

**UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE
RUS BULLETIN 1780-26
Rural Development-GD-2024-001**

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

TO: Rural Development State Directors, Water and Environmental Program Directors, Community Program Directors, and State Engineers

EFFECTIVE DATE: Date of approval

OFFICE OF PRIMARY INTEREST: Engineering Policy Branch, Water and Environmental Programs (WEP), under the Rural Utilities Service (RUS), a part of Rural Development (RD), an Agency within the United States Department of Agriculture (USDA)

INSTRUCTIONS: This Bulletin replaces RUS Bulletin 1780-26, Document ID: Rural Development-GD-2023-001 dated May 24, 2023, and preapproves the use of the 2020 edition of EJCDC E-500 instead of the 2014 edition. The EJCDC C-522, E-520 and E525 documents have also been preapproved for use under certain limited circumstances.

This Bulletin revokes the following RUS Bulletins:

- RUS Bulletin 1780-14, RUS Supplemental General Conditions, Document ID: RD-GD-1997-24, dated July 30, 1997.
- RUS Bulletin 1780-15, Construction Contract Documents, Document ID: RD-GD-1997-25, dated July 30, 1997.

AVAILABILITY: This Bulletin, as well as any instructions, regulations, or forms referenced in this Bulletin are available at USDA State Offices. The State Office staff is familiar with the use of the documents in their states and can answer specific questions on Agency requirements.

This Bulletin is available on the website: rd.usda.gov/publications/regulations-guidelines/bulletins/water-and-environmental.

PURPOSE: This Bulletin is to be used by RD staff in providing information and guidance to funding applicants/recipients (Owners) and professional consultants in the development of Bidding and Contract Documents that are legally sufficient, ensure appropriate services are provided at a reasonable fee, and expedite the achievement of the applicant's goals. This Bulletin supports compliance with [7 CFR](#)

[part 1780](#), [2 CFR part 200](#) and the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

MICHELE BROOKS  Digitally signed by MICHELE BROOKS
Date: 2024.05.10 14:49:46 -04'00'

MICHELE BROOKS
Assistant Administrator
Water and Environmental Programs

Date

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EJCDC
Contract Documents
Water and Environmental Programs

ABBREVIATIONS

AIS – American Iron and Steel
BABAA – Build America, Buy America Act
CFR – Code of Federal Regulations
EJCDC – Engineers Joint Contract Documents Committee
EO – Executive Order
GC – General Conditions of the Construction Contract
IIJA – Infrastructure Investment and Jobs Act
ITB - Instructions to Bidders for Construction Contract
NEPA – National Environmental Policy Act
OGC – Office of General Counsel
Pub. L. – Public Law
PPG – Predevelopment Planning Grants
RD – Rural Development
RPR – Resident Project Representative
RUS – Rural Utilities Service
SC – Supplementary Conditions of the Construction Contract
SEARCH - Special Evaluation Assistance for Rural Communities and Households
U.S.C. – United States Code
USDA – United States Department of Agriculture
WEP – Water and Environmental Programs
WWD – Water and Waste Disposal

DEFINITIONS

Defined terms from EJCDC documents are capitalized in this Bulletin.

1. General

- (a) **Approved documents.** The EJCDC developed Contract Documents, some of which are approved by RUS for procurement of equipment and/or services by loan and grant recipients, subject to the modifications indicated in this Bulletin being incorporated in these documents. Approved documents are listed in the appropriate sections that follow.
- (b) **Alternative documents.** Owners not wishing to use these EJCDC documents may submit the alternative contract document(s) and a written justification of the need for its (their) use. Such documents must be modified to meet all federal and state requirements and must be approved for each project by the RD State Engineer (State Engineer) and reviewed by 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 do not require OGC approval.

2. Availability

- (a) The EJCDC documents are available online from any of the sponsoring organizations:
 - (1) National Society of Professional Engineers (www.nspe.org);
 - (2) American Council of Engineering Companies (www.acec.org); and
 - (3) American Society of Civil Engineers (www.asce.org); or
 - (4) Directly from EJCDC (www.ejcdc.org).
- (b) EJCDC documents are proprietary and include a license agreement. State Offices will not distribute EJCDC documents for use as Contract Documents.
- (c) For training purposes, or to illustrate the appropriate use of the integrated set of documents on RUS financially assisted Water and Waste Disposal (WWD) projects, the State Office may provide water-marked pdf copies of the documents.

3. Purpose

- (a) The EJCDC has developed Contract Documents that when assembled as described in this Bulletin are acceptable for use on WWD projects funded by RUS.
- (b) This Bulletin is not intended to make the use of EJCDC documents mandatory. Rather, this Bulletin serves to assist Owners and professional consultants who

choose to use EJCDC documents in tailoring certain EJCDC bidding and contract documents for use with WWD projects financed by RUS.

4. How to use the Bulletin

- (a) **Assembly of documents.** This Bulletin explains the use of EJCDC standard contract documents, and modifications to make them acceptable for use on WWD projects.
- (b) **Revising text.** This Bulletin may be used in one of three ways:
 - (1) The Engineer makes all the edits to the purchased EJCDC documents when these documents will be used for RUS funded WWD projects. Changes to EJCDC standard language, whether the changes are as per this Bulletin or by the Owner and its Engineer, are made using red bold type additions and red single-line strike-out deletions, showing all revisions.
 - (2) Attachments are inserted in the Bidding and Contract Documents at the appropriate location. These attachments must be incorporated by reference within the agreement. The requirements under Section 4(c) below still apply under this option.
 - (3) The Engineer requests from EJCDC free, editable copies of the certain documents with WEP-required edits already included, upon proof of purchase of EJCDC documents.
- (c) **Guidance notes.** Guidance notes in blue boxes in the EJCDC documents shall be implemented as deemed appropriate by Owner and Engineer and deleted prior to finalization of the documents. Note that several EJCDC documents require the user to make selections. The user must make those choices and delete the text not used in accordance with the EJCDC guidance notes.

5. Owner Responsibility

- (a) **Verify bulletin is current.** Before an Owner or their Engineer proceeds with the development of a set of Bidding Documents, they should contact the State Engineer 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 settling all contractual and administrative issues arising out of procurement as a condition of receiving funding assistance from RUS. 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 WEP policy that when Owners choose to use the EJCDC documents they do so with minimal modification. However, WEP recognizes each project is unique and that modifications may be necessary to satisfy project requirements or state statutes. If changes must be made to the standard documents and/or the modifications in the attached attachments to address project-specific issues, they must be made in accordance with section 4(b) above. Because the EJCDC documents are fully integrated, when making a modification in one document Owners must ensure that appropriate modifications are made in all affected documents.

6. Construction Contract Documents (EJCDC C-Series)

- (a) **Use of EJCDC C-series for WWD projects**. The EJCDC developed its Construction Contract Documents (C-series), 2018 edition, for use in traditional design-bid-build projects. This Bulletin consists of attachments with some including modifications that, when combined with the standard EJCDC documents and appropriate Drawings, Specifications and other documents, create a complete set of acceptable Construction Contract Documents for use on WWD projects. Contract packages must be assembled in accordance with the notes and requirements within Attachments [A](#) and [B](#) of this Bulletin.
- (b) **Approved documents**. The following EJCDC 2018 edition C-series documents are approved by WEP for procurement of construction services by loan and grant recipients, subject to the modifications indicated in this Bulletin being incorporated in these documents. The documents are listed in the order of their use:
- (1) ADVERTISEMENT FOR BIDS FOR CONSTRUCTION CONTRACT, EJCDC C-111
 - (2) INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACT, EJCDC C-200
 - (3) BID FORM FOR CONSTRUCTION CONTRACT, EJCDC C-410
 - (4) BID BOND (PENAL SUM FORM), EJCDC C-430
 - (5) QUALIFICATIONS STATEMENT, EJCDC C-451
 - (6) NOTICE OF AWARD, EJCDC C-510
 - (7) AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE), EJCDC C-520

- (8) PERFORMANCE BOND, EJCDC C-610
 - (9) PAYMENT BOND, EJCDC C-615
 - (10) STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT, EJCDC NO. C-700
 - (11) SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT, EJCDC C-800
 - (12) NOTICE TO PROCEED, EJCDC C-550
 - (13) APPLICATION FOR PAYMENT, EJCDC C-620
 - (14) WORK CHANGE DIRECTIVE, EJCDC C-940
 - (15) CHANGE ORDER, EJCDC C-941
 - (16) FIELD ORDER, EJCDC C-942
 - (17) CERTIFICATE OF SUBSTANTIAL COMPLETION, EJCDC C-625
 - (18) NOTICE OF ACCEPTABILITY OF WORK, EJCDC C-626
- (c) **Previous editions.** The current (2018) EJCDC C-series documents should be used for WWD projects. This Bulletin does not retroactively change the status of a contract that previously received concurrence from the Agency.
- (d) **General Conditions.** The EJCDC General Conditions (C-700) should not be modified. Changes to C-700 should be made via the Supplementary Conditions (C-800).
- (e) **EJCDC suggested language.** The Instructions to Bidders and Supplementary Conditions must be developed by the Engineer based on EJCDC guidance documents and the instructions and attachments below. The State Engineer must verify that the instructions and attachments below were followed prior to any advertisement for bids.
- (f) **EJCDC standard language.** The Bid Form and the Agreement Between Owner and Contractor are standard documents from EJCDC but must be modified before use on a RUS funded project. The State Engineer must verify that the instructions and attachments below were followed prior to advertisement for bidding.

- (g) **Project signs.** It is customary that project signs identifying the Owner, Contractor, Engineer, and funding agencies be displayed during project construction. The Engineer should contact the State Engineer for RD sign standards to be included in the contract package.
- (h) **Submission of Contract Documents.** One copy of the Bidding Documents (defined in EJCDC C-700 Article 1.01), which include but are not limited to those listed in the checklist in [Attachment B.1](#) of this Bulletin, must be submitted to the State Engineer for review and acceptance prior to advertisement for bid. One copy of the Advertisement for Bids must be provided to the State Engineer prior to publication, and one copy must be provided to the RD Area Specialist prior to issuance of the Notice to Proceed. Addenda shall be submitted to the State Engineer for review and acceptance prior to issuance, with a copy provided to the State Engineer and Area Specialist after issuance. Consult with the State Engineer and Area Specialist for the preferred method of submission (electronic vs. paper).
- (i) **State Engineer Concurrence Prior to Bid, Award and Construction.** All Bidding Documents, which include Contract Documents, must receive State Engineer concurrence prior to advertisement for bids. The State Engineer must concur with the recommendation to award, and the executed Contract Documents must be concurred with by the State Engineer. The Owner must obtain agency concurrence as demonstrated by a fully executed copy of The Certificate of Owner's Attorney and Agency Concurrence document ([Attachment A.1](#)) prior to construction
- (j) **Assembly of Bidding and Contract Documents.** Refer to the checklist in [Attachment B.1](#). Other attachments to [Attachment B](#) include edits to the EJCDC C-series documents.

7. Construction Contract Documents For Small Projects (EJCDC C-522)

- (a) **Use of EJCDC C-522.** EJCDC C-522, intended for smaller infrastructure projects, can be used on WWD projects when the informal procurement methods under [2 CFR 200.320\(a\)](#) are used. The procurement procedure must be documented for the Agency to review. Contracts assembled in accordance with Attachments [A](#) and [C](#) of this Bulletin will be considered pre-approved.
- (b) **Approved documents.** The following EJCDC 2018 edition C series documents are approved by WEP for use along with EJCDC C-522:
 - (1) PERFORMANCE BOND, EJCDC C-610
 - (2) PAYMENT BOND, EJCDC C-615
 - (3) NOTICE TO PROCEED, EJCDC C-550

- (4) WORK CHANGE DIRECTIVE, EJCDC C-940
 - (5) CHANGE ORDER, EJCDC C-941
 - (6) CERTIFICATE OF SUBSTANTIAL COMPLETION, EJCDC C-625
 - (7) NOTICE OF ACCEPTABILITY OF WORK, EJCDC C-626
- (c) **Previous editions.** There is no previously approved edition of C-522.
- (d) **EJCDC suggested language.** The EJCDC C-522 document must be developed by the Engineer based on EJCDC guidance documents and the instructions and attachments below. The State Engineer must verify that the instructions and attachments below were followed prior to any contract award.
- (e) **Submission of contract documents.** One copy of the Contract Documents, which include but are not limited to those listed in the checklist in [Attachment C.1](#) of this Bulletin, must be submitted to the State Engineer for review prior to contract award. The contract cannot be awarded until it receives concurrence from the State Engineer. Consult with the State Engineer and Area Specialist for the preferred method of submission (electronic vs. paper).
- (f) **State Engineer concurrence.** The State Engineer must concur with the recommendation to award and the executed Contract Documents. The Owner must obtain agency concurrence as demonstrated by a fully executed copy of The Certificate of Owner's Attorney and Agency Concurrence document ([Attachment A.1](#)) prior to construction.

8. Engineering Contract Documents (EJCDC E-Series)

- (a) **Use of EJCDC E-series for WWD projects.** The EJCDC developed its Engineering Family Documents (E-series), 2020 to 2022 editions, for use in traditional design-bid-build projects. This Bulletin consists of attachments with acceptable modifications that, when combined with the standard EJCDC document, create a complete and acceptable Agreement Between Owner & Engineer for Professional Services (Engineer Agreement) for use on WWD projects. The Engineer Agreement must be assembled in accordance with the following notes and requirements of [Attachment D](#). EJCDC provides guidance for use of various clauses throughout the documents; those guidance notes must be followed and should be deleted once the documents are completed.
- (b) **Approved documents.** The following EJCDC 2020-2022 edition E-series documents are approved by WEP for procurement of engineering services by loan and grant recipients, subject to the modifications indicated in this Bulletin being incorporated in these documents:

- (1) AGREEMENT BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES, EJCDC E-500 (2020)
 - (2) SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES, EJCDC E-520 (2020)
 - (3) AGREEMENT BETWEEN OWNER & ENGINEER FOR STUDY AND REPORT PROFESSIONAL SERVICES, EJCDC-E525 (2022)
- (c) **Previous editions.** The 2020-2022 EJCDC E-series document should be used for WWD projects. This Bulletin approves the 2020 E-500 for use. The 2014 E-500 document will continue to be accepted for one year after approval date of this Bulletin. There are no previously approved editions for E-520 and E-525. This Bulletin does not retroactively change the status of a contract that previously received concurrence from the Agency.
- (d) **EJCDC standard language.** The Engineer Agreement is a standard document from EJCDC but must be modified before use on each WEP funded project. The State Engineer must verify that the instructions and attachments below were followed prior to acceptance by the Owner and Engineer.
- (e) **Deliverable Schedules.** Adequate time should be provided for Agency review within the Owner's allotted time. The time allotted to the Engineer for furnishing a deliverable should be no later than the time frame provided in the RD Letter of Conditions.
- (f) **Specific Considerations for EJCDC E-500.**
- (1) Exhibits A, B, C, E, G and J of EJCDC E-500 (2020) are required for WWD projects. Exhibit D must be included if the Engineer is to provide RPR services. The Standard hourly rate schedule with the specified RPR hourly rate must be included in the agreement. See *EJCDC Notes to User* under Article 8 for guidance when any Exhibit is not used.
 - (2) E-500 (2020) Exhibit G "Insurance" amounts should be established by the Owner based on advice from the Owner's attorney or a risk manager hired by the Owner.
 - (3) The following are the only Compensation Packets (Exhibit C of E-500) that are allowed on WWD projects:
 - (i) Basic Services: Lump Sum (Compensation Packet BC-1) or Standard Hourly Rates (Compensation Packet BC-2)
 - (ii) RPR Services: Lump Sum (Compensation Packet RPR-1) or

Standard Hourly Rates (Compensation Packet RPR-2)

(iii) Additional Services: Standard Hourly Rates (Compensation Packet AS-1)

(g) **Specific Considerations for EJCDC E-520.**

(1) The E-520 (2020) Short Form of Agreement for engineering services may be used in these circumstances:

- (i) Project cost is below the simplified acquisition threshold,
- (ii) RPR services are the only services to be provided, or
- (iii) The project scope fits within the Guidelines for Use of the E-520 document and the State Engineer concurs with use of E-520 for the project.

(2) Lump sum or standard hourly rate compensation must be used.

(h) **Specific Considerations for EJCDC E-525.**

(1) The E-525 agreement for study and report services may be used when professional services are limited to preparation of a Preliminary Engineering Report and/or Environmental Assessment (or other NEPA documentation) or providing other services normally included in the EJCDC E-500 Study and Report phase. These are the services typically needed to fulfill WEP SEARCH and PPG grant requirements.

(2) Lump sum or standard hourly rate compensation must be used.

(i) **Seismic acknowledgments.** For each applicable structure, borrowers and grant recipients must provide RUS a written acknowledgment from a registered architect or engineer responsible for the design stating that seismic provisions pursuant to [7 CFR part 1792](#) will be used in the design of the structure.

(1) If Drawings and Specifications are required to be submitted to RUS, this acknowledgement shall be on the title page of the Drawings included with the final Drawings and Specifications. This acknowledgement will include the identification and date of the model code or standard that is used in the seismic design of the structure. The Drawings and Specifications must be dated, signed, and sealed by a registered architect or engineer.

(2) For projects in which Drawings and Specifications are not submitted, this acknowledgement shall be in the form of a statement from the architect

or engineer responsible for the building design. The statement shall identify the model code or standard identified that is used in the seismic design of the building or buildings and shall be dated and signed.

- (j) **Number of copies of Engineer Agreement.** One copy of the draft Engineer Agreement will be submitted to the State Engineer for review and preliminary concurrence prior to signing by the Owner and Engineer. Amendments shall be submitted to the State Engineer for review and preliminary concurrence prior to signing. Consult with the State Engineer and Area Specialist for the preferred method of submission (electronic vs. paper).
- (k) **State Engineer Concurrence.** The executed Engineer Agreement will be concurred with by the State Engineer prior to Agency concurrence in any payment of RUS funding for engineering services.
- (l) **Assembly of Engineer Agreement.** Refer to [Attachment D](#) of this Bulletin for RUS edits to EJCDC E-500 (2020), E-520 (2020), E-525 (2022). Agency will review to ensure changes were made as necessary.

ATTACHMENT A – GENERAL DOCUMENTS

Note to User: *These Attachments are applicable to most WWD projects.*

ATTACHMENT A.1 – CERTIFICATE OF OWNER’S ATTORNEY AND AGENCY
CONCURRENCE

**ATTACHMENT A.1 – CERTIFICATE OF OWNER’S ATTORNEY AND AGENCY
CONCURRENCE**

Notes to User:

1. *This attachment consists of two certificates, on a single page, to be attached to the Contract and signed upon execution.*
2. *The first is a certificate to be signed by the Owner’s attorney and the second is the concurrence to be signed by the State Engineer.*
3. *This page is to be inserted after the Agreement between Owner and Contractor for Construction Contract (Stipulated Price) (EJCDC C-520, 2018) in the Construction Contract Documents.*
4. *When the EJCDC C-522 Contract for Construction of a Small Project is used, attach this page to the C-522 document.*

CERTIFICATE OF OWNER’S ATTORNEY

PROJECT NAME:

CONTRACTOR NAME AND CONTRACT NUMBER:

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

ATTACHMENT A.1 – CERTIFICATE OF OWNER'S ATTORNEY AND AGENCY
CONCURRENCE

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

ATTACHMENT A.2 – DOMESTIC PREFERENCE DE MINIMIS LIST FORMAT

ATTACHMENT A.2 – DOMESTIC PREFERENCE *DE MINIMIS* LIST FORMAT**Notes to User:**

1. This attachment is an example format for Contractors to use in maintaining a list of items to document the use of the *De Minimis* waiver of the Domestic Preference requirements.
2. This list or similar is required to be filled out throughout the construction Contract as needed.
3. The State Engineer may periodically ask to review this information.
4. At the Contract completion, this list, along with all Manufacturers' certifications, are to be given to the Engineer for delivery to the Owner.
5. This list is applicable for projects governed by BABAA. USDA RD State Office can provide guidance if AIS applies to the project instead.

DE MINIMIS COSTING WORKSHEET

Project Name: _____

Contract Name/# (if more than one) _____

Contractor (Company Name): _____

Representative: _____

Date: _____

Total Project Costs: _____

\$

Allowable Total *De Minimis* Costs (5% of project costs) _____

\$

Total Cost of all *De Minimis* Items _____

\$

Remaining Amount Allowed for Future *De Minimis* Items _____

\$

No.	Detailed Description and Manufacturer or Local Source of <i>De Minimis</i> Material	Quantity	Cost Per Item	Total Item Cost
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				

ATTACHMENT A.3 – SAMPLE LANGUAGE FOR CONTRACTOR’S CERTIFICATION
OF COMPLIANCE

**ATTACHMENT A.3 – SAMPLE LANGUAGE FOR CONTRACTOR’S
CERTIFICATION OF COMPLIANCE**

Notes to User:

1. *This attachment provides sample language that the Contractor can use to certify compliance with the Build America Buy America Act (BABAA) requirements. The language can be modified.*

Modification Example: If the project is subject to AIS, the BABAA reference should be replaced with language such as “American Iron and Steel (AIS) requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 and subsequent annual appropriations for WWD programs.”

2. *The certification should be on letterhead and should be signed and dated by an authorized company representative.*

3. *A certification is to be provided by Contractor to Engineer for delivery to the Owner and Agency prior to final payment.*

Project Name

Owner / Applicant

Contract Number

I hereby certify, that to the best of my knowledge and belief, all Iron and Steel products, Manufactured Products, and Construction Materials installed for this project by my company and by any and all subcontractors and Manufacturers my company has contracted with for this project comply with the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953 or are the subject of a waiver approved by the Secretary of Agriculture or designee.

Name of Contractor Authorized Representative
Contractor Company Name
Contractor Address

Date

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ATTACHMENT A.4 – SAMPLE LANGUAGE FOR MANUFACTURER'S
CERTIFICATION OF COMPLIANCE

**ATTACHMENT A.4 – SAMPLE LANGUAGE FOR MANUFACTURER'S
CERTIFICATION OF COMPLIANCE**

Notes to User:

1. *This attachment provides sample language for the Manufacturer's Certification of Compliance with Domestic Preference requirements.*
2. *Contractor should ensure that Engineer has an approved Manufacturers' Certification prior to any domestic preference item being delivered to the project site.*
3. *The Manufacturer's Certification must be on letterhead and should indicate the specific item being certified, reference which domestic preference requirement is being certified, and be signed by an authorized company representative.*
4. *The Manufacturer's Certification may include multiple domestic preference requirements. It is important for the governing domestic preference requirement (whether AIS, BABAA or other) to be clearly included within the certification.*

Date:

Company Name:

Company
Address:

Subject: Domestic Preference Requirement Certification for {Owner's Name and Project Name (City, State)}, and Contract Number

I hereby certify that the following product(s) and / or material(s) shipped or provided for the subject project are in full compliance with the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.

[List common name of items, products and/or materials]

These products and/or materials were manufactured in [Provide location(s) of manufacturing]

[Include signature of authorized representative]

ATTACHMENT A.5 – ENGINEERS CERTIFICATIONS

Notes to User:

1. *This attachment provides sample language for the statements needed for the Engineer of Record's certification; it should be submitted with the bid package to the Agency for concurrence for authorization to bid by Agency.*
2. *This certification is not intended to be a warranty in any way but rather the designer's professional opinion that to the best of their knowledge the documents comply.*
3. *This certification does not need to be included in the contract documents.*
4. *The language can be modified.*

Modification Example: If the project is subject to AIS, the BABAA reference should be replaced with language such as "American Iron and Steel (AIS) requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 and subsequent annual appropriations for WWD programs."

The final Drawings and Specifications, construction Contract Documents, Bidding Documents, procurement documents, and any other final design phase deliverables, comply with all applicable federal requirements including the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953, or are the subject of a waiver approved by the Secretary of Agriculture or designee. This includes the following:

- The Engineers Joint Contract Documents Committee (EJCDC) documents have been used, and all acceptable revisions identified in this Bulletin have been made in accordance with the terms of the license agreement, which states in part that the Engineer "will 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).
- Any building(s) designed for this Project will comply with the requirements of the Architectural Barriers Act (ABA) of 1968, the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, and any federal, state, or local accessibility standards.
- Any building(s) designed for this Project will comply with the Seismic Safety of Federally Assisted New Building Construction requirements of 7 CFR part 1792, and any federal, state, or local standards.
- All referenced Products and Construction Materials in the Drawings, Specifications, and Bidding Documents for the Project comply with BABAA.
- All referenced Products and Construction Materials to be referenced in the Addenda, executed Contracts, and Change Orders will comply with BABAA.

Engineer Name and Title
Engineering Company Name

Date

ATTACHMENT B – CONSTRUCTION CONTRACT DOCUMENTS (EJCDC C SERIES)

ATTACHMENT B – CONSTRUCTION CONTRACT DOCUMENTS (EJCDC C SERIES)

Note to User: *These Attachments are applicable to WWD projects when using EJCDC Construction Contract Documents (C-series).*

ATTACHMENT B.1 – CONTRACT DOCUMENT CHECKLIST

Notes to User:

1. *This attachment provides a checklist for Owner and Engineer to use to assemble the Bidding Documents for a RUS-funded project.*
2. *EJCDC documents are available from EJCDC, the National Society of Professional Engineers, the American Council of Engineering Companies, or the American Society of Civil Engineers.*
3. *RD offices cannot distribute EJCDC documents.*
4. *For questions and copies of RD documents please contact State Engineer.*

Contents	Form
Table of Contents	Prepared by Engineer
Advertisement for Bids for Construction Contract	EJCDC C-111 as modified by RUS Bulletin 1780-26 Attachment B.2
Instructions to Bidders for Construction Contract	EJCDC C-200 as modified by RUS Bulletin 1780-26 Attachment B.3
Bid Form for Construction Contract	EJCDC C-410 as modified by RUS Bulletin 1780-26 Attachment B.4
Bid Bond (Penal Sum Form)	EJCDC C-430
Qualifications Statement	EJCDC C-451
Compliance Statement	Form RD 400-6
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions	Form AD-1048 – May be provided as a courtesy for the Contractor's use
Certification for Contracts, Grants & Loans	RD Instruction 1940-Q Exhibit A-1
Notice of Award	EJCDC C-510 Note: Owner will obtain concurrence of State Engineer prior to issuing award.
Agreement between Owner and Contractor for Construction Contract (Stipulated Price)	EJCDC C-520 as modified by RUS Bulletin 1780-26 Attachment B.5
Performance Bond	EJCDC C-610. Note: the bond will be at least 100% of the bid amount.
Payment Bond	EJCDC C-615. Note: the bond will be at least 100% of the bid amount.
Certificate of Owner's Attorney / Agency Concurrence	RUS Bulletin 1780-26 Attachment A.1
Standard General Conditions of the Construction Contract	EJCDC C-700. Note: modifications to C-700 should be made in C-800, Supplementary Conditions.
Supplementary General Conditions of the Construction Contract	EJCDC C-800 as modified by RUS Bulletin 1780-26 Attachment B.6
Special Conditions	May be added if desired by Engineer
State Wage Rates	State Wage Rates if required by State Law.

ATTACHMENT B.1 – CONTRACT DOCUMENT CHECKLIST

Federal Wage Rates	Davis Bacon Wage Rates. Note: only required if other funding source requires
Davis Bacon 29 CFR 5.5	Rural Development version. Note: only required if Federal Wage Rates have been included
Notice to Proceed	EJCDC C-550
Project Sign (Temporary Construction Sign)	Consult State Engineer for current requirements.
Application for Payment	EJCDC C-620
Work Change Directive	EJCDC C-940
Change Order	EJCDC C-941
Field Order	EJCDC C-942
Sample Language for Contractor's Certification of Compliance	RUS Bulletin 1780-26 Attachment A.3
Sample Language for Manufacturer's Certification of Compliance	RUS Bulletin 1780-26 Attachment A.4
Certificate of Substantial Completion	EJCDC C-625
Notice of Acceptability of Work	EJCDC C-626
Mitigation Requirements from NEPA Documentation	To be provided in drawings, specifications, Supplementary Conditions (C-800, SC 19.10.A.5)
Drawings and Specifications	Engineer Submittal

ATTACHMENT B.2 – ENGINEER'S DEVELOPMENT OF ADVERTISEMENT FOR
BIDS

**ATTACHMENT B.2 – ENGINEER'S DEVELOPMENT OF ADVERTISEMENT FOR
BIDS**

Notes to User:

1. *This attachment contains language for Engineer to add to the Advertisement for Bids for Construction Contract (EJCDC C-111, 2018) for compliance with Domestic Preference requirements.*
2. *The Engineer may either make the changes directly in the Advertisement for Bids or insert this attachment directly behind the Advertisement for Bids.*
3. *If the project is subject to AIS instead of BABAA replace the BABAA reference with "This project is subject to the American Iron and Steel (AIS) requirements instituted by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 and subsequent annual appropriations for WWD programs." And delete references to manufactured products and construction materials.*
4. *Contact the Rural Development State Office for guidance as needed.*

- ☐ Add at the end of EJCDC C-111 prior to "This Advertisement is issued by:"

Domestic Preference

This project is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States.

The following waivers apply to this Contract:

BABAA De Minimis, Small Grants, and Minor Components

[add project specific waivers as applicable; If AIS applies instead of BABAA delete the BABAA waiver reference and insert references to the AIS De Minimis and AIS Minor Component waivers].

ATTACHMENT B.3 – ENGINEER’S DEVELOPMENT OF INSTRUCTIONS TO
BIDDERS

**ATTACHMENT B.3 – ENGINEER’S DEVELOPMENT OF INSTRUCTIONS TO
BIDDERS**

Notes to User:

1. *This attachment contains a list of changes to be made by Engineer to the Instructions to Bidders for Construction Contract (EJCDC C-200, 2018).*
2. *The Engineer will develop the Instructions to Bidders using EJCDC C-200 (2018) and the instructions provided below.*
3. *In addition, Engineer will ensure that any applicable state or federal wage rate requirements are added at Article 24. RD does not require the use of Davis Bacon Wage rates in most cases, but other sources of federal funds may. If other funding sources involved in the project require the use of Davis Bacon Wage rates, RD’s version of Davis Bacon [29 CFR 5.5](#) will be added to these construction Contract Documents, as listed in the checklist in [Attachment B.1](#).*
4. *The Engineer may either make the changes below directly to the Instructions to Bidders or insert this attachment directly behind the Instructions to Bidders.*
5. *If AIS applies instead of BABAA remove reference to BABAA in 1.01.B and 23.03 and replace it with “American Iron and Steel (AIS) requirements instituted by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 and of 2017 and subsequent annual appropriations for WWD programs.”*
6. *Contact the Rural Development State Office for guidance as needed.*

- ☐ Article 1.01.B - Add the following:

1.01.B “Domestic Preference – The Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.

- ☐ Article 3.02 – Delete in its entirety and insert “Deleted”.
- ☐ Article 8.01 – Add to the end of the paragraph “Bid security must be at least 5% of the Bidder’s maximum Bid price.”
- ☐ Article 9.02 – Delete in its entirety and insert “Deleted”.
- ☐ Article 10.01 – Delete in its entirety and insert “Deleted”.
- ☐ Article 10.02 – Insert after the sentence that starts “Each such request...: “Each such request shall include the Manufacturers’ Certification for Compliance with Domestic Preference requirements. Refer to the suggested Manufacturer’s Certification provided in these construction Contract Documents.”
- ☐ Article 10.02 – Add to the end of this paragraph: “Substitutes and “or-equal” materials and equipment may be proposed by Contractor in accordance with Paragraphs 7.05 and 7.06 of the General Conditions after the Effective Date of the Contract. Each such request shall include Manufacturer’s Certification letter to

ATTACHMENT B.3 – ENGINEER’S DEVELOPMENT OF INSTRUCTIONS TO
BIDDERS

document compliance with Domestic Preference requirements. Refer to
Manufacturer’s Certification Letter provided in these Contract Documents.”

☐ Article 11.01 – Delete in its entirety and insert “Deleted”.

☐ Article 11.05 – Add the following:

11.05 – The Contractor shall not award work to Subcontractor(s) in excess of the
limits stated in SC 7.07A.

☐ Article 13.04 – Delete in its entirety and insert “Deleted”.

☐ Article 13.07 – Delete in its entirety and insert “Deleted”.

☐ Article 18.05.E – Delete in its entirety and insert “Deleted”.

☐ Article 18.05.F – Delete in its entirety and insert “Deleted”.

☐ Add the following, renumbering if Articles 21 and/or 22 are not used:

ARTICLE 23 – FEDERAL REQUIREMENTS

23.01 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.

23.02 Federal requirements at Article 19 of the Supplementary Conditions apply
to this Contract.

ATTACHMENT B.4 – ENGINEER'S DEVELOPMENT OF BID FORM

Notes to User: *This attachment contains a list of changes to be made by Engineer to the Bid Form for Construction Contract (EJCDC C-410, 2018). The Engineer may either make the changes directly to the Bid Form or insert this attachment directly behind the Bid Form.*

- ☐ Article 2.01 - Delete the “and” at the end of 2.01.F

Delete the existing text for 2.01.G and add the following text and the referenced attachments to the Bidding Documents:

- G. If Bid amount exceeds \$10,000, signed Compliance Statement (RD 400-6). Refer to specific equal opportunity requirements set forth in the Supplementary Conditions of the Construction Contract (EJCDC C-800);
- H. If Bid amount exceeds \$25,000, signed Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions (AD-1048);
- I. If Bid amount exceeds \$100,000, signed RD Instruction 1940-Q Exhibit A-1, Certification for Contracts, Grants, and Loans.”
- J. [List other documents and edit above as pertinent].

- ☐ Article 4 – Delete in its entirety and insert “Deleted”.
- ☐ Article 5 – Delete in its entirety and insert “Deleted”.
- ☐ Article 6.02 – Delete in its entirety and insert “Deleted”.
- ☐ Article 6.03 – Delete in its entirety and insert “Deleted”.
- ☐ Article 8.01.A.3 – Delete the period at the end of Article 8.018.A.3 and insert the following language: “, including all Domestic Preference requirements.”

**ATTACHMENT B.5 – ENGINEER’S DEVELOPMENT OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

Notes to User:

- 1. This attachment contains a list of changes to be made by the Engineer to the Agreement between Owner and Contractor for Construction Contract (Stipulated Price) (EJCDC C-520, 2018).*
- 2. The Engineer may either make the changes directly to the Agreement or insert this attachment directly behind the Agreement.*
- 3. The preparer should develop a precontract record explaining how the Liquidated Damage (LD) dollar values were developed and why they are realistic. This record should be included with the bid/contract document submittal that is reviewed by RD prior to bid advertisement.*

- ☐ Article 4.05.C – Delete in its entirety and insert “Deleted”.
- ☐ Article 6.02.A.1.a – Replace “[number]” with “95”.
- ☐ Article 6.02.A.1.a(1) – Delete in its entirety and insert “Deleted”.
- ☐ Article 6.02.A.1.b – Replace “[number]” with “95”.
- ☐ Article 6.02.B – After “Substantial Completion” insert “of the entire construction to be provided under the construction Contract Documents”.

**ATTACHMENT B.6 – ENGINEER’S DEVELOPMENT OF SUPPLEMENTARY
CONDITIONS**

Notes to User:

1. *This attachment contains a list of changes to be made by Engineer to the Supplementary Conditions (SC) of the Construction Contract (EJCDC C-800, 2018). The Engineer may also add other project-specific supplementary conditions as required for the Project.*
2. *The SC document that is developed for a Project is the contractual means by which the Standard General Conditions of the Construction Contract (EJCDC C-700, 2018) are modified and supplemented for the Project. The references in the SC items below (and in EJCDC C-800 as published) to adding, deleting, 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 Article 1.01.A.8 of C-700.*
3. *The SC 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 SC item that is in EJCDC C-800, as published. Guidance notes should not be included in the Bidding Documents.*
4. *The Engineer (in cooperation with the Owner) should follow the guidance of EJCDC C-800, as published, to develop Project-specific SC; 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.*
5. *If the project requires compliance with American Iron and Steel (AIS) instead of Build America Buy America Act (BABAA), then SC-1.01.A.52 should remove the BABAA reference and define Domestic Preference as “The American Iron and Steel (AIS) requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 of 2017 and subsequent annual appropriations for WWD programs.”. Also, in such cases the BABAA specific waivers listed in SC 19.14 should be removed and replaced with applicable AIS waivers (De Minimis and Small Components).*
6. *Contract the Rural Development State Office for guidance as needed.*

☐ ARTICLE 1 – Delete the sentence “No suggested Supplementary Conditions in this Article.”

☐ SC-1.01.A.8 – Add the following at the end of the Paragraph:

The Change Order form to be used on this Project is EJCDC C-941 (2018). Agency approval is required before Change Orders are effective.

☐ SC-1.01.A.30 – Add the following at the end of the Paragraph:

For the purposes of Rural Development, this term is synonymous with the term

ATTACHMENT B.6 – ENGINEER’S DEVELOPMENT OF SUPPLEMENTARY
CONDITIONS

“applicant” as defined in 7 CFR 1780.7 (a) (1), (2) and (3) and is an entity receiving financial assistance from the federal programs.

- SC-1.01.A.50 – Add the following at the end of the Paragraph:

The Work Change Directive form to be used on this Project is EJCDC C-940 (2018). Agency approval is required before a Work Change Directive is issued.

- SC-1.01.A.51 – Add the following new paragraph immediately after Paragraph 1.01.A.50:

51. 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 U.S.C. 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-1.01.A.52 – Add the following new paragraph with the title “Domestic Preference Definitions” immediately after Paragraph 1.01.A.51:

52.a *Build America, Buy America Act (BABAA)* – Requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953-58 mandating domestic preference that all iron and steel, manufactured products, and construction materials are produced in the United States, in accordance with 2 CFR part 184.

52.b *Construction Materials* – Those articles, materials, or supplies — other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives— that are or consist primarily of: non-ferrous metals, plastic and polymer-based products, glass, lumber or drywall.

52.c *Contractor’s Certification* – A certification submitted by Contractor that, to the best of the Contractor’s knowledge and belief, all Work complies with Domestic Preference requirements.

52.d *De Minimis* – Materials and products that represent a small portion of an infrastructure project, specifically no more than 5% of the project costs up to a maximum of \$1,000,000,

52.e *Domestic Preference* – The Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.

ATTACHMENT B.6 – ENGINEER’S DEVELOPMENT OF SUPPLEMENTARY CONDITIONS

52.f *Engineer’s Certification* – Documentation submitted by the Engineer that Drawings, Specifications, and Bidding Documents comply with Domestic Preference requirements.

52.g *Manufactured Product* – Items assembled out of components, or otherwise made or processed from raw materials into finished products. Manufactured products must be manufactured (assembled) in the United States, and the cost of components that were mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the product.

52.h *Manufacturer’s Certification* – Documentation provided by the Manufacturer stating that Domestic Preference requirements have been satisfied for all provided items. Manufacturers’ Certifications must include (at a minimum): specific list of products (using common names) associated with the certificate, location of the final manufacturing, signature of the manufacturer’s representative, and a reference to the Domestic Preference statute. If items are purchased via a Supplier, distributor, vendor, etc. from the Manufacturer directly, then the Supplier, distributor, vendor, etc. will be responsible for obtaining and providing these certifications to the parties purchasing the products.

52.i *Minor Components* - Components *within* an iron and/or steel product otherwise compliant with the Domestic Preference requirements. This waiver, typically used by Manufacturers, allows use of non-domestically produced miscellaneous Minor Components comprising up to five percent of the total material cost of an otherwise domestically produced iron and steel product. However, unless a separate waiver for a product has been approved, all other iron and steel components in said product must still meet the Domestic Preference requirements. This waiver does not exempt the whole product from the Domestic Preference requirements only Minor Components within said product and the iron or steel components of the product must be produced domestically.

52.j *Primarily Iron or Steel* - A product is made of greater than 50 percent iron or Steel on a materials cost basis.

☐ SC-2.02.A – Delete **[number]** and insert in its place “five.”

☐ SC-4.01.A – Delete the paragraph, and replace with:

A. The Contract Times will commence on the day indicated in the Notice to Proceed. The Notice to Proceed date must be no later than 30 days after the Effective Date of the Contract. The Owner must issue a Notice to Proceed”.

☐ SC-4.05.C.5 – Paragraph is mandatory for WWD projects.

☐ SC-4.05.C.5.a – Add the following at the end of this paragraph:

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Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered abnormal weather conditions. Requests for time extensions due to abnormal weather conditions will be submitted to the Engineer within five days of the end of the abnormal weather condition event. It is the responsibility of the Contractor to provide the information listed in SC 4.05.C.5.b.

- ☐ SC-6.01 – Disregard EJCDC Guidance Notes – Performance and Payment Bonds, Note 1. Performance and Payment Bonds are required for WWD projects.
- ☐ SC-6.01 – EJCDC Guidance Notes – “Other Bonds,” Warranty Bond, Note 1. RD does not require a Warranty Bond, and RD will not accept a Warranty Bond in place of a Performance and Payment Bond. The decision to include a Warranty Bond is made by the Owner and their counsel. Please refer to EJCDC for guidance.
- ☐ SC-7.04.D – Add the following new paragraph immediately after Paragraph 7.04.C:

D. All products must meet Domestic Preference requirements.
- ☐ SC-7.04.E – Add the following new paragraph immediately after Paragraph 7.04.D:

E. For projects utilizing a *De Minimis* waiver, Contractor shall maintain an itemized list of non-domestically produced components and ensure that the cost is less than 5% of total project cost for project up to a maximum of \$1,000,000.
- ☐ SC-7.05.A – Amend the third sentence of paragraph 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-7.05.A.1.a.3 – Amend the last sentence of Paragraph a.3 by striking out “and;” and adding a period at the end of Paragraph a.3.
- ☐ SC-7.05.A.1.a.4 – Delete paragraph in its entirety and insert “Deleted.”
- ☐ SC-7.05.B – Add the following at the end of paragraph:

Contractor shall include a Manufacturer’s Certification or waiver for compliance with Domestic Preference requirements and supporting data, as applicable. Refer to Sample Language for Manufacturer’s Certification provided in these Contract Documents.
- ☐ SC-7.06.A.3.a.2 – Remove “and” from the end of paragraph.

ATTACHMENT B.6 – ENGINEER’S DEVELOPMENT OF SUPPLEMENTARY
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- SC-7.06.A.3.a.3 – Add “; and” to the end of paragraph.
- SC-7.06.A.3.a.4 – Add the following new paragraph immediately after Paragraph 7.06.A.3.a.3:

4. Comply with Domestic Preference requirements by providing Manufacturer’s Certification or waiver , as applicable. Refer to Sample Language for Manufacturers’ Certification provided in these Contract Documents.
- SC-7.07.B – Delete paragraph in its entirety and insert “Deleted”.
- SC-7.07.E – Delete the second sentence of paragraph and insert the following in its place:

Owner may not require that Contractor use a specific replacement.
- SC-7.12.A Amend paragraph by adding the following after “written interpretations and clarifications,”:

Manufacturers’ Certifications,
- SC-7.16.A.1.c – Amend paragraph by deleting the last period and adding:

, including Manufacturer’s Certification, or waiver for any item in the submittal subject to Domestic Preference requirements. Refer to the Sample Language for Manufacturers’ Certification provided in these Contract Documents.
- SC-7.16.C.9 – Add new paragraph immediately after Paragraph 7.16.C.8:

9. Engineer’s review and approval of a Shop Drawing or Sample shall include review of Manufacturers’ Certifications and any waivers in order to document compliance with Domestic Preference requirements, as applicable.
- SC-7.17.F – Add new paragraph immediately after Paragraph 7.17.E:

F. Contractor shall certify prior to final payment that all Work and Materials have complied with Domestic Preference requirements. Contractor shall provide Certification to Owner and Engineer. Refer to the Sample Language for Contractor’s Certification provided in these Contract Documents.
- ARTICLE 11 – Delete the sentence “No suggested Supplementary Conditions in this Article.”
- SC-11.02.C – Add new paragraph immediately after Paragraph 11.02.B:

ATTACHMENT B.6 – ENGINEER’S DEVELOPMENT OF SUPPLEMENTARY CONDITIONS

C. The Engineer or Owner shall contact the Agency for concurrence on each Change Order prior to issuance. All Contract Change Orders must be concurred on (signed) by Agency before they are effective.

- SC-11.03.A.2 - Add new Paragraph 11.03.A.2 immediately after Paragraph 11.03.A, which shall be renamed Paragraph 11.03.A.1:

2. The Engineer or Owner shall contact the Agency for concurrence on each Work Change Directive prior to issuance. Once authorized by Owner, a copy of each Work Change Directive shall be provided by Engineer to the Agency.

- SC-11.05.B – Add the following at the end of this paragraph:

For Owner-authorized changes in the Work, the Contractor will provide the Manufacturer’s Certification, or waiver, for materials subject to Domestic Preference requirements except when sole-source is specified, in which case the Engineer will provide the Manufacturer’s Certification, or waiver.

- SC-11.09.B.2.c – Add new paragraph immediately after Paragraph 11.09.B.2.b:

c. For change orders involving materials subject to Domestic Preference requirements, Contractor shall include a Manufacturer’s Certification or waiver , as applicable. Refer to the Sample Language for Manufacturer’s Certification provided in these Contract Documents.

- SC-13.02.C – Delete paragraph in its entirety and insert "Deleted".
- SC 13.03.E – Delete paragraph in its entirety and replace with SC 13.03.E as shown in the EJCDC C-800 Supplementary Conditions.
- ARTICLE 14 – Delete the sentence “No suggested Supplementary Conditions in this Article.”
- SC-14.03.G – Add new paragraph immediately after Paragraph 14.03.F:

G. Installation of materials that are non-compliant with Domestic Preference requirements shall be considered defective work. Contractor should ensure that Engineer has an approved Manufacturer’s Certification, or waiver, prior to any domestic preference compliant item being delivered to the project site.

- SC-15.01.B.4 – Add the following language at the end of paragraph:

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

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Contractor.

- ☐ SC-15.01.B.5 – Add new paragraph immediately after Paragraph 15.01.B.4:

5. 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.B.6 – Add new paragraph immediately after Paragraph 15.01.B.5:

6. By submitting an Application for Payment, based in whole or in part on furnishing equipment or materials, Contractor certifies that such equipment and materials are compliant with Domestic Preference requirements. Manufacturer’s Certification for material(s) satisfy these requirements. Refer to the Sample Language for Manufacturer’s Certification provided in these Contract Documents.

- ☐ SC-15.01.C.2.d – Add the following new paragraph immediately after Paragraph 15.01.C.2.c:

d. The materials presented for payment in an Application for Payment comply with Domestic Preference requirements.

- ☐ SC-15.01.D.1 – Delete paragraph 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 by striking out the following text: “7 days after”.

- ☐ SC-15.03.A – Modify by adding the following after the last sentence:

Contractor shall also submit the Contractor’s Certification of Compliance certifying that to the best of the Contractor’s knowledge and belief all Iron and Steel products, Manufactured Products, and Construction Materials proposed in the Shop Drawings, Change Orders, and Partial Payment Estimates, and those installed for the Project, comply with Domestic Preference requirements.

- ☐ SC-18.11 – Add new paragraph immediately after Paragraph 18.10:

18.11 *Tribal Sovereignty*

A. No provision of this Agreement will be construed by any of the signatories

ATTACHMENT B.6 – ENGINEER’S DEVELOPMENT OF SUPPLEMENTARY
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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 the following new Article 19 immediately after Article 18:

Article 19 - FEDERAL REQUIREMENTS

19.01 *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.

19.02 *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 “Certificate of Owner’s Attorney” before Owner submits the executed Contract Documents to Agency for approval. Refer to Certificate of Owner’s Attorney and Agency Concurrence provided in these Contract Documents.
- B. Agency concurrence is required on both the Bid and the Contract before the Contract is effective.

19.03 *Conflict of Interest*

- A. Contractor may not knowingly contract with a Supplier or Manufacturer if the individual or entity who prepared the Drawings 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 or other interest in or a tangible personal benefit from the Contractor. Owner’s officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractor or subcontractors.

ATTACHMENT B.6 – ENGINEER'S DEVELOPMENT OF SUPPLEMENTARY
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- 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.

19.05 *Small, Minority and Women's Businesses*

- A. If Contractor intends to let any subcontracts for a portion of the work, Contractor will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps will include:
 - 1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - 2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - 3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - 4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - 5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

ATTACHMENT B.6 – ENGINEER’S DEVELOPMENT OF SUPPLEMENTARY
CONDITIONS19.06 *Anti-Kickback*

- A. Contractor shall comply with the Copeland Anti-Kickback Act (40 U.S.C. 3145) 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.

19.07 *Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended*

- A. Contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

19.08 *Equal Employment Opportunity*

- A. The Contract is considered a federally assisted construction contract. Except as otherwise provided under 41 CFR part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

19.09 *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*

- A. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification (RD Instruction 1940-Q Exhibit A-1). The Contractor certifies to the Owner and every subcontractor certifies to the Contractor 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, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining the Contract if it is covered by 31 U.S.C. 1352. The Contractor and every subcontractor must also disclose any lobbying with non-federal

ATTACHMENT B.6 – ENGINEER’S DEVELOPMENT OF SUPPLEMENTARY
CONDITIONS

funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

19.10 Environmental Requirements

- A. When constructing a Project involving trenching and/or other related earth excavations, Contractor shall comply with the following environmental conditions:
1. Wetlands – When disposing of excess, spoil, or other Construction Materials on public or private property, Contractor shall not fill in or otherwise convert wetlands.
 2. 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.
 3. Historic Preservation - Applicants shall ensure that Contractors maintain a copy of the following inadvertent discovery plan onsite for review:
 - a. If during the course of any ground disturbance related to any Project, any post review discovery, including but not limited to, any artifacts, foundations, or other indications of past human occupation of the area are uncovered, shall be protected by complying with 36 CFR § 800.13(b)(3) and (c) and shall include the following:
 - i. All Work, including vehicular traffic, shall immediately stop within a 50 ft. radius around the area of discovery. The Contractor shall ensure barriers are established to protect the area of discovery and notify the Engineer to contact the appropriate RD personnel. The Engineer shall engage a Secretary of the Interior (SOI) qualified professional archeologist to quickly assess the nature and scope of the discovery; implement interim measures to protect the discovery from looting and vandalism; and establish broader barriers if further historic and/or precontact properties, can reasonably be expected to occur.
 - ii. The RD personnel shall notify the appropriate RD environmental staff member, the Federal Preservation Officer (FPO), and State Historic Preservation Office (SHPO) immediately. Indian tribe(s) or Native Hawaiian Organization (NHOs) that have an interest in the area of discovery shall be contacted immediately. The SHPO may require additional tribes or NHOs who may have an interest in the

ATTACHMENT B.6 – ENGINEER’S DEVELOPMENT OF SUPPLEMENTARY
CONDITIONS

area of discovery also be contacted. The notification shall include an assessment of the discovery provided by the SOI qualified professional archeologist.

- iii. When the discovery contains burial sites or human remains, the Contractor shall immediately notify the appropriate RD personnel who will contact the RD environmental staff member, FPO, and the SHPO. The relevant law enforcement authorities shall be immediately contacted by onsite personnel to reduce delay times, in accordance with tribal, state, or local laws including 36 CFR part 800.13; 43 CFR part 10, subpart B; and the Advisory Council on Historic Preservation’s Policy Statement Regarding treatment of Burial Sites, Human Remains, or Funerary Objects (February 23, 2007).
- iv. When the discovery contains burial sites or human remains, all construction activities, including vehicular traffic shall stop within a 100 ft. radius of the discovery and barriers shall be established. The evaluation of human remains shall be conducted at the site of discovery by a SOI qualified professional. Remains that have been removed from their primary context and where that context may be in question may be retained in a secure location, pending further decisions on treatment and disposition. RD may expand this radius based on the SOI professional’s assessment of the discovery and establish broader barriers if further subsurface burial sites, or human remains can reasonably be expected to occur. RD, in consultation with the SHPO and interested tribes or NHOs, shall develop a plan for the treatment of native human remains.
- v. Work may continue in other areas of the undertaking where no historic properties, burial sites, or human remains are present. If the inadvertent discovery appears to be a consequence of illegal activity such as looting, the onsite personnel shall contact the appropriate legal authorities immediately if the landowner has not already done so.
- vi. Work may not resume in the area of the discovery until a notice to proceed has been issued by RD. RD shall not issue the notice to proceed until it has determined that the appropriate local protocols and consulting parties have been consulted.
- vii. Inadvertent discoveries on federal and tribal land shall follow the processes required by the federal or tribal entity.

4. Endangered Species – Contractor shall comply with the Endangered

ATTACHMENT B.6 – ENGINEER’S DEVELOPMENT OF SUPPLEMENTARY
CONDITIONS

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.

5. Mitigation Measures – The following environmental mitigation measures are required on this Project: *[Insert mitigation measures from the Letter of Conditions here]*.

19.11 *Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)*

- A. Where applicable, for contracts awarded by the Owner in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor will comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Under 40 U.S.C. 3702 of the Act, the Contractor will compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic will be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

19.12 *Debarment and Suspension (Executive Orders 12549 and 12689)*

- A. A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

19.13 *Procurement of recovered materials*

- A. The Contractor will comply with 2 CFR 200.322, “Procurement of recovered materials.”

19.14 *Domestic Preference*

- A. Build America, Buy America Act (BABAA). All Iron and Steel Products, Manufactured Products, and Construction Materials used in this project must comply with the Build America, Buy America Act (BABAA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953. Aggregates such as stone, sand, or gravel do not apply to BABAA
- B. The following waivers apply to this Contract:
 - 1. BABAA *De Minimis*, *Small Grants and Minor Components*
 - 2. *[add project specific waivers as applicable]*.

19.15 *Telecommunications and Video Surveillance Services or Equipment Prohibitions*

- A. The telecommunication and video surveillance services and equipment prohibitions under 2 CFR 200.216 apply to this contract. This contract may not be used to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment is:
 - 1. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - 2. Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - 3. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - 4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

**ATTACHMENT C – CONTRACT FOR CONSTRUCTION OF A SMALL PROJECT
(EJCDC C-522)**

Notes to User:

- 1. Technical specifications used with EJCDC C-522 must not require the use of proprietary products, unless approved in writing by the Agency. The preparer of these documents may consider adding Article 7.05 of EJCDC C-700 regarding “Or Equals”, with the applicable C-800 RUS modifications, to this document.*
- 2. If the project requires compliance with American Iron and Steel instead of Build America Buy America Act, the Domestic Preference definition (such as in Article 18.15.A of C-522) should be adjusted by replacing the BABAA reference with “The American Iron and Steel (AIS) requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 of 2017 and subsequent annual appropriations for WWD program.”*

ATTACHMENT C.1 – C-522 CONTRACT DOCUMENT CHECKLIST

Notes to User:

1. *This attachment provides a checklist for Owner and Engineer to use to assemble the Bidding Documents for a RUS-funded project.*
2. *EJCDC documents are available from EJCDC, the National Society of Professional Engineers, the American Council of Engineering Companies, or the American Society of Civil Engineers. RD offices cannot distribute EJCDC documents.*
3. *Performance and Payment Bonds are not required for contracts that do not exceed the Simplified Acquisition Threshold.*
4. *For questions and copies of RD documents please contact State Engineer.*

Contents	Form
Table of Contents	Prepared by Engineer
Compliance Statement	Form RD 400-6
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions	Form AD-1048 – May be provided as a courtesy for the Contractor's use
Certification for Contracts, Grants & Loans	RD Instruction 1940-Q Exhibit A-1
Procurement Documentation	No preapproved form
Contract for Construction of a Small Project	EJCDC C-522 as modified by RUS Bulletin 1780-26 Attachment C.2
Performance Bond (note 3)	EJCDC C-610. Note: the bond will be at least 100% of the contract amount.
Payment Bond (note 3)	EJCDC C-615. Note: the bond will be at least 100% of the contract amount.
Certificate of Owner's Attorney / Agency Concurrence	RUS Bulletin 1780-26 Attachment A.1
State Wage Rates	State Wage Rates if required by State Law.
Federal Wage Rates	Davis Bacon Wage Rates. Note: only required if other funding source requires
Davis Bacon 29 CFR 5.5	Rural Development version. Note: only required if Federal Wage Rates have been included
Notice to Proceed	EJCDC C-550
Project Sign (Temporary Construction Sign)	Consult State Engineer for current requirements.

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ATTACHMENT C.1 – C-522 CONTRACT DOCUMENT CHECKLIST

Application for Payment	EJCDC C-620
Work Change Directive	EJCDC C-940
Change Order	EJCDC C-941
Field Order	EJCDC C-942
Sample Language for Contractor's Certification of Compliance	RUS Bulletin 1780-26 Attachment A.3
Sample Language for Manufacturer's Certification of Compliance	RUS Bulletin 1780-26 Attachment A.4
Certificate of Substantial Completion	EJCDC C-625
Notice of Acceptability of Work	EJCDC C-626
Mitigation Requirements from NEPA Documentation	To be provided in drawings, specifications, Supplementary Conditions (C-800, SC 19.10.A.5)
Drawings and Specifications	Engineer Submittal

**ATTACHMENT C.2 – REVISIONS TO EJCDC C-522 CONTRACT FOR
CONSTRUCTION OF A SMALL PROJECT**

- ☐ Article 4.01.A – Delete sentence and insert “Deleted”
- ☐ Article 4.01.B – Delete the paragraph and replace with (*Note to user - Insert the number of days to be allowed for substantial completion and final payment in paragraph below*):
 - B. The Owner must issue a Notice to Proceed. The Notice to Proceed must be no later than 30 days after the Effective Date of the Contract. The Work will be substantially complete within [number of days] days after the Notice to Proceed and completed and ready for final payment within [number of days] days after the Notice to Proceed.
- ☐ Article 6.01.A – Insert “The Performance and Payment bond forms to be used on this Project are EJCDC C-610 and C-615 respectively.” after “final payment becomes due.”
- ☐ Article 10.02.A.1 – Delete the semicolon after “Work Change Directive” and add “. The Engineer or Owner shall contact the Agency for concurrence on each Work Change Directive prior to issuance. Once authorized by Owner, a copy of each Work Change Directive shall be provided by Engineer to the Agency.”
- ☐ Article 10.02.C – Add the following:
 - C. The Engineer or Owner must contact the Agency for concurrence on each Change Order prior to issuance. All Contract Change Orders must be concurred on (signed) by Agency before they are effective. The Change Order form to be used on this Project is EJCDC C-941 (2018)."
- ☐ Article 10.03.A – Insert at the end of the paragraph “The Work Change Directive form to be used on this Project is EJCDC C-940 (2018). Agency approval is required before a Work Change Directive is issued.”
- ☐ Article 14.02.A – Insert at the end of the paragraph “The Application for Payment form to be used on this Project is EJCDC C-620.”
- ☐ Article 14.03.A – Delete the paragraph and replace with:
 - A. The Owner shall retain 5% of each progress payment until the Work is substantially complete. No payment 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.”

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ATTACHMENT C.2 – REVISIONS TO EJCDC C-522 CONTRACT FOR
CONSTRUCTION OF A SMALL PROJECT

- ☐ Article 14.04.D – Add the following:

D. Agency must approve all Applications for Payments before payment is made.

- ☐ Article 14.05.A – Delete “7 days after”

- ☐ Article 17.08 – For projects located on tribal land or for which a tribe is an active participant, add the following:

17.08 Tribal Sovereignty

A. 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.

- ☐ Article 18 – Add the following:

Article 18 – FEDERAL REQUIREMENTS

18.01 *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.

18.02 *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 “Certificate of Owner’s Attorney” before Owner submits the executed Contract Documents to Agency for approval. Refer to Certificate of Owner’s Attorney and Agency Concurrence provided in these Contract Documents.

B. Agency concurrence is required on both the Bid and the Contract before the Contract is effective.

18.03 *Conflict of Interest*

A. Contractor may not knowingly contract with a Supplier or Manufacturer if the individual or entity who prepared the Drawings 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

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ATTACHMENT C.2 – REVISIONS TO EJCDC C-522 CONTRACT FOR
CONSTRUCTION OF A SMALL PROJECT

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 or other interest in or a tangible personal benefit from the Contractor. Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractor or subcontractors.

18.04 *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 18.04.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.

18.05 *Small, Minority and Women's Businesses*

- A. If Contractor intends to let any subcontracts for a portion of the work, Contractor will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps will include:
 - 1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - 2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - 3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and

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- minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

18.06 *Anti-Kickback*

- A. Contractor shall comply with the Copeland Anti-Kickback Act (40 U.S.C. 3145) 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.

18.07 *Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended*

- A. Contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

18.08 *Equal Employment Opportunity*

- A. The Contract is considered a federally assisted construction contract. Except as otherwise provided under 41 CFR part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

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ATTACHMENT C.2 – REVISIONS TO EJCDC C-522 CONTRACT FOR
CONSTRUCTION OF A SMALL PROJECT

18.09 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

- A. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification (RD Instruction 1940-Q Exhibit A-1). The Contractor certifies to the Owner and every subcontractor certifies to the Contractor 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, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining the Contract if it is covered by 31 U.S.C. 1352. The Contractor and every subcontractor must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

18.10 Environmental Requirements

- A. When constructing a Project involving trenching and/or other related earth excavations, Contractor shall comply with the following environmental conditions:
1. Wetlands – When disposing of excess, spoil, or other Construction Materials on public or private property, Contractor shall not fill in or otherwise convert wetlands.
 2. 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.
 3. Historic Preservation - Applicants shall ensure that Contractors maintain a copy of the following inadvertent discovery plan onsite for review:
 - a. If during the course of any ground disturbance related to any Project, any post review discovery, including but not limited to, any artifacts, foundations, or other indications of past human occupation of the area are uncovered, shall be protected by complying with 36 CFR § 800.13(b)(3) and (c) and shall include the following:
 - i. All Work, including vehicular traffic, shall immediately stop within a 50 ft. radius around the area of discovery. The Contractor shall ensure barriers are established to protect the area of discovery and notify the Engineer to contact the appropriate RD personnel. The Engineer shall engage a Secretary of the Interior (SOI) qualified

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professional archeologist to quickly assess the nature and scope of the discovery; implement interim measures to protect the discovery from looting and vandalism; and establish broader barriers if further historic and/or precontact properties, can reasonably be expected to occur.

- ii. The RD personnel shall notify the appropriate RD environmental staff member, the Federal Preservation Officer (FPO), and State Historic Preservation Office (SHPO) immediately. Indian tribe(s) or Native Hawaiian Organization (NHOs) that have an interest in the area of discovery shall be contacted immediately. The SHPO may require additional tribes or NHOs who may have an interest in the area of discovery also be contacted. The notification shall include an assessment of the discovery provided by the SOI qualified professional archeologist.
- iii. When the discovery contains burial sites or human remains, the Contractor shall immediately notify the appropriate RD personnel who will contact the RD environmental staff member, FPO, and the SHPO. The relevant law enforcement authorities shall be immediately contacted by onsite personnel to reduce delay times, in accordance with tribal, state, or local laws including 36 CFR part 800.13; 43 CFR part 10, subpart B; and the Advisory Council on Historic Preservation's Policy Statement Regarding treatment of Burial Sites, Human Remains, or Funerary Objects (February 23, 2007).
- iv. When the discovery contains burial sites or human remains, all construction activities, including vehicular traffic shall stop within a 100 ft. radius of the discovery and barriers shall be established. The evaluation of human remains shall be conducted at the site of discovery by a SOI qualified professional. Remains that have been removed from their primary context and where that context may be in question may be retained in a secure location, pending further decisions on treatment and disposition. RD may expand this radius based on the SOI professional's assessment of the discovery and establish broader barriers if further subsurface burial sites, or human remains can reasonably be expected to occur. RD, in consultation with the SHPO and interested tribes or NHOs, shall develop a plan for the treatment of native human remains.
- v. Work may continue in other areas of the undertaking where no historic properties, burial sites, or human remains are present. If the inadvertent discovery appears to be a consequence of illegal activity such as looting, the onsite personnel shall contact the

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appropriate legal authorities immediately if the landowner has not already done so.

- vi. Work may not resume in the area of the discovery until a notice to proceed has been issued by RD. RD shall not issue the notice to proceed until it has determined that the appropriate local protocols and consulting parties have been consulted.
 - vii. Inadvertent discoveries on federal and tribal land shall follow the processes required by the federal or tribal entity.
4. 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.
5. Mitigation Measures – The following environmental mitigation measures are required on this Project: *[Insert mitigation measures from the Letter of Conditions here]*.

18.11 *Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)*

- A. Where applicable, for contracts awarded by the Owner in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor will comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Under 40 U.S.C. 3702 of the Act, the Contractor will compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic will be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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ATTACHMENT C.2 – REVISIONS TO EJCDC C-522 CONTRACT FOR
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18.12 *Debarment and Suspension (Executive Orders 12549 and 12689)*

- A. A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

18.13 *Procurement of recovered materials*

- A. The Contractor will comply with 2 CFR part 200.322, “Procurement of recovered materials.”

18.14 *Agency: The USDA Rural Utilities Service*

- A. The Project is financed in whole or in part by USDA Rural Utilities Service pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 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.

18.15 *Domestic Preference*

- A. Build America, Buy America Act (BABA). All Iron and Steel Products, Manufactured Products, and Construction Materials used in this project must comply with the Build America, Buy America Act (BABA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953, in accordance with 2 CFR part 184. BABA does not apply to aggregates, sand, and cement.
- B. All materials and products incorporated into the Work must meet Domestic Preference requirements.
- C. Manufacturer's Certification
 - 1) Definition: Documentation provided by the manufacturer stating that Domestic Preference requirements have been satisfied for all provided items. Manufacturers' Certifications must include (at a minimum): specific list of products (using common names) associated with the certificate, location of the final manufacturing, signature of the manufacturer's representative, and a reference to the Domestic Preference statute.
 - 2) A Manufacturer's Certification must be provided for each item in every submittal unless the item is covered by an approved waiver.

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ATTACHMENT C.2 – REVISIONS TO EJCDC C-522 CONTRACT FOR
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- 3) Contractor must check that the Manufacturers' Certifications include the information required in the definition above.
 - 4) Contractor must have copies of the Manufacturer's Certifications accessible at the site.
- D. Installation of products and materials that are non-compliant with Domestic Preference requirements shall be considered defective work. Installation of products and materials that are not accompanied by acceptable manufacturer's certification, and are not subject to a waiver, shall also be considered defective work.
- E. By submitting an Application for Payment, based in whole or in part on furnishing equipment or materials, Contractor certifies that such equipment and materials are compliant with Domestic Preference requirements.
- F. Contractor's Certification:
- 1) Definition: A certification submitted by Contractor that, to the best of the Contractor's knowledge and belief, all Work complies with Domestic Preference requirements.
 - 2) Contractor must submit Contractor's Certification prior to final payment.
- G. The following waivers apply to this Contract:
- 1) BABA De Minimis, Small Grants and Minor Components
 - a. For projects utilizing a De Minimis waiver, Contractor shall maintain an itemized list of non-domestically produced components and ensure that the cost is less than 5% of total project cost up to a maximum of \$1,000,000 waived.
 - 2) *[add project specific waivers as applicable]*.

18.16 *Telecommunications and Video Surveillance Services or Equipment Prohibitions*

- A. The telecommunication and video surveillance services and equipment prohibitions under 2 CFR 200.216 apply to this contract. This contract may not be used to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment is:
- 1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - 2) Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - 3) Telecommunications or video surveillance services provided by such entities or using such equipment.

ATTACHMENT C.2 – REVISIONS TO EJCDC C-522 CONTRACT FOR
CONSTRUCTION OF A SMALL PROJECT

- 4) Telecommunication or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

ATTACHMENT D – ENGINEERING CONTRACT DOCUMENTS (EJCDC E-SERIES)

ATTACHMENT D – ENGINEERING CONTRACT DOCUMENTS (EJCDC E-SERIES)

Notes to User:

1. This attachment contains provisions applicable to most WWD projects.
2. If the project requires compliance with American Iron and Steel instead of Build America Buy America Act, the Domestic Preference definition (such as in Article 7.01.A of the E-500 agreement; Article 7.01 of the E-520 agreement; Article 7.01.H of the E-525 agreement) should be adjusted by replacing the BABAA reference with “The American Iron and Steel (AIS) requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 and subsequent annual appropriations for WWD program.”

**ATTACHMENT D.1 – REVISIONS TO STANDARD FORM FOR AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES (EJCDC E-
500 (2020))**

Modifications to the Main Body of the Agreement

- ☐ Article 2.04.K – Add the following:

K. Owners are responsible for compliance with Domestic Preference Requirements and will be responsible for the following:

1. Sign agreements for engineering services, construction contracts, and all other appropriate and necessary documents which include Domestic Preference language.
2. Sign change orders (i.e., C-941 of EJCDC) and partial payment estimates (i.e., C-620 of EJCDC) and thereby acknowledge responsibility for compliance with Domestic Preference requirements.
3. Where the Owner directly procures products, Owner will obtain Manufacturers' Certifications and provide copies to Engineer and Contractor.

- ☐ Article 2.05.B.3 – Add the following:

3. Engineer's compensation for each delineated service summarized above will not be exceeded without the concurrence of the Agency.

- ☐ Article 4.01.A – Insert the following text after the first sentence:

Invoices will include a breakdown of services provided.

- ☐ Article 5.01.A – Insert the following at the end of the paragraph:

Opinions of probable Construction Cost and any revisions thereof must reflect compliance with Domestic Preference requirements.

- ☐ Article 5.02.A – Insert the following to the end of the paragraph:

Opinions of Total Project Costs and any revisions thereof must reflect compliance with Domestic Preference requirements.

- ☐ Article 7.01.A – Add the following:

ATTACHMENT D.1 – REVISIONS TO STANDARD FORM FOR AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES (EJCDC E-500
(2020))

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

45. Contractor's Certification - A certification submitted by Contractor that, to the best of the Contractor's knowledge and belief, all Work complies with Domestic Preference requirements.

46. Domestic Preference – The Build America, Buy America Act (BABA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953, and 2 CFR part 184.

47. Manufacturer's Certification – Documentation provided by the Manufacturer stating that Domestic Preference requirements have been satisfied for all provided items.

☐ Article 8.05 – Add the following:

8.06 Federal Requirements

- A. Agency Concurrence. 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. Agency concurrence does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements.
- B. Audit and Access to Records. 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

ATTACHMENT D.1 – REVISIONS TO STANDARD FORM FOR AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES (EJCDC E-500
(2020))

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.
- E. Telecommunications and Video Surveillance Services or Equipment Prohibitions. The telecommunication and video surveillance services and equipment prohibitions under 2 CFR 200.216 apply to this contract. This contract may not be used to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment is:
1. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 2. Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 3. Telecommunications or video surveillance services provided by such entities or using such equipment.
 4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

ATTACHMENT D.1 – REVISIONS TO STANDARD FORM FOR AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES (EJCDC E-500
(2020))

Modifications to **Exhibit A** of the Agreement

- Article 1.01.D and Article 1.01.E – Add the following:

D. In all phases of Engineer's services, Engineer is responsible for Domestic Preference compliance documentation for the project. This includes but is not limited to:

1. Obtaining manufacturers' certifications for items specified by Engineer as sole source.
2. Verifying and certifying that all items subject to Domestic Preference specified in the contract are available domestically or are covered by a waiver.
3. Reviewing change order proposals, shop drawings, payment applications, proposed substitutes and "or-equals," and any other submittals to ensure Manufacturer Certifications are submitted for all items subject to Domestic Preference requirements.
4. Ensuring that all Manufacturers' Certifications provided by the contractor comply with Domestic Preference requirements.
5. Maintaining all Domestic Preference documentation throughout the project and providing Contractor's and Manufacturers' Certifications to Owner upon final completion of the Work. Provide a copy of the Contractor's Certification to Agency.
6. Certifying, upon final completion of the Work, that the project complies with Domestic Preference requirements (signing EJCDC C-626 Notice of Acceptability of Work will suffice for this certification).

E. In all phases of Engineer's services, Engineer is responsible for ensuring the project does not violate the prohibitions on telecommunication and video surveillance services and equipment under 2 CFR 200.216.

- Article 1.02.A.1.b – Replace 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.

- Article 1.02.A.1.c. – Delete paragraph and replace with "Deleted".

ATTACHMENT D.1 – REVISIONS TO STANDARD FORM FOR AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES (EJCDC E-500
(2020))

- ☐ Article 1.02.A.15.c – Add the following:
 - a. This Report is the Preliminary Engineering Report (PER) 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. Cost estimates in the PER should reflect compliance with Domestic Preference requirements. This will be certified by stating in the transmittal letter with the PER, “The cost estimates for this project include the costs of Domestic Preference compliance.”
- ☐ Article 1.02.A.16.a – Replace “a. [List any other Study and Report Phase tasks or deliverables here]” with the following:
 - a. Provide the appropriate environmental documentation as required by 7 CFR part 1970. This documentation must be concurred in by the Agency.
 - b. [List any other Study and Report Phase tasks or deliverables here].
- ☐ Article 1.02.A.18 – Insert “and Agency’s” after “response to Owner’s”:
- ☐ Article 1.03.A – Modify by inserting “and concurrence by Agency” after the words “acceptance by Owner”.
- ☐ Article 1.03.A – Insert the following to the end of the paragraph:

Any resulting changes to Engineer’s scope of services will be subject to Agency concurrence.
- ☐ Article 1.03.B.5 – Modify by inserting “and Agency” after “authorized by Owner”.
- ☐ Article 1.03.B.14 – Insert the following to the end of paragraph:

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.
- ☐ Article 1.04.B.3 – Insert “and Agency” after “address Owner”
- ☐ Article 1.04.C – Insert “and Agency” after “Owner’s legal counsel”
- ☐ Article 1.04.D.4 – Add the following:
 - 4. Engineer will furnish to Agency the draft Bidding/Proposal Documents and Front-End Construction Contract Documents for review and concurrence.

ATTACHMENT D.1 – REVISIONS TO STANDARD FORM FOR AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES (EJCDC E-500
(2020))

- Article 1.04.G.1 – Insert the following to the end of paragraph:

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.

- Article 1.04.G.3 – Change number to 1.04.G.4 and insert the following for 1.04.G.3:

3. 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.

- Article 1.05.A – Insert “and Agency” after “After acceptance by Owner”

- Article 1.05.A.2 – Add the following to the end of paragraph:

Obtain Agency concurrence on any Addenda that modify the Bidding Documents. Obtain prior concurrence when possible.

- Article 1.05.A.3 – Replace with the following:

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. Issue a bid addendum for any and all approved “or equals” and substitutes. Review of substitutes and “or equals” will be in accordance with the General Conditions of the Construction Contract and applicable Agency requirements. Services under this paragraph are subject to the provisions of Exhibit A Paragraph A2.01.A.2.

- Article 1.05.A.9.a – Replace “a. [List any other Bidding/Proposal Phase tasks or deliverables here].” With the following:

a. 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.

b. [List any other Bidding/Proposal Phase tasks or deliverables here].

- Article 1.06.B.5 - Insert “and chair” after “Participate in” regarding the preconstruction conference.

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BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES (EJCDC E-500
(2020))

- ☐ Article 1.06.B.7 – Replace “If requested by Owner to do so, maintain” with “Maintain”.

- ☐ Article 1.06.B.11.c – Add the following:

c. These site visits must be at least monthly and the Engineer must document all visits to the project with copies furnished to the Owner and Agency.

- ☐ Article 1.06.B.23.b – Insert the following at the end of the paragraph:

By signing payment application and recommending payment, Engineer is certifying to the best of their knowledge that all items submitted for payment comply with Domestic Preference requirements.

- ☐ Article A1.06.B.24 – Modify by deleting the following:

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 will be to check that Contractor has submitted a complete set of those documents that Contractor is required to submit.

And inserting in its place:

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.

- ☐ Article 1.06.B.26 – Modify by deleting the following:

a. [List any other such tasks or deliverables here].

And insert in its place:

a. Provide the Owner and Agency with a written certification that the project complies with Domestic Preference requirements, to the best of Engineer’s knowledge.

b. Verify and document Contractor implemented environmental mitigation requirements. Provide documentation to Owner and Agency.

c. [List any other such tasks or deliverables here].

ATTACHMENT D.1 – REVISIONS TO STANDARD FORM FOR AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES (EJCDC E-500
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- ☐ Article 1.06.B.27.d – Insert the following at the end of the paragraph:

Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.

- ☐ Article 2.01.A.2.b – Delete paragraph and insert “Deleted”.
- ☐ Article 2.02.A – Insert “, and approved by Agency” after “If authorized in writing by Owner”.
- ☐ Article 2.02.A.3 – Insert “(not including preparation of the environmental documentation required by 7 CFR part 1970)” after “preparation or review of environmental assessments and impact statements”.
- ☐ Article 2.02.A.6 – Delete the period at the end of the paragraph, and insert “, but only if the Owner’s request is made after completion of the Study and Report Phase.”
- ☐ Article 2.02.A.21 – Delete paragraph and insert “Deleted”.

Modifications to **Exhibit D** of the Agreement

- ☐ Article 1.01.B – Modify by deleting the following:

[revise if representation will be less than full time]

and insert in its place:

, unless requested in writing by the Owner and waived in writing by the Agency.

- ☐ Article 1.02.A.9.a – Insert at the end of the Paragraph “Installation of items that do not comply with Domestic Preference requirements is considered defective Work.”
- ☐ Article 1.02.A.11.b – Insert the following “observations on Domestic Preference and environmental mitigation compliance,” after the words “observations in general,”
- ☐ Article 1.02.A.11.c – Delete “Upon request from Owner to Engineer,”. Capitalize the word “photograph”.
- ☐ Article 1.02.A.12.b – Delete paragraph and insert “Deleted”.
- ☐ Article 1.02.A.16 – Add the following:

ATTACHMENT D.1 – REVISIONS TO STANDARD FORM FOR AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES (EJCDC E-500
(2020))

16. Domestic Preference

a. Observe and report on compliance with Domestic Preference requirements including but not limited to: Verifying that items delivered to the site are accompanied by Domestic Preference documentation, as applicable, and photographing stored and installed items to document compliance.

Modifications to **Exhibit J** of the Agreement

- ☐ Compensation Packet BC-1 – Modify paragraph 1.01.A.2 by adding “and Agency” after “approved in writing by the Owner”.
- ☐ Compensation Packet BC-1 – Modify paragraph 1.01.B by inserting “, with concurrence of the Owner and Agency” after “the compensation amount for Engineer’s services will be appropriately adjusted”.
- ☐ Compensation Packet BC-2 – Modify paragraph 1.01.A.5 by inserting “and Agency” after “approved in writing by Owner”.
- ☐ Compensation Packet BC-2 – Modify paragraph 1.03.C.2 by inserting “and Agency” after Owner in “Engineer shall give Owner written notice thereof.”
- ☐ Compensation Packet BC-2 – Modify paragraph 1.03.D 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.”
- ☐ Compensation Packet RPR-1 – Modify 2.01.A.3 by adding the following at the end of the paragraph “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- ☐ Compensation Guide RPR-2 – Modify 2.01.C.3.b by inserting “and Agency” after Owner in “Engineer shall give Owner written notice thereof.”
- ☐ Compensation Packet RPR-2 – Modify 2.01.C.4 by inserting the following at the end of the paragraph: “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- ☐ Compensation Packet RPR-2 – Modify 2.01.C.5 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.
- ☐ Compensation Packet AS-1 – Modify 3.01.C.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.”

ATTACHMENT D.1 – REVISIONS TO STANDARD FORM FOR AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES (EJCDC E-500
(2020))

- ☐ Compensation Packet AS-1 - Modify 3.01.C.4 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.
- ☐ Exhibit J, Appendix 2 – Add a new row at the end of the schedule in section B. Insert “Resident Project Representative (RPR)” in the first column of this row and “\$ [Enter Rate]/hour” in the second column.

**ATTACHMENT D.2 – REVISIONS TO SHORT FORM OF AGREEMENT
BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES (EJCDC E-
520 (2020))**

Notes to User:

1. *The time allotted, in Article 3.01.A, for the Engineer to submit deliverables should be no later than the time frame listed in the Rural Development Letter of Conditions.*
2. *The edit below for Appendix 1 is only needed if RPR services are to be provided.*

Modifications to the E-520 Agreement:

- ☐ Article 1.01.A – Delete “and consented to by Engineer.” and replace with “, consented to by Engineer, and concurred by Agency.”
- ☐ Article 2.01.C – Add the following:
 - C. Owner is responsible for compliance with Domestic Preference requirements.
 1. Where Owner directly procures products, Owner will obtain Manufacturers’ Certifications and provide copies to Engineer and Contractor.
- ☐ Article 4.01.A – Insert “Invoices will include a breakdown of services provided.” after “on a monthly basis.”
- ☐ Article 6.01.D – Add the following at the end of the paragraph: “Opinions of probable construction cost and any revisions thereof should reflect compliance with Domestic Preference requirements.”
- ☐ Article 7.01 – Add the following at the end of the section:
 - C. Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.
 - D. Contractor’s Certification – A certification submitted by Contractor that, to the best of the Contractor’s knowledge and belief, all Work complies with Domestic Preference requirements.
 - E. Domestic Preference – The Build America, Buy America Act (BABA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.

ATTACHMENT D.2 – REVISIONS TO SHORT FORM OF AGREEMENT BETWEEN
OWNER & ENGINEER FOR PROFESSIONAL SERVICES (EJCDC E-520 (2020))

F. Manufacturer's Certification - Documentation provided by the Manufacturer stating that Domestic Preference requirements have been satisfied for all provided items.

- ☐ Article 10.01 – Add the following:

10.01 Federal Requirements

- A. Agency Concurrence. Agency concurrence 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

ATTACHMENT D.2 – REVISIONS TO SHORT FORM OF AGREEMENT BETWEEN
OWNER & ENGINEER FOR PROFESSIONAL SERVICES (EJCDC E-520 (2020))

Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions,” to the Owner.

- E. In all phases of Engineer’s services, Engineer is responsible for Domestic Preference compliance documentation for the project. This includes but is not limited to (as applicable):
 - 1. Obtaining manufacturers' certifications for items specified by Engineer as sole source.
 - 2. Verifying and certifying all items subject to Domestic Preference specified in the contract are available domestically or are covered by a waiver.
 - 3. Reviewing change order proposals, shop drawings, payment applications, proposed substitutes and “or-equals,” and any other submittals to ensure Manufacturer Certifications are submitted for all items subject to Domestic Preference requirements.
 - 4. Ensuring that all Manufacturers’ Certifications provided by the contractor comply with Domestic Preference requirements.
 - 5. Maintaining all Domestic Preference documentation throughout the project and providing Contractor’s and Manufacturers’ Certifications to Owner upon final completion of the Work. Provide a copy of the Contractor’s Certification to Agency.
 - 6. Certifying, upon final completion of the Work, that the project complies with Domestic Preference requirements (signing EJCDC C-626 Notice of Acceptability of Work will suffice for this certification).
- F. In all phases of Engineer’s services, Engineer is responsible for ensuring the project does not violate the prohibitions on telecommunication and video surveillance services and equipment under 2 CFR 200.216.
 - 1. The telecommunication and video surveillance services and equipment prohibitions under 2 CFR 200.216 apply to this contract. This contract may not be used to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment is:
 - a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - b. Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - c. Telecommunications or video surveillance services provided by such entities or using such equipment.

ATTACHMENT D.2 – REVISIONS TO SHORT FORM OF AGREEMENT BETWEEN
OWNER & ENGINEER FOR PROFESSIONAL SERVICES (EJCDC E-520 (2020))

- d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- ☐ Appendix 1 – If RPR services are included in the Agreement, add a new row at the end of the schedule in section B. Insert “Resident Project Representative (RPR)” in the first column of this row and “\$ [Enter Rate]/hour” in the second column.

ATTACHMENT D.3 – REVISIONS TO AGREEMENT BETWEEN OWNER AND
ENGINEER FOR STUDY AND REPORT PROFESSIONAL SERVICES (EJCDC E-525
(2022))

**ATTACHMENT D.3 – REVISIONS TO AGREEMENT BETWEEN OWNER AND
ENGINEER FOR STUDY AND REPORT PROFESSIONAL SERVICES (EJCDC E-
525 (2022))**

Notes to User:

1. *The time allotted for the Engineer to submit deliverables, in Article 3.01.A, should be no later than the time frame listed in the Rural Development Letter of Conditions.*
2. *When developing Article 3.01 the preparer should provide adequate time for Agency review within the Owner's allotted time.*
3. *Lump Sum or Hourly Rates Compensation Methods may be selected in Article 4.02. Direct Labor Costs Times a Factor cannot be used for WWD projects.*

Modifications to the Main Body of the E-525 Agreement

- ☐ Article 3.01.A - Insert "and Agency" after "deliverables to Owner"
- ☐ Article 3.01.B – Insert "and receives comments from Agency" after "receives the Documents from the Engineer".
- ☐ Article 4.01.A – Insert at the end of the Paragraph "Invoices will include a breakdown of services provided."
- ☐ Article 6.02.A - Insert at the end of the Paragraph "Opinions of probable construction cost and any revisions thereof must reflect compliance with Domestic Preference requirements."
- ☐ Article 6.02.B - Insert at the end of the Paragraph "Opinions of Total Project Costs and any revisions thereof must reflect compliance with Domestic Preference requirements."
- ☐ Article 7.01.G and 7.01.H – Add the following:
 - G. Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development
 - H. Domestic Preference – The Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.

ATTACHMENT D.3 – REVISIONS TO AGREEMENT BETWEEN OWNER AND
ENGINEER FOR STUDY AND REPORT PROFESSIONAL SERVICES (EJCDC E-525
(2022))

- Article 8.03 – Add the following:

8.03 Federal Requirements

- A. Agency Concurrence. 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. Agency concurrence does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements.
- B. Audit and Access to Records. 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

ATTACHMENT D.3 – REVISIONS TO AGREEMENT BETWEEN OWNER AND
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(2022))

Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion –
lower tier transactions” to the Owner.

- E. Telecommunications and Video Surveillance Services or Equipment Prohibitions. The telecommunication and video surveillance services and equipment prohibitions under 2 CFR 200.216 apply to this project.

Modifications to **Exhibit A** of the Agreement

- ☐ Article 1.01.C and Article 1.01.D – Add the following:
 - C. In all phases of Engineering services, Engineer is responsible for Domestic Preference compliance documentation for the project.
 - D. In all phases of Engineering services, Engineer is responsible for ensuring the project does not violate the prohibitions on telecommunication and video surveillance services and equipment under 2 CFR 200.216.
- ☐ Article 1.02.A.1.b – Insert at the end of the paragraph “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.”
- ☐ Article 1.02.A.1.c - Delete paragraph and insert “Deleted”
- ☐ Article 1.02.A.15.c – Add the following:
 - c. This Report is the Preliminary Engineering Report (PER) 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. Cost estimates in the PER should reflect compliance with Domestic Preference requirements. This will be certified by stating in the transmittal letter with the PER, “The cost estimates for this project include the costs of Domestic Preference compliance.”
- ☐ Article 1.02.A.16.a – Delete and replace with the following:
 - a. Provide the appropriate environmental documentation as required by 7 CFR part 1970. This documentation must be concurred in by the Agency.
 - b. [List any such tasks or other deliverables here].

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- ☐ Article 1.02.A.18 – Modify by inserting “and Agency’s” after “response to Owner’s”
- ☐ Article 2.01.A – Modify by inserting “and Agency” after “in writing by Owner”
- ☐ Article 2.01.B.4 – Modify by inserting “(not including preparation of the environmental documentation required by 7 CFR part 1970 defined under the Study and Report Phase)” after “impact statements”.

Article 2.01.C.3 –Delete the paragraph and insert “Deleted”