulletin assists Applicants and Project Engineers in the development of engineering agreements and construction contracts that are legally sufficient, ensure appropriate services are provided at a reasonable fee, and expedite the achievement of the Applicant's goals.

ENGINEERING AGREEMENT ADDITIONAL INFORMATION REQUIRED: Iowa Rural Development requests that the fees be separated to identify all costs. The following information is required with the Engineering Agreement documents to identify all costs:

a. Basic Services:
   1. If reimbursable expenses are in Basic Services, the total reimbursable cost for Basic Services must be shown separately on Appendix 1 to Exhibit C.

b. Resident Project Representative services:
   1. If a Resident Project Representative is proposed, indicate on the Standard Hourly Rate Schedule, Appendix 2 to Exhibit C the exact billing class for RPR services for this specific project.
   2. If reimbursable expenses are included in the RPR total compensation shown in C2.04.A.1, the total reimbursable costs for RPR services must be shown separately on Appendix 1 to Exhibit C.

c. Additional Services:
   1. If Additional Services are planned for the project, the costs need to be itemized in the Agreement. By itemizing the services and cost they are preapproved as required in A2.02A. Following is a sample format for showing Additional Services:

a. Operation and Maintenance manual (LS-HR)	$ _____
b. Property surveys (LS-HR)	$ _____
c. Soil testing (LS)	$ _____
d. Easement work (LS-HR)	$ _____
e. Construction survey (LS-HR)	$ _____
f. Other (LS-HR) _____	$ _____
g. Other (LS-HR) _____	$ _____
Total Compensation for Additional Services	$_____

The individual itemized amounts shall not be exceeded without prior Owner and RD concurrence. Reimbursable expenses are included in each itemized cost (note if lump sum (LS) or hourly rate (HR)).

UNITED STATES DEPARTMENT OF AGRICULTURE
Rural Utilities Service
RUS BULLETIN 1780-26

SUBJECT: **Guidance for the Use of Engineers Joint Contract Documents Committee (EJCDC) Documents on Water and Waste Disposal Projects with RUS Financial Assistance**

TO: Rural Development State Directors, RUS Program Directors, and State Engineers

EFFECTIVE DATE: Date of approval. See "Use of Prior Versions of EJCDC Documents" on page three.

OFFICE OF PRIMARY INTEREST: Engineering and Environmental Staff, Water and Environmental Programs

INSTRUCTIONS: This Bulletin replaces RUS Bulletin 1780-26, dated August 20, 2009, and revised October 2009.

AVAILABILITY: This Bulletin, as well as any Rural Development instruction or Rural Utilities Service instructions, regulations, or forms referenced in this Bulletin are available at any Rural Development State Office. The State Office staff is familiar with the use of the documents in their States and can answer specific questions on Rural Development requirements.

This Bulletin is available on the Rural Utilities Service website at http://www.rurdev.usda.gov/RDU_Bulletins_Water_and_Environmental.html

PURPOSE: This Bulletin assists Rural Development staff in providing information and guidance to applicants and professional consultants in the development of engineering agreements and construction contracts that are legally sufficient, ensure appropriate services are provided at a reasonable fee, and expedite the achievement of the applicant's goals.

MODIFICATIONS: Rural Development State Offices may modify this guidance when appropriate to comply with state statutes and regulations in accordance with the procedures outlined at Rural Development Instruction 2006-B (2006.55).

4/11/14

JACQUELINE M. PONTI-LAZARUK
Water and Environmental Programs

Date

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Agreement for Engineering Services
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ABBREVIATIONS

CFR – Code of Federal Regulations
EJCDC – Engineers Joint Contract Documents Committee
EO – Executive Order
OGC – Office of General Counsel
PL – Public Law
RD – Rural Development
RPR – Resident Project Representative
RUS – Rural Utilities Service
USC – United States Code
USDA – United States Department of Agriculture
WWD – Water and Waste Disposal

1 GENERAL

a Approved Documents. Subject to the modifications indicated in this Bulletin, the Engineers Joint Contract Documents Committee (EJCDC) developed the following documents which were previously approved by the Rural Utilities Service (RUS) for procurement of professional and construction services by loan and grant recipients:

(1) Agreement between Owner and Engineer for Professional Services (EJCDC No. E-500, 2014 Edition)

(2) Agreement between Owner and Contractor for Construction Contract (Stipulated Price) (EJCDC No. C-520, 2013 Edition)

(3) Standard General Conditions of the Construction Contract (EJCDC No. C-700, 2013 Edition)

b Associated Documents. In addition to items 2 and 3, there are also associated construction contract documents, some of which are available through EJCDC and its member organizations and some of which are to be developed by the engineer based on instructions in this Bulletin.

c Alternative Documents. Recipients not wishing to use EJCDC documents may submit alternative documents for review and consideration. Such documents must be modified to meet all federal and state requirements and must be approved for each project by the Agency and the USDA Office of General Counsel (OGC). When modified as described in this Bulletin, the EJCDC documents listed above have been determined to meet such requirements and generally do not require OGC approval.

2 AVAILABILITY

The EJCDC documents are available online from any of the sponsoring organizations: the National Society of Professional Engineers (www.nspe.org); American Council of Engineering Companies (www.acec.org); and American Society of Civil Engineers (www.asce.org); or directly from EJCDC (www.ejcdc.org). EJCDC documents are proprietary and include a license agreement. RUS offices will not distribute EJCDC documents for any purpose other than training or to illustrate the appropriate use of the integrated set of documents on RUS financially assisted projects.

3 USE OF PRIOR VERSIONS OF EJCDC DOCUMENTS

a Acceptable Use. Although this Bulletin is effective on the date signed, older versions of EJCDC documents may be used in the following circumstances as follows:

(1) Project-specific EJCDC documents approved prior to the effective date of this Bulletin are still considered approved. This Bulletin does not retroactively change the status of an individual document already approved.

(2) Project-specific EJCDC documents previously submitted to a Rural Development (RD) office or submitted up to 60 calendar days after the effective date of this Bulletin may be approved at the discretion of the approving official.

(3) If a set of construction contracts is approved for a project within 60 days of the effective date of this Bulletin or was approved before the effective date of this Bulletin, the associated documents from the same EJCDC construction series may be used during the construction project.

d Approval of Previous Engineering Agreements. The approval of a previous edition EJCDC engineering agreement before the cut-off date does not enable the continued use of previous edition construction documents for that project.

e Phase Out of Previous Editions. After 60 days have passed from the effective date of this Bulletin, EJCDC documents from any and all previous versions of EJCDC documents must not be approved by RD staff for use on Water and Waste Disposal (WWD) projects. RD staff should use this time to notify all stakeholders that previous versions of EJCDC documents will no longer be accepted.

4 PURPOSE

a Use by Staff. This Bulletin is to be used by Rural Development staff in providing information and guidance to applicants and professional consultants in the development of agreements that are legally sufficient, ensure appropriate services are provided for a reasonable fee, and expedite the achievement of the applicant's goals.

b Assembly of Documents. This Bulletin consists of exhibits with required modifications that when combined with the standard EJCDC documents and appropriate drawings, specifications and other required documents, create a complete set of engineering and construction contracts for use with WWD projects. However, the documents in these exhibits are not to be used as a substitute for the careful evaluation of the requirements for a project. The owner, their engineer, and legal counsel, with RD consultation, must determine the best approach for a successful outcome.

5 OWNER RESPONSIBILITY

a Verify Bulletin is Current. Before an applicant or consultant proceeds with the development of an engineering agreement or a set of construction contract documents, they should contact the Rural Development State Office to verify they have the most current information specific to the type of project and state or other jurisdiction where the project is located.

b Contractual and Administrative Issues. The Owner is responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of a loan or grant. These include, but are not limited to: source evaluation; protests; disputes; and claims. Matters concerning violations of laws are to be referred to the applicable local, state, or Federal authority.

c Modifications. It is RUS policy that applicants use the EJCDC documents with minimal modification. However, RUS recognizes each project is unique and that modifications may be required to satisfy project requirements or state statutes. If changes must be made to the standard documents to address project-specific issues, they must be made via bold type additions and deletions with strike-outs or addenda showing all revisions. Because the EJCDC documents are fully integrated, when making a modification in one document applicants must ensure that appropriate modifications are made in all affected documents.

6 USE OF EXHIBITS

The following explains the purpose of each Exhibit to this Bulletin.

a THE ENGINEERING AGREEMENT - MODIFICATIONS FOR RUS FUNDED PROJECTS: This exhibit explains the use of the EJCDC Owner – Engineer Agreement for RUS funded projects and includes instructions for modification and review of the Agreement Between Owner and Engineer for Professional Services (EJCDC E-500)

b REVISIONS TO EJCDC E-500: This exhibit contains the list of revisions to the E-500 (2014), “Agreement Between Owner and Engineer for Professional Services” for RUS funded WWD projects. The exhibit consists of a checklist of changes that must be made to the standard EJCDC documents to ensure they comply with Agency requirements. The actual changes must be made using either bold type additions and deletions with strike-outs or addenda showing all revisions.

c RUS CERTIFICATION PAGE: This exhibit consists of a certification, to be signed by the engineer and owner, stating the fees for engineering services and certifying that the required changes were made to the Owner – Engineer Agreement. This certification is to be attached as the last page of the Owner-Engineer Agreement.

d THE CONSTRUCTION CONTRACT AND BIDDING DOCUMENTS – MODIFICATIONS FOR RUS FUNDED PROJECTS: This exhibit explains the use of the EJCDC construction contract and bidding documents. It includes a table of all the required documents and instruction for modification and review of these documents.

e ENGINEER’S DEVELOPMENT OF INSTRUCTIONS TO BIDDERS: This exhibit contains instructions for the engineer to develop Instructions to Bidders using C-200 (2013), “Suggested Instructions to Bidders” and a checklist of modifications included in the exhibit.

f ENGINEER’S DEVELOPMENT OF BID FORM: This exhibit contains a checklist of changes that must be made by the engineer to the C-410 (2013), “Bid Form for Construction Contracts”.

g ENGINEER’S DEVELOPMENT OF AGREEMENT BETWEEN OWNER AND CONTRACTOR: This exhibit contains a checklist of changes that must be

made by the engineer to C-520 (2013), “Agreement between Owner and Contractor for Construction Contract (Stipulated Price)”.

h ENGINEER’S DEVELOPMENT OF SUPPLEMENTARY CONDITIONS: This exhibit contains instructions for the engineer to develop Supplementary Conditions using C-800 (2013), “Guide to the Preparation of Supplementary Conditions” and a checklist of modifications included in the exhibit.

i CERTIFICATE OF OWNER’S ATTORNEY AND AGENCY CONCURRENCE: This exhibit consists of two certificates, on a single page, to be attached to the construction contract and signed upon execution. The first is a certificate signed by the owner’s attorney and the second is the State Engineer’s concurrence in the executed construction contract. This certificate is to be attached after the Owner-Contractor Agreement (C-520) in the construction contract.

j ENGINEER’S CERTIFICATION OF FINAL PLANS AND SPECIFICATIONS: This exhibit is a certification by the engineer to the owner and RD that the plans and specifications have been completed in accordance with RUS requirements. This certificate is to be provided to the Agency with the final plans and specifications prior to advertisement for bids.

THE ENGINEERING AGREEMENT
MODIFICATIONS FOR RUS FUNDED PROJECTS

1 PURPOSE

This exhibit explains the use of the EJCDC Owner – Engineer Agreement for RUS funded projects and includes instructions for modification and review of the Agreement Between Owner and Engineer for Professional Services (EJCDC E-500)

2 GENERAL INFORMATION

The EJCDC has developed a 2014 edition of the Owner-Engineer Agreement that, when assembled as described in this Bulletin, is acceptable for use on WWD projects funded by RUS.

3 INSTRUCTIONS

a <u>Process:</u> Instructions to modify EJCDC E-500 prior to use on RUS funded WWD projects are as follows:

(1) Engineer must attach the list of "Revisions to the EJCDC E-500" to the Agreement as an addendum or make the specific changes listed using bold type additions and deletions with strike-outs.
(2) Engineer must include the "RUS Certification Page" in the Agreement (Exhibit C of this Bulletin).
(3) Project-specific requirements may be added to Exhibit J of E-500.
(4) Owner and Engineer must select a payment method from Exhibit C of E-500 (see below).
(5) Owner and Engineer must sign the Agreement and complete and sign the RUS Certification Page (Exhibit C of this Bulletin).
(6) Agency must review to ensure changes were made as required or revisions were attached and that the certification is attached, completed, and acceptable.
(7) Agency completes and signs the RUS Certification page.

b <u>Approval</u>. The executed Owner-Engineer Agreement must be approved by Rural Development prior to Agency concurrence in any payment of RUS funding for engineering services.

c <u>Subsurface Utility Data</u>. ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," is mentioned in Exhibits A and B of the Agreement. Note that the use of this ASCE standard is optional, but the scope of engineering services in this Agreement includes the Engineer discussing whether or not the standard will be used on a given project.

d Payment for Services. The standard Exhibit C from E-500, "Payments to Engineer for Services and Reimbursable Expenses," should be used along with the E-500 Owner-Engineer Agreement, but only the following Compensation Packets are allowed for use with RUS funded projects (other compensation packets are not allowed):

(1) Allowed for Basic Services:
Lump Sum (Compensation Packet BC-1)
Standard Hourly Rates (Compensation Packet BC-2)

(2) Allowed for RPR Services:
Lump Sum (Compensation Packet RPR-1)
Standard Hourly Rates (Compensation Packet RPR-2)

(3) Allowed for Additional Services:
Standard Hourly Rates (Compensation Packet AS-1)

f Insurance. Exhibit G (to E-500), "Insurance," amounts should be established by the Owner based on advice from the Owner's attorney or a risk manager hired by the Owner.

g Limitations of Liability. Exhibit I (to E-500), "Limitations of Liability," is not to be used on RUS funded projects. It should be deleted or crossed out by the Engineer and Owner prior to execution of the Agreement.

REVISIONS TO EJCDC E-500

- Amend paragraph 4.01.A by inserting the following text after the first sentence: "Invoices must include a breakdown of services provided."

- In paragraph 6.04.B replace "shall" with "may".

- Modify paragraph 7.01.A.25 by striking ", as an Additional Service."

- Add paragraph 7.01.A.38 to the Agreement as follows:

  Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.

- Add paragraph 8.05 to the Agreement as follows:

  8.05 Federal Requirements

  A. Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 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. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.

  B. Audit and Access to Records. Owner, Agency, the Comptroller General of the United States, 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" if they are recipients of engineering services contracts and subcontracts that exceed $100,000 at any tier. 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 applicable award. 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. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.

- Replace paragraph A1.01.A.1.b with "In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency."

- Delete paragraph A1.01.A.1.c.

- Insert the following additional text at the end of Article A1.01.A.8: "The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency."

- Modify paragraph A1.01.A.10 by inserting "and approved by the Agency" after "When mutually agreed."

- Add the following immediately after paragraph A1.01.A.14: "Provide an Environmental Report as defined at 7 CFR 1794 and RUS Bulletin 1794A-602 or other Agency approved format. The Environmental Report must be concurred in by the Agency."

- Replace paragraph A1.01.A.16 with "Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within [ ] days of receipt of Owner's and Agency's comments."

- Modify paragraph A1.02.A by inserting "and concurrence by Agency" after the words "acceptance by Owner."

- Modify paragraph A1.02.A.2 by inserting "and Agency" after "authorized by Owner."

- Add the following to the end of paragraph A1.02.A.8: "Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article."

- Add the following immediately after paragraph A1.03.A.9: "The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards."

- Modify paragraph A1.03.A.10 by adding the “and Agency” after the word “counsel.”

- Insert paragraph A1.03.A.12 stating, “Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer’s Certification of Final Plans and Specifications (Attachment GC-B) for this purpose.”

- Modify paragraph A1.03.B by deleting the period at the end of the paragraph and adding: “and all final design phase deliverables have been accepted by Owner.”

- Add the following to the end of paragraph A1.04.A.2: “Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible.”

- Replace paragraph A1.04.A.6 with the following: “The Engineer shall evaluate and determine the acceptability of “or equals” and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved “or equals” and substitutes. Review of substitutes and “or equals” shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.”

- Add the following sentence immediately after paragraph A1.04.A.9: “Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.”

- Paragraph A1.05.A.4: Insert “and chair” after “Participate in” regarding the preconstruction conference.

- Delete “If requested by Owner to do so” from Article A1.05.A.6 regarding the Engineer maintaining a set of Drawings and Specifications.

- Insert paragraph A1.05.A.9.c stating “The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.”

- Add the following text at the end of paragraph A1.05.A.18: “Review of substitutes and “or equals” shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations.”

- Insert paragraph A1.05.A.24.a: “Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.”

- Modify paragraph A1.05.A.22 by striking the words “Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent

of Engineer's review of record documents shall be to check that Contractor has submitted all pages."

- Add the following to the end of paragraph A1.05.A.22: "Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner."

- Add the following text after "preparation or review of environmental assessments and impact statements" in A2.01.A.1: "not including preparation of the Environmental Report defined under Basic Services."

- Replace the period at the end of Article A2.01.A.4 with a comma and add the following text to the end of the Article: "but only if the Owner's request is made after completion of the Study and Report Phase."

- Mark paragraph A2.01.A.17 as "[Deleted]."

- Replace paragraph A2.02.A.2 with the following: "Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract."

- Modify Exhibit C, Compensation Packet BC-1, paragraph C2.01.A.2, by adding "and Agency" after "approved in writing by the Owner."

- Modify Exhibit C, Compensation Packet BC-2, paragraph C2.01.A.5, by inserting "and Agency" after "approved in writing by Owner."

- Modify Exhibit C, Compensation Packet BC-2, paragraph C2.01.A.8, by inserting the following text at the end of the paragraph, "Changes will not be effective unless and until concurred in by the Owner and Agency."

- Modify Exhibit C, Compensation Packet BC-1, paragraph C2.01,B by inserting "with concurrence of the Owner and Agency" after "the compensation amount for Engineer's services shall be appropriately adjusted."

- Modify text of Exhibit C, Compensation Packet BC-2, paragraph C2.03.C.2 by inserting "and Agency" after Owner in "Engineer shall give Owner written notice thereof."

- Add paragraph C2.04.A.2 to Exhibit C, Compensation Packet RPR-2, by adding the following text to the end of the paragraph: "If rate(s) for RPR services is not indicated in Appendix Two to Exhibit C, "Standard Hourly Rates Schedule," the Standard Hourly Rate for RPR services is $_____ per hour."

- Modify Exhibit C, Compensation Packet RPR-1, paragraph C2.04.A.3 by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”

- Modify Exhibit C, Compensation Packet RPR-2, paragraph 2.04.B.4, by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”

- Modify Exhibit C, Compensation Guide RPR-2, paragraph 2.04.C.3.B by inserting “and Agency” after Owner in “Engineer shall give Owner written notice thereof.”

- Modify Exhibit C, Compensation Packet RPR-2, paragraph C2.04.C.4 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.

- Modify Exhibit C, Compensation Packet AS-1, paragraph C2.05.B.4, by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”

- Modify Exhibit C, Compensation Packet AS-1, paragraph C2.05.C.3 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.

- Add the following to the end of Exhibit D, Article D1.01.A: “Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.”

- Mark paragraph D1.01.C.12.b as [Deleted] regarding Resident Project representative role in Change Orders, Work Change Directives, and Field Orders.

- Add the following to the end of Exhibit F, Article F5.02.D: “Engineers determinations on types and quality of materials, equipment, and component systems to be included in the Drawings and Specifications are subject to approval by Agency in accordance with requirements of 7 CFR 1780, including open and free competition.”

RUS CERTIFICATION PAGE

PROJECT NAME:_____

The Engineer and Owner hereby concur in the Funding Agency required revisions to E-500. In addition, Engineer certifies to the following:

All modifications required by RUS Bulletin 1780-26 have been made in accordance the terms of the license agreement, which states in part that the Engineer "must plainly show all changes to the Standard EJCDC Text, using 'Track Changes' (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions." Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).

SUMMARY OF ENGINEERING FEES

Note that the fees indicated on this table are only a summary and if there is a conflict with any provision of Exhibit C, the provisions there overrule the values on this table. Fees shown in will not be exceeded without the concurrence of the Agency.

Basic Services		$_____
Resident Project Observation		$_____
Additional Services		$_____
	TOTAL:	$_____

Any adjustments to engineering fees or changes to maximum estimated values must be approved by the Agency and must include a table of what specific category or categories of fees are being changed, what fees were before and after the change, and the resulting total fee.

Engineer Date

Name and Title

Owner Date

Name and Title

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

Agency Representative Date

Name and Title

THE CONSTRUCTION CONTRACT AND BIDDING DOCUMENTS MODIFICATIONS FOR RUS FUNDED PROJECTS

1 PURPOSE

This exhibit explains the use of the EJCDC construction contract and bidding documents. It includes a table of all the required documents and instruction for modification and review of these documents.

2 GENERAL INFORMATION

The EJCDC has developed a 2013 edition of the Construction Series (Owner-Contractor) documents that when assembled as described in this Bulletin is acceptable for use on WWD projects funded by RUS. All contract documents must be approved by the USDA, Rural Development State Engineer prior to advertisement for bids, the Agency must concur in award, and the executed contract documents must be approved by the USDA, Rural Development State Engineer prior to Agency concurrence in any payment of RUS funding for construction services. A copy of the signature page on the last page of this exhibit must be used for this purpose.

3 INSTRUCTIONS

a Assembly of Documents. Bid packages must be assembled in accordance with the following notes, requirements of Exhibits E through H, and the table below:

b Indicating Revised Text. Although the following instructions direct that changes be made to various EJCDC construction documents, actual changes to EJCDC standard language must be made using either bold type additions or deletions with strike-outs or addenda showing all revisions.

c General Conditions. The EJCDC General Conditions (C-700) should not be modified. Changes to C-700 should only be made via the Supplementary Conditions, except in unusual cases as approved by the USDA State Engineer.

d EJCDC Suggested Language. The Instruction to Bidders and Supplementary General Conditions must be developed by the Engineer based on EJCDC guidance documents and the instructions and Exhibits below. The USDA State Engineer must verify that the instructions and Exhibits below were followed prior to any advertisement for bids.

e EJDCDC Standard Language. The Bid Form and the Agreement Between Owner and Contractor are standard documents from EJCDC, but must be modified before use on an RUS funded project as explained below. The USDA State Engineer must verify that the instructions and Exhibits below were followed prior to advertisement for bidding.

f Project Signs. It is customary that project signs identifying the Owner, Contractor, Engineer, and Funding Agencies be displayed during project construction. The sign requirements are not included in the Supplementary Conditions, but should be a part of the specifications prepared by the Engineer. The Engineer should contact the Rural

Development State Office for specific requirements and include the sign standard in the bid package.

Note that at least five copies of the executed construction contracts documents (two for Agency, one for Engineer, one for Contractor, and one for Owner) must be submitted to the RD State Office for review and acceptance before issuance of the Notice to Proceed.

Assembling the Construction Contract and Bidding Documents

Advertisement for Bids	Use EJCDC C-111 (2013).
Instructions to Bidders	Engineer will develop the Instructions to Bidders using the Suggested Instructions to Bidders for Construction Contracts (EJCDC C-200, 2013) as modified by this Bulletin.
Qualifications Statement	Use EJCDC C-451 (2013).
Bid Form	Use EJCDC C-410 (2013) as modified by this Bulletin.
Bid Bond	Use EJCDC C-430 (2013).
Notice of Award	Use EJCDC C-510 (2013). Owner must obtain concurrence of Agency prior to announcing award.
Agreement Between Owner and Contractor (Stipulated Price)	Use EJCDC C-520 (2013) as modified by this Bulletin.
Standard General Conditions of the Construction Contract	Use EJCDC C-700 (2013). Modifications to C-700 should be made in the Supplementary Conditions, not in C-700 itself.
Supplementary Conditions	Engineer will develop the Supplementary Conditions using the Guide to the Preparation of Supplementary Conditions (EJCDC C-800) as modified by this Bulletin.
Performance Bond	Use EJCDC C-610 (2013). Note that the bond must be at least 100% of the bid amount.
Payment Bond	Use EJCDC C-615 (2013). Note that the bond must be at least 100% of the bid amount.
Application for Payment	Use EJCDC C-620 (2013). This documents is pre-approved for use per 7 CFR 1780.76(e).
Change Order	Use EJCDC C-941 (2013). This documents is pre-approved for use per 7 CFR 1780.76(h)(2).
Notice to Proceed	Use EJCDC C-550 (2013).
Certificate of Substantial Completion	Use EJCDC C-625 (2013).
Compliance Statement	Use Form RD 400-6.
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions	Use Form AD-1048.
Certification for Contracts, Grants, and Loans	Use Exhibit A-1 of RD Instruction 1940-Q.
Construction Project Sign	Template provided by RD State Office.
Certificate of Owner's Attorney	Use template provided in Attachment GC-A of this Bulletin.
Engineer's Certification of Final Plans and Specifications	Use template provided in Attachment GC-B of this Bulletin.

ENGINEER'S DEVELOPMENT OF INSTRUCTIONS TO BIDDERS

The Engineer will develop the Instructions to Bidders using the Suggested Instructions to Bidders (EJCDC C-200, 2013) and using the instructions provided in this Bulletin. In addition, the Engineer must ensure that any applicable state or federal wage rate requirements are added to the Instructions to Bidders (ITB) at Article 24. The USDA, Rural Utilities Service, Water and Waste Disposal program does not require the use of Davis Bacon Wage rates in most cases, but other sources of federal funds may.

- ITB 3.01 The second suggested version of 3.01 is not acceptable for use on RUS funded projects. Owners must not preclude entities from submitting bids.

- ITB 8.01 Bid security must be at least 5% of the Bidder's maximum Bid price.

- ITB 9.01 The second suggested version of 9.01(applicable to Price-plus-Time bids) is not acceptable for use on RUS funded projects.

- ITB 11 The following text shall be used for Article 11:

ARTICLE 11 – SUBSTITUTE AND "OR-EQUAL" ITEMS

11.01 The Contract for the Work, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, and those "or-equal" or substitute materials and equipment subsequently approved by Engineer prior to the submittal of Bids and identified by Addendum. No item of material or equipment will be considered by Engineer as an "or- equal" or substitute unless written request for approval has been submitted by Bidder and has been received by Engineer at least 15 days prior to the date for receipt of Bids in the case of a proposed substitute and 5 days prior in the case of a proposed "or-equal." Each such request shall comply with the requirements of Paragraphs 7.04 and 7.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approves any such proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner. Substitutes and "or-equal" materials and equipment may be proposed by Contractor in accordance with Paragraphs 7.04 and 7.05 of the General Conditions after the Effective Date of the Contract.

11.02 All prices that Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of "or-equal" or substitution requests are made at Bidder's sole risk.

11.03 If an award is made, Contractor shall be allowed to submit proposed substitutes and "or-equals" in accordance with the General Conditions.

- ITB 12.01 Do not include this first paragraph of Article 12.

- ITB 12.02 Do not include this second paragraph of Article 12.

- ITB 12.03 Insert the following text at the beginning of the third paragraph of Article 12, "If required by the bid documents."

- ☐ ITB 12.05 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.

- ☐ ITB 12.06 The Contractor shall not award work to Subcontractor(s) in excess of the limits stated in SC 7.06.

- ☐ ITB 14.01 The fourth suggested versions of 14.01 (for cost-plus-fee bids) is not acceptable for use on RUS funded projects.

- ☐ ITB 14.04 Do not include Article 14.04 (applicable only to Price-plus-Time bids).

- ☐ ITB 19.03.B The fourth version of 19.03.B (for Cost-plus-Fee bids) will not be used.

- ☐ ITB 19.03.C Will not be used (applicable only to Price-plus-Time bids).

- ☐ ITB 24 The following text must be used for Article 24:

ARTICLE 24 WAGE RATE REQUIREMENTS

24.01 If the contract price is in excess of $100,000, provisions of the Contract Work Hours and Safety Standards Act at 29 CFR 5.5(b) apply.

ENGINEER'S DEVELOPMENT OF BID FORM

Development of the Bid Form must be based on the Bid Form for Construction Contracts (EJCDC C-410, 2013) as modified below.

- ☐ In Article 5, "Basis of Bid," do not use the Suggested Formats for Price-plus-Time Bids or Cost-plus-Fee bids.

- ☐ Use the first version of Article 6.01 regarding "Time of Completion."

- ☐ Add the following additional required Attachments to Article 7.01, "Attachments to this Bid":

H. If Bid amount exceeds $10,000, signed Compliance Statement (RD 400-6). Refer to specific equal opportunity requirements set forth in the Supplemental General Conditions;

I. If Bid amount exceeds $25,000, signed Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions (AD-1048);

J. If Bid amount exceeds $100,000, signed RD Instruction 1940-Q, Exhibit A-1, Certification for Contracts, Grants, and Loans.

ENGINEER'S DEVELOPMENT OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

Development of the Agreement between Owner and Contractor must be based on EJCDC C-520, 2013, as modified below:

- Delete paragraph 4.04 in its entirety and insert the following in its place:

  [Deleted]

- Amend paragraph 6.02.A.1.a by adding 95 to the blank.

- Amend paragraph 6.02.A.1.a by deleting the period at the end of the first sentence, replacing it with a semicolon, and by striking out the following text: "If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage;"

- Amend paragraph 6.02.A.1.b by adding 95 to the blank.

- Amend paragraph 6.02.B by inserting "of the entire construction to be provided under the Contract Documents" after "Substantial Completion."

ENGINEER'S DEVELOPMENT OF SUPPLEMENTARY CONDITIONS

The Engineer will develop Supplementary Conditions using the guidance from the Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2013), instructions provided in this Bulletin, and by adding other project-specific supplementary conditions as required for the project.

The Supplementary Conditions document that is developed for a specific Project is the contractual means by which the Standard General Conditions (EJCDC C-700, 2013) are modified and supplemented for the Project. The references in the Supplementary Conditions items below (and in EJCDC C-800 as published) to adding, amending, or supplementing are referring to the paragraphs of C-700. Thus the first item below, SC-1.01.A.8, is a contractual provision that adds the stated language ("The Change Order form to be used etc.") to Paragraph 1.01.A.8 of C-700.

As in C-800 itself, the actual Supplementary Conditions (contract terms) are shown in bold. as modified below. Also included below are a few Guidance Notes to assist in development of the Project-specific Supplementary Conditions document. The Guidance Notes are not in bold.

The Supplementary Conditions items that follow are mandatory for each specific Project, unless noted otherwise. In most cases they are new (supplemental) SC items; in a few cases, they replace or expand on a Supplementary Condition item that is in EJCDC C-800, as published.

In addition to including the items that follow in the Supplementary Conditions document for the specific Project, the Engineer (in cooperation with the Owner) also should follow the guidance of EJCDC C-800, as published, to develop other SC items for inclusion in the Project-specific Supplementary Conditions document; as the published guidance indicates, some of the published SC items are mandatory, or require additional Project-specific input, such as insurance coverage limits. Other SC items in C-800 as published are optional but in many cases will be useful for the specific Project.

Include the following RUS-mandated Supplementary Conditions (or follow the Guidance Notes provided) in the Supplementary Conditions document for the specific Project:

☐ **SC 1.01.A.8 Add the following language at the end of last sentence of Paragraph 1.01.A.8:**

The Change Order form to be used on this Project is EJCDC C-941. Agency approval is required before Change Orders are effective.

☐ **SC 1.01.A.48 Add the following language at the end of the last sentence of Paragraph 1.01.A.48:**

A Work Change Directive cannot change Contract Price or Contract Times without a subsequent Change Order.

☐ **SC 1.01.A.49 Add the following new Paragraph after Paragraph 1.01.A.48:**

Abnormal Weather Conditions – Conditions of extreme or unusual weather for a given region, elevation, or season as determined by Engineer. Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered Abnormal Weather Conditions.

SC 1.01.A.50 Add the following new Paragraph after Paragraph 1.01.A.49:

Agency - The Project is financed in whole or in part by USDA Rural Utilities Service pursuant to the Consolidated Farm and Rural Development Act (7 USC Section 1921 et seq.). The Rural Utilities Service programs are administered through the USDA Rural Development offices; therefore, the Agency for these documents is USDA Rural Development.

SC 2.02.A Amend the first sentence of Paragraph 2.02.A. to read as follows:

Owner shall furnish to Contractor five copies of the Contract Documents (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF).

SC 2.06.B (Non-mandatory). Guidance Note: If the parties do not intend to develop electronic or digital transmittal protocols, then Paragraph 2.06B of the General Conditions may be deleted. Use the following Supplementary Condition in such case:

SC- 2.06.B Delete Paragraph 2.06.B and replace it with the term [Deleted].

Guidance Note, continued: If the use of electronic data, electronic media, or electronic project monitoring is planned for this Project, then the parties may develop a protocol with the assistance of the Engineer or Consensus DOCS form 200.2 may be added to the Construction Contract as an Exhibit. If Consensus DOCS form 200.2 will be used, then include the following Supplementary Condition:

SC-2.06.B Add the following language to the end of 2.06.B:

Special requirements for electronic data apply to this Project. See attached Exhibit entitled "Electronic Communications Protocol Addendum," Consensus DOCS form 200.2.

SC 4.01.A Amend the last sentence of Paragraph 4.01.A by striking out the following words:

In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

SC 4.05.C.2 Amend Paragraph 4.05.C.2 by striking out the following text: "abnormal weather conditions;" and inserting the following text:

Abnormal Weather Conditions;

SC 5.03 Guidance Note: Amend Paragraph 5.03 using one of the suggested Paragraphs SC 5.03 in EJCDC C-800, concerning reports and drawings of conditions at the Site, and any Technical Data in the reports and drawings on whose accuracy the Contractor may rely.

SC 5.06 Guidance Note: Amend Paragraph 5.06 using one of the suggested Paragraphs SC 5.06 from EJCDC C-800, concerning reports and drawings regarding Hazardous Environmental Conditions at

the Site, and any Technical Data in those reports and drawings on whose accuracy the Contractor may rely.

- SC 6.03 Guidance Note: Amend Paragraph 6.03 identifying specific insurance coverage requirements using guidance from EJCDC C-800.

- **SC 7.04.A Amend the third sentence of Paragraph 7.04.A by striking out the following words:**

  Unless the specification or description contains or is followed by words reading that no like, equivalent, or 'or-equal' item is permitted.

- **SC 7.04.A.1 Amend the last sentence of Paragraph a.3 by striking out "and;" and adding a period at the end of Paragraph a.3.**

- **SC 7.04.A.1 Delete paragraph 7.04.A.1.a.4 in its entirety and insert the following in its place:**

  [Deleted]

- **SC 7.06.A Amend Paragraph 7.06.A by adding the following text to the end of the Paragraph:**

  The Contractor shall not award work valued at more than fifty percent of the Contract Price to Subcontractor(s), without prior written approval of the Owner.

- **SC 7.06.B Delete paragraph 7.06.B in its entirety and insert the following in its place:**

  [Deleted]

- **SC 7.06.E Amend the second sentence of Paragraph 7.06.E by striking out "Owner may also require Contractor to retain specific replacements; provided, however, that".**

- SC 10.03 Guidance Note: Amend Paragraph 10.03 using one of the two alternatives presented in C-800's section on SC 10.03 (either the Engineer will provide Resident Project Representative services on the Project, with specific authority and responsibilities, or Engineer will not provide Resident Project Representative services).

- **SC 11.07.C Add the following new Paragraph after Paragraph 11.07.B:**

  All Contract Change Orders must be concurred in by Agency before they are effective.

- **SC 13.02.C Delete Paragraph 13.02.C in its entirety and insert the following in its place:**

  [Deleted]

- **SC 15.01.B Amend the second sentence of Paragraph 15.01.B.1 by striking out the following text: "a bill of sale, invoice, or other."**

- **SC 15.01.B.3 Add the following language at the end of paragraph 15.01.B.3:**

No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage, or invest the retainage for the benefit of the Contractor.

☐ **SC 15.01.B.4 Add the following new Paragraph after Paragraph 15.01.B.3:**

The Application for Payment form to be used on this Project is EJCDC C-620. The Agency must approve all Applications for Payment before payment is made.

☐ **SC 15.01.D.1 Delete Paragraph 15.01.D.1 in its entirety and insert the following in its place:**

The Application for Payment with Engineer's recommendations will be presented to the Owner and Agency for consideration. If both the Owner and Agency find the Application for Payment acceptable, the recommended amount less any reduction under the provisions of Paragraph 15.01.E will become due twenty (20) days after the Application for Payment is presented to the Owner, and the Owner will make payment to the Contractor.

☐ **SC 15.02.A Amend Paragraph 15.02.A by striking out the following text: "no later than seven days after the time of payment by Owner" and insert "no later than the time of payment by Owner."**

☐ **SC 18.09 Add the following new paragraph after Paragraph 18.08:**

Tribal Sovereignty. No provision of this Agreement will be construed by any of the signatories as abridging or debilitating any sovereign powers of the {insert name of Tribe} Tribe; affecting the trust-beneficiary relationship between the Secretary of the Interior, Tribe, and Indian landowner(s); or interfering with the government-to-government relationship between the United States and the Tribe.

☐ **SC 19 Add Article 19 titled "FEDERAL REQUIREMENTS"**

☐ **SC 19.01 Add the following language as Paragraph 19.01 with the title "Agency Not a Party":**

A. This Contract is expected to be funded in part with funds provided by Agency. Neither Agency, nor any of its departments, entities, or employees is a party to this Contract.

☐ **SC 19.02 Add the following sections after Article 19.01 with the title "Contract Approval":**

A. Owner and Contractor will furnish Owner's attorney such evidence as required so that Owner's attorney can complete and execute the following "Certificate of Owner's Attorney" (Attachment GC-A) before Owner submits the executed Contract Documents to Agency for approval.

B. Concurrence by Agency in the award of the Contract is required before the Contract is effective.

☐ **SC 19.03 Add the following language after Article 19.02.B with the title "Conflict of Interest":**

A. Contractor may not knowingly contract with a supplier or manufacturer if the individual or entity who prepared the plans and specifications has a corporate or financial affiliation with the supplier or manufacturer. Owner's officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest in Contractor. Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractor or subcontractors.

☐ **SC 19.04 Add the following language after Article 19.03.A with the title "Gratuities":**

A. If Owner finds after a notice and hearing that Contractor, or any of Contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of Owner or Agency in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, Owner may, by written notice to Contractor, terminate this Contract. Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.

B. In the event this Contract is terminated as provided in paragraph 19.04.A, Owner may pursue the same remedies against Contractor as it could pursue in the event of a breach of this Contract by Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, Owner may pursue exemplary damages in an amount (as determined by Owner) which shall not be less than three nor more than ten times the costs Contractor incurs in providing any such gratuities to any such officer or employee.

☐ **SC 19.05 Add the following language after Article 19.04.B with the title "Audit and Access to Records":**

A. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor 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.

☐ **SC 19.06 Add the following language after Article 19.05.A with the title "Small, Minority and Women's Businesses":**

A. If Contractor intends to let any subcontracts for a portion of the work, Contractor shall take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services. Affirmative steps shall consist of: (1) including qualified small, minority and

women's businesses on solicitation lists; (2) assuring that small, minority and women's businesses are solicited whenever they are potential sources; (3) dividing total requirements when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses; (4) establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority and women's businesses; (5) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; (6) requiring each party to a subcontract to take the affirmative steps of this section; and (7) Contractor is encouraged to procure goods and services from labor surplus area firms.

☐ **SC 19.07 Add the following after Article 19.06.A with the title "Anti-Kickback":**

A. Contractor shall comply with the Copeland Anti-Kickback Act (18 USC 874 and 40 USC 276c) as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States"). The Act provides that Contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. Owner shall report all suspected or reported violations to Agency.

☐ **SC 19.08 Add the following after Article 19.07.A with the title "Clean Air and Pollution Control Acts":**

A. If this Contract exceeds $100,000, compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h) and 42 USC 7401et. seq.), section 508 of the Clean Water Act (33 U.S.C. 1368) and Federal Water Pollution Control Act (33 USC 1251 et seq.), Executive Order 11738, and Environmental Protection Agency regulations is required. Contractor will report violations to the Agency and the Regional Office of the EPA.

☐ **SC 19.09 Add the following after Article 19.08 with the title "State Energy Policy":**

A. Contractor shall comply with the Energy Policy and Conservation Act (P.L. 94-163). Mandatory standards and policies relating to energy efficiency, contained in any applicable State Energy Conservation Plan, shall be utilized.

☐ **SC 19.10 Add the following after Article 19.09 with the title "Equal Opportunity Requirements":**

A. If this Contract exceeds $10,000, Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

B. Contractor's compliance with Executive Order 11246 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4 and its efforts to meet the goals established for the geographical area where the Contract is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting Contractor's goals shall be a violation of the Contract, the Executive Order, and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

C. Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the Contract is to be performed.

☐ **SC 19.11 Add the following after Article 19.10.C with the title "Restrictions on Lobbying":**

A. Contractor and each subcontractor 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, Contractor must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Contract. 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 U.S.C. 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.

☐ **SC 19.12 Add the following after Article 19.11.A with the title "Environmental Requirements":**

When constructing a Project involving trenching and/or other related earth excavations, Contractor shall comply with the following environmental conditions:

A. Wetlands – When disposing of excess, spoil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert wetlands.

B. Floodplains – When disposing of excess, spoil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert 100-year floodplain areas (Standard Flood Hazard Area) delineated on the latest Federal Emergency Management Agency Floodplain Maps, or other appropriate maps, e.g., alluvial soils on NRCS Soil Survey Maps.

C. Historic Preservation – Any excavation by Contractor that uncovers an historical or archaeological artifact or human remains shall be immediately reported to Owner and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the State Historic Preservation Officer (SHPO).

D. Endangered Species – Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of Contractor, Contractor will immediately report this evidence to Owner and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the U.S. Fish and Wildlife Service.

E. Mitigation Measures – The following environmental mitigation measures are required on this Project: {Insert mitigation measures here}.

CERTIFICATE OF OWNER'S ATTORNEY AND AGENCY CONCURRENCE

CERTFICATE OF OWNER'S ATTORNEY

PROJECT NAME: _____

CONTRACTOR NAME: _____

I, the undersigned, _____, the duly authorized and acting legal representative of _____, do hereby certify as follows: I have examined the attached Contract(s) and performance and payment bond(s) and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements is adequate and has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with the terms, conditions, and provisions thereof.

_____

Name Date

AGENCY CONCURRENCE

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

_____

Agency Representative Date

_____

Name

ENGINEER'S CERTIFICATION OF FINAL PLANS AND SPECIFICATIONS

PROJECT NAME:_____

The final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, comply with all requirements of the U.S. Department of Agriculture, Rural Utilities Service, to the best of my knowledge and professional judgment.

If the Engineers Joint Contract Documents Committee (EJCDC) documents have been used, all modifications required by RUS Bulletin 1780-26 have been made in accordance the terms of the license agreement, which states in part that the Engineer "must plainly show all changes to the Standard EJCDC Text, using 'Track Changes' (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions." Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).

_____

Engineer Date

_____

Name and Title