

UNITED STATES DEPARTMENT OF AGRICULTURE
Rural Utilities Services
Kentucky Bulletin 1780-1a

SUBJECT: Guidance for Use of Engineers Joint Contract Documents (EJCDC) Agreement for Engineering Services E-500 (2014 edition)

TO: Project Engineers

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

INSTRUCTIONS: This Bulletin replaces Kentucky Bulletin 1780-1, dated October 15, 2011 and any other previous.

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

Signed Julie Anderson

Date 7/9/15

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Exhibits:

- A The Engineering Agreement- Modifications for RUS funded projects
- B Revisions to EJCDC E-500
- C RUS Certification Page
- D Kentucky Fee Guidance

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)

- b Associated Documents: In addition to E-500 Agreement for Engineering Services There are associated construction contract documents, some on which are available through EJCDC and its member organizations, of some of which are to be developed by the engineer based on Kentucky Bulletin 1780-1.

- 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 ECJDC documents previously submitted to 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 an engineering agreement is approved within 60 days of the effective date of this bulletin, the associated contract documents from the same EJCDC construction series may be used.
- d. 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 and agreements will no longer be accepted.

4 PURPOSE

- a. Use by Staff. This Bulletin is to be used by D staff in providing information and guidance to applicants and professional consultants with 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 and required modifications that, when combined with the standard EJCDC documents, creates an Engineering Agreement for use on RD projects. These documents and exhibits are not to be used as the substitute for 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 agreement, they should contact the RD staff to verify that 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.

**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 Process: 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 Approval. 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 Subsurface Utility Data. 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)
 - (2) Allowed for RPR Services:
Lump Sum (Compensation Packet RPR-1)
 - (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 the 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 the completion of the study and report phase."
- Mark paragraph A2.01.A.12 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 material or equipment other than "or equal" items; evaluation and determination of an excessive number of proposed "or equal" or substitutions, whether proposed before or after the award of the Construction Contract."
- Modify Exhibit C, Compensation Packet BC-1 with the following:
 - o C2.01.A.1: delete the words "based on the following estimated distribution of compensation" and items a through f, and add the text "for Study and Report Phase for services performed and furnished under paragraph A1.01.
 - o C2.01.A.2: delete in its entirety and insert the following:
 - 2. A Lump Sum amount of \$_____ which may not be exceeded unless approved in writing by the Owner and the Agency.
 - a. A sum which equals 30% of the total compensation payable under paragraph C.2.01.A.2, after the Preliminary Design Phase documents are revised and submitted to the Owner and Agency.
 - b. A sum which, together with compensation provided under paragraph C.2.01.A.2.a, equals 50% of the total compensation payable under paragraph C.2.01.A.2, after the Final Design Phase documents are completed and submitted to the Owner and Agency.
 - c. A sum which, together with the compensation provided under paragraph C.2.01.A.2.a and b, equals 70% of the total compensation payable under paragraph C.2.01.A.2, after the Final Design Phase documents are considered complete as defined in Exhibit A.
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- d. A sum which, together with the compensation provided in paragraphs C.2.01.A2.a, b, and c, equals 80% of the total compensation payable under paragraph C.2.01.A.2, after Bidding and 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 construction administration of the Contractor's work during the construction period on percentage ratios identical to those approved by the Engineer as basis upon which to make partial payments to the Contractor(s). Payments will be made on a monthly basis. However, payments under this paragraph and of such additional sums that are due the Engineer by reason of any necessary adjustments in the payment computations will be in the amount so that the aggregate sum paid to the Engineer under paragraphs C.2.01.A.2a-e will equal 95% of the total compensation payable under paragraph C.2.10.A.2 and any appropriately adjusted amount by amendment.
 - f. A final payment which, together with C.2.01.A2.a-e, equals 100% of the total compensation payable under paragraph C.2.01.A.2, shall be made when it is determined that all services required by the Agreement under Exhibit A have been completed. Such payment includes payment for Post Construction Phase services as outlined in Exhibit A. Engineer remains responsible to Owner for the technical adequacy and completeness of such services.
- C2.01.A.4: mark as "deleted:
 - C.2.01.A.5: delete in its entirety and replaced with the following: "Construction Administration billing throughout construction shall be billed on a percent construction complete basis as outlined in C2.01.A.2.c."
 - a. In cases where 100% of construction time has elapsed yet construction is not 100% complete; cause for delay, additional compensation, and responsible party will be evaluated at that point prior to payment.
 - C2.01.B: insert "with concurrence of the Owner and Agency"
- Modify Exhibit Compensation Packet RPR-1 with the following:
- C2.04.A.2: mark as "deleted"
 - C2.04.A.3: insert "Changes will not be effective unless and until concurred in by the Owner and Agency."
 - C2.04.A.4: this section should be added and read as follows
 - 4) RPR Services will be compensated on a percent construction complete basis.
 - a. In cases where 100% of construction time has elapsed yet construction is not 100% complete; cause for delay, additional compensation, and responsible party will be evaluated at that point prior to payment.

- Modify Exhibit C, Compensation Packed AS-1 with the following:
 - C2.05.B.4: insert “Changes will not be effective unless and until concurred in by the Owner and Agency.”
 - C2.05.C.3: delete the language “at cost” and replace with “at no cost”.

- Exhibit D, Article D1.01.A: “Full time RPR is required unless requested in writing by the Owner and waived in writing by the Agency, or determined unnecessary by the Agency.”

- D1.01.C.12.b: mark as “deleted”

- Exhibit F, Article F5.02.D: Add the following language “Engineers determination on types and quality of materials, equipment, and component system 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, the Engineer certifies to the following:

All modifications required by Kentucky Bulletin 1780-1a have been made in accordance with 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 any conflict with a provision of Exhibit C, the provisions there overrule the values on this table. Fees shown will not be exceeded without concurrence of the Agency.

PER	\$ _____
Basic Services	\$ _____
Resident Project Representative	\$ _____
Additional Services	\$ _____ *
TOTAL:	\$ _____

*Itemized list of expected deliverables underneath additional engineering services

Additional Services

_____	\$ _____
_____	\$ _____

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

KENTUCKY USDA/RURAL DEVELOPMENT UTILITY PROGRAM FEE GUIDE

The following Tables I and II are designed to represent usual and customary reimbursement percentages for the fees for Professional Engineering Services and Resident Project Representatives respectively. These tables are to be utilized in conjunction with projects using the "Engineers Joint Contract Documents Committee (EJCDC) documents for Project Contract Documents to help provide guidance when determining applicable fees.

FEES FOR PROFESSIONAL ENGINEERING SERVICES PERCENTAGE OF CONSTRUCTION COST

TABLE I – BASIC DESIGN

These fees shall pertain to projects requiring complex or detailed engineering design. This will include sewage treatment plants, sewage collection systems, sewage lift stations, water treatment plants, water distribution mains and appurtenances, water pump stations, water storage facilities and renovations of water and sewer facilities.

<u>NET CONSTRUCTION COST</u>	<u>PERCENTAGE FEE</u>
\$	
100,000	14.00
200,000	12.20
300,000	11.25
400,000	10.70
500,000	10.30
600,000	9.73
700,000	9.45
800,000	9.20
900,000	9.00
1,000,000	8.85
2,000,000	7.65
3,000,000	7.22
4,000,000	6.90
5,000,000	6.75
6,000,000	6.65
7,000,000	6.55
8,000,000	6.45
9,000,000	6.40

Fees for less complex projects such as light industrial buildings, roads, streets, storm drains 24 inches and larger, and appurtenances related thereto are typically 85% of the above Table I percentages.

FEES FOR RESIDENT PROJECT REPRESENTATIVE SERVICES
PERCENTAGE OF CONSTRUCTION COST

TABLE I I – INSPECTION COSTS

<u>NET CONSTRUCTION COST</u>	<u>PERCENTAGE FEE</u>
\$	
100,000	13.00
200,000	10.40
300,000	8.80
400,000	8.00
500,000	7.40
600,000	6.80
700,000	6.40
800,000	6.00
900,000	5.80
1,000,000	5.60
2,000,000	4.60
3,000,000	4.00
4,000,000	3.70
5,000,000	3.50
6,000,000	3.32
7,000,000	3.20
8,000,000	3.12
9,000,000	3.05

NOTE: Add two percent to the above Table II percentages for the first \$1,000,000 cost of treatment facilities. Add one percent to the above percentages for all over \$1,000,000 cost of treatment facilities.

GENERAL INFORMATION FOR BASIC AND RESIDENT PROJECT REPRESENTATIVE FEES

The Resident Project Representative will maintain a daily log meeting USDA/Rural Development Utility Program requirements. Respective percentages for construction costs between the values listed in the schedule can be determined by interpolation. If a project is divided into units and all units are authorized for design at the same time, they are treated as one whole project and the typical compensation can be determined by adding together the cost of the construction of the various units and applying the table to the sum of these costs. If remaining funds are used and additional construction is designed and bid, the project is considered a new project.

OWNER _____	ENGINEER _____
TITLE _____	TITLE _____
DATE _____	DATE _____