

COMMENTARY ON THE EJCDC ENGINEERING SERVICES DOCUMENTS

Prepared by



Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Copyright © 2014:

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

The copyright for EJCDC® E-001 is owned jointly by the three organizations listed above. The National Society of Professional Engineers is the Copyright Administrator for the EJCDC documents; please direct all inquiries regarding EJCDC copyrights to NSPE.

NOTE: EJCDC publications may be purchased at www.ejcdc.org, or from any of the three sponsoring organizations above.

TABLE OF CONTENTS

Chapter 1: Introduction to the EJCDC Engineering Services Documents	1
A. The EJCDC Engineering Series.....	1
B. Engineers Joint Contract Documents Committee.....	1
C. EJCDC’s Guiding Principles	2
D. Development of the Engineering Series Documents	2
E. Owner-Engineer Agreements.....	3
F. Owner-Geotechnical Engineer Agreement	5
G. Subagreements for Professional Services	5
H. Engineer-Subcontractor Agreement	6
I. Special Purpose Agreements	6
J. Professional Services Agreements in the EJCDC Design-Build Series.....	8
Chapter 2: General Comments on Using the EJCDC Engineering Services Documents	9
A. Standard Terms and Format.....	9
B. Preparing an Agreement.....	9
C. Four Drafting Tips	11
Chapter 3: The EJCDC Professional Services Agreements— Contents of the Main Text of the Agreement	13
Chapter 4: The EJCDC Professional Services Agreements— Contents of the Standard Exhibits	17
A. Standard Exhibits.....	17
B. Paragraph Numbering System for Exhibits.....	18
C. Comments Regarding the Exhibits:.....	18
Chapter 5: The Short Form of Agreement Between Owner and Engineer	22
Chapter 6: EJCDC Subagreements	23

A. Flowdown of the Terms of the Prime Agreement.	23
B. Options for Payment Obligations.....	23
Chapter 7: Agreement between Owner, Design Engineer, and Peer Reviewers for Peer Review of Design	24
Chapter 8: Teaming Agreement to Pursue Joint Business Opportunity <i>and</i> Joint Venture Agreement Between Engineers	25
Chapter 9: Agreement between Engineer and Engineer’s Subcontractor	26

COMMENTARY ON THE EJCDC ENGINEERING SERVICES DOCUMENTS

Chapter 1: Introduction to the EJCDC Engineering Services Documents

A. *The EJCDC Engineering Series*

The Engineers Joint Contract Documents Committee (EJCDC®) develops, publishes, and updates standard contract documents for the design and construction of engineered projects. The EJCDC Engineering Series (“E-Series”) is comprised of nine professional services agreements, each having a specific intended application; one document for use by engineering firms in subcontracting non-professional services; two special-purpose documents (a teaming agreement/joint venture document, and a peer review agreement); and this Commentary. This Commentary discusses the content and use of the E-Series documents.

EJCDC revises its Engineering documents individually on a periodic basis. The engineering services documents were revised and published anew in 2008-2011 and the series is being updated beginning in 2014. The EJCDC documents are available in electronic format from the EJCDC supporting organizations, and from <http://www.ejcdc.org>.

B. *Engineers Joint Contract Documents Committee*

The members of EJCDC represent a major cross-section of the professional design and construction community. EJCDC is administered and supported in equal measure by three national supporting organizations:

- The American Council of Engineering Companies (ACEC)
- The American Society of Civil Engineers (ASCE)
- Professional Engineers in Private Practice, a Division of the National Society of Professional Engineers (NSPE/PEPP)

The EJCDC documents are prepared with the active participation of representatives of the stakeholders in the design and construction process, including project owner groups; construction contractors; professional engineers and engineering firms; risk managers; professional liability insurers; surety and insurance experts; construction lawyers; various professional societies, including but not limited to ASCE and NSPE; and construction managers. Many of EJCDC’s documents are approved and endorsed by the Construction Specifications Institute (CSI). EJCDC documents are specifically drafted for use on public and private projects designed by engineers, including public infrastructure; water and wastewater treatment and conveyance facilities; utility work; solid waste handling and disposal facilities; transportation projects; production and processing facilities; heating,

ventilating, and air conditioning systems; electrical projects; plumbing and fire protection projects; engineered instrumentation, controls, and information technology projects; site development work; environmental remediation projects; street, curb, and gutter work; tunneling and excavating projects; and similar applications.

The Engineering Series, which is the subject of this Commentary, is one of five principal EJCDC standard contract document series:

- **Engineering (E-Series)**, professional services agreements and related contracts
- **Construction (C-Series)**, for design/bid/build and design/negotiate/build construction projects
- **Design-Build (D-Series)**, including Owner-Design Builder, Owner-Consultant, Design Builder-Engineer, and Design Builder-Subcontractor contracts.
- **Procurement (P-Series)**, for the direct purchase by a buyer from a seller of equipment and materials; most typically Owner purchases that are then assigned to the construction contractor (“furnish and deliver”).
- **Environmental Remediation (R-Series)**, primarily intended for use on site remediation projects where the project delivery system is a form of design-build.

C. EJCDC’s Guiding Principles

EJCDC’s overall mission is to develop, publish, and maintain high-quality standard engineering and construction contract documents; to promote the use of the documents in the engineering profession and construction industry; and to provide guidance and information to users of the documents. EJCDC strives to identify, acknowledge, and fairly allocate risks, using a balanced approach that assigns a specific risk to the party best able to manage and control that risk. EJCDC’s publications are written to be objective and fair to all parties; to recognize and respect the parties’ interests, capabilities, and roles; and to contribute to the continual improvement of professional engineering services and construction contracting practices throughout the United States. It is the intent of EJCDC that its documents be thorough, practical, and even-handed.

D. Development of the Engineering Series Documents

The EJCDC Engineering Series documents have been drafted with the input of organizations and individuals with substantial knowledge and practical experience in project design and construction, including project owners (notably including representatives of the American Public Works Association and the U.S. Department of Agriculture’s Rural Utility Service); contractors and subcontractors (including the Associated General Contractors of America and National Utility Contractors Association); civil, environmental, structural, mechanical, electrical, and geotechnical engineers; surveyors and architects; sureties; and professional liability insurers. Legal and legislative developments and industry trends are considered during the process of drafting and updating the documents. The E-Series documents are

coordinated internally, among themselves, and with other documents, such as EJCDC's C-series and P-series documents, in their use of terminology and allocation of responsibilities.

When appropriate and applicable, EJCDC uses the same, or closely similar, wording in the terms and conditions of the various E-series documents. For example, the clause that describes the professional standard of care is exactly the same in all of the E-series professional services contracts, both prime agreements and subagreements.

Note that EJCDC uses the traditional, singular term "Engineer" in its documents, but recognizes that in most situations the "Engineer" will in fact be an engineering or consulting firm, joint venture, or other entity, and not an individual.

On some projects the Owner's in-house engineering staff may serve the role of "Engineer." Such situations presumably eliminate the need for an Owner-Engineer contract, and necessitate careful review and consideration of the use of the term "Engineer" in the project's construction contract. If in such situations the in-house engineering staff will delegate certain specific services, such as the geotechnical investigation, to an engineering consultant, then it should be possible to use one of the EJCDC professional services agreements for that delegation, with appropriate revisions to clarify that Owner and "Engineer" are effectively the same entity.

E. *Owner-Engineer Agreements*

The following four EJCDC Engineering series documents are professional services agreements between the Engineer and the project Owner:

- 1. EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.** This is a comprehensive Owner-Engineer contract. EJCDC® E-500 is EJCDC's flagship professional services agreement. Most commonly E-500 is used to engage an engineer's services for a single, specific project. It is drafted for the design-bid-build project delivery system; with minor revisions it is appropriate for design-negotiate-build project delivery; and it is readily adaptable to use in contracting for primary professional services on a variety of other project delivery systems. E-500 contemplates that the Engineer will furnish a full scope of engineering services, including preparation of the feasibility study, preliminary design, final design, assistance with the selection of a construction contractor during the bidding or negotiating phase, observation of construction, review of payment applications, other construction-phase tasks, start-up, and contract close-out. Optional provisions are also included for the Engineer to furnish Resident Project Representative (RPR) services.

EJCDC® E-500 includes standard terms and conditions together with 11 exhibits. It addresses the full range of subjects of importance in professional services agreements, including the standard of care, insurance, indemnification, compensation, ownership of design documents, and the scope of engineering services.

- 2. EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services—Task Order Edition.** The Task Order Edition of the standard professional

services agreement is intended for use when the project Owner and the Engineer have an ongoing relationship, spanning multiple engineering tasks or projects: for example, when a sewer district uses a specific engineering firm for all the district's wastewater conveyance projects. In such cases, EJCDC recommends that the two parties use E-505 to establish their basic contractual relationship—in effect a “master services agreement”—and then use short task orders for each specific project or assignment. Use of EJCDC® E-505 can greatly streamline the services contracting process over time.

EJCDC® E-505 includes the same comprehensive range of terms and conditions present in EJCDC® E-500, as well as a task order form. The numbering and structure of E-500 and E-505 are nearly identical, including exhibits. The most noteworthy distinguishing feature of E-505 is its use of individual task orders for specific professional assignments. In the task order, the Owner and Engineer agree to terms for the specific assignment, such as scope of services, schedule, and compensation. When a task order is issued, no drafting or negotiating are needed for terms such as indemnification, insurance, claims, dispute resolution, suspension, termination, or the like, because these provisions are already set forth in the “master services agreement.”

EJCDC emphasizes that the task orders under EJCDC® E-505 are not unilateral directives of the Owner. Both parties must agree to the scope, schedule, and compensation terms for the specific task order/assignment. The Engineer is legally bound to undertake a particular assignment only if it joins the Owner in executing the associated task order. EJCDC also notes that the entry into a Task Order Edition agreement is not a commitment by the Owner to issue task orders to the Engineer, and the arrangement between the two parties is not exclusive or limiting. The Owner may choose to retain other engineers, and the Engineer is free to provide its services to other owners.

3. **EJCDC® E-520, Short Form of Agreement Between Owner and Engineer for Professional Services.** The Short Form is intended for use on projects of limited scope and complexity. It contains the core contractual elements—such as provisions concerning time for completion of services, compensation, termination, standard of care, safety responsibility, ownership of design documents—as well as a standard limitation of liability provision. The Short Form is less comprehensive than most of EJCDC's other professional services agreements. For example, there is merely a blank for scope of services, rather than a detailed menu of standard services items, such as that found in Exhibit A, Engineer's Services, in EJCDC® E-500. The Short Form's compensation options are more limited than under the comprehensive standard professional services agreements. Insurance and indemnification are among the topics that are not addressed in the Short Form. For more discussion regarding the Short Form, see Chapter 5 of this Commentary.
4. **EJCDC® E-525, Agreement Between Owner and Engineer for Study and Report Phase Professional Services.** EJCDC® E-525 is for use in retaining an engineering firm to prepare a study and report, for example with respect to evaluating a project's

feasibility, facility needs, treatment options, or siting challenges. E-525 does not include design phase or construction phase engineering services. If, after receiving the report, the Owner decides to move forward with a specific project, the parties may use EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services, to proceed with the design phases and other services.

F. *Owner-Geotechnical Engineer Agreement*

EJCDC publishes a prime agreement specifically for geotechnical engineering services:

1. **EJCDC® E-530, Agreement Between Owner and Geotechnical Engineer for Professional Services.** It is common practice for project owners to directly engage the services of a geotechnical engineering firm, to investigate the subsurface condition of the site, and to prepare a report for Engineer's use in designing the project, and possibly for use as a reference document for prospective bidders and for the contractor during construction. The geotechnical services may also include specialized design services and construction-phase services. E-530 addresses the key issues involved in retaining a geotechnical engineer, including: scope of services, modifications in the scope in response to conditions encountered, site restoration, site safety, and risk allocation. E-530's provisions and terminology are generally consistent with those included in EJCDC® E-564, Agreement between Engineer and Geotechnical Engineer for Professional Services, under which the Engineer, rather than the Owner, retains the geotechnical engineer. For more on E-564, see Chapter 1, Paragraph G.4 of this Commentary, below.

G. *Subagreements for Professional Services*

Four of the EJCDC Engineering Series documents to which the Engineer is a direct party are subconsultant agreements under which another design professional (or professional services firm) agrees to provide professional services for the Engineer. These documents are:

1. **EJCDC® E-570, Agreement Between Engineer and Consultant for Professional Services.** This is EJCDC's most commonly used professional services subagreement, and may be used for a variety of Engineer's consultants, including structural engineers, mechanical engineers, electrical engineers, and others.
2. **EJCDC® E-568, Agreement Between Engineer and Architect for Professional Services.** Many engineer-led projects include one or more design components that the Engineer may prefer to delegate to an architect. This subagreement is tailored to that purpose.
3. **EJCDC® E-560, Agreement Between Engineer and Land Surveyor for Professional Services.** This subagreement focuses on the specialized scope of services that a land surveyor furnishes to the Engineer. E-560 was developed with the participation and advice of representatives of the National Society of Professional Surveyors.

4. **EJCDC® E-564, Agreement Between Engineer and Geotechnical Engineer for Professional Services.** When the Engineer’s scope of services includes geotechnical investigations or design, then EJCDC® E-564 may be used to delegate such services to a geotechnical engineering firm or individual. As with the parallel document, EJCDC® E-530, Agreement Between Owner and Geotechnical Engineer for Professional Services, E-564 addresses the key issues involved in retaining a geotechnical engineer, including scope of geotechnical services, modifications in scope in response to conditions encountered, site restoration, site safety, and risk allocation.

H. *Engineer-Subcontractor Agreement*

EJCDC has prepared the following standard agreement for use when an engineer or engineering firm needs to have **non-professional services** performed for it:

1. **EJCDC® E-562, Agreement Between Engineer and Engineer’s Subcontractor.** This standard document is intended to be used by engineering firms to subcontract a broad spectrum of general, non-professional services, such as printing and binding, data management, site support, physical exploratory tasks, incidental fabrication and construction for the Engineer, cost reviews, and recordkeeping. Engineers may also use E-562 as a stand-alone contract for retaining assistance with such tasks in situations where the Subcontractor’s scope of work is not associated with a specific prime agreement. Engineers should continue to use EJCDC’s professional services subagreements to delegate professional services: EJCDC® E-570, Agreement Between Engineer and Consultant for Professional Services, and its companion subagreements E-560 (Engineer–Land Surveyor); E-564 (Engineer-Geotechnical Engineer); and E-568 (Engineer–Architect).

EJCDC® E-562 addresses the key issues in subcontracting for non-professional services, including payment, insurance, schedule, warranty, safety, flow-down of prime agreement terms (if applicable), and termination. Although suitable for incidental construction for the Engineer (for example, constructing access stairs and ramps for Engineer’s job trailer), EJCDC recommends using EJCDC’s standard construction (C-series) or design-build (D-Series) contract documents for more substantial construction for the Engineer, and for all construction to be performed for Owner.

I. *Special Purpose Agreements*

EJCDC’s remaining two engineering services documents serve specialized purposes:

1. **EJCDC® E-581, Agreement between Owner, Design Engineer, and Peer Reviewers for Peer Review of Design.** This document is used to conduct an independent “peer review” of the Engineer’s design. EJCDC developed E-581 in the 1990s to support peer review standards and guidelines developed by the American Society of Civil Engineers (ASCE) and the American Council of Engineering Companies (ACEC).

Peer reviews are performed at key points during the design process by independent and external teams not associated with the original design team. Peer review provides an evaluation of design concepts relative to critical performance objectives, and is intended to add a measure of increased confidence by the Owner, or in some cases by funding, financing, or permitting entities, regarding the quality of the design. E-581 creates a framework of agreement among the Owner, Engineer, and the peer reviewers on the scope of the review. E-581 facilitates using independent and external peer reviews for many projects, and particularly those:

- Where project performance is critical to the public health, safety, welfare, and the protection of the environment;
- Where reliability of project performance under emergency conditions is critical;
- Using innovative materials, techniques, or design methods;
- Lacking redundancy in the design; or
- That have unique construction sequencing or a short/overlapping design-construction schedule.

Peer reviews can be initiated by the Owner, the Engineer, a regulatory authority having jurisdiction, or by the requirements of external funding/financing entities. Peer review agreements set a defined scope of services, and provide mutually acceptable procedures and limitations.

2. **EJCDC® E-580, Teaming Agreement to Pursue Joint Business Opportunity and Joint Venture Agreement Between Engineers.** This EJCDC publication consists of two documents for use by engineering firms that wish to work together as a team. The component known as EJCDC® E-580—TA (“Teaming Agreement to Pursue Joint Business Opportunity”) presents model language for the basic structure for combining forces to prepare and submit proposals for furnishing professional services. EJCDC’s publication of the Teaming Agreement recognizes that in many cases working together with a team member will substantially increase and enhance the likelihood of attaining the goal of being selected to provide requested professional services. The second component of EJCDC® E-580 is the “Joint Venture Agreement Between Engineers for Professional Services” (EJCDC® E-580—JV). This component may be used as a joint venture agreement after a successful team effort to obtain the subject engineering services contract from the Owner.

EJCDC® E-580—TA and EJCDC® E-580—JV may be used singly or in combination depending on the project.

When E-580-TA is used as the basis for a teaming agreement, its users can: (a) delete the “Joint Venture” portion of the document (E-580—JV), or (b) retain the “Joint Venture” portion, unexecuted, as an exhibit that serves as a sample of the agreement that the team members intend to execute if and when they are awarded the work.

In many situations in which two design professionals work together, one will take the role of prime design professional, and the other will serve as a subconsultant to the

prime; in such cases, EJCDC® E-570, Agreement Between Engineer and Consultant for Professional Services (or one of E-570's derivatives), may be used to establish the relationship between the two firms. As an alternative to the prime-subconsultant contractual relationship, some design professionals may prefer to form a joint venture, particularly for significant engagements and complex projects. The Joint Venture component of EJCDC® E-580 (E-580-JV) provides a platform for design professionals to use to establish and conduct their formal joint working relationship. E-580-JV addresses capital contributions, the respective interests in the joint venture, management of the joint venture, distribution of proceeds, liability, insurance, and indemnification.

EJCDC® E-580 is intended for joint efforts with respect to professional services. The Joint Venture Agreement component in particular is not intended for use in collaborations between engineers and contractors (such as in the design-build project delivery system), or for providing construction or design-build services.

J. *Professional Services Agreements in the EJCDC Design-Build Series*

By their nature, the primary EJCDC design-build publications, such as EJCDC® D-520, Agreement Between Owner and Design-Builder, involve both professional services and construction obligations. The following two secondary Design-Build series documents are narrowly limited to the provision of professional services:

- EJCDC® D-500, Agreement Between Owner and Owner's Consultant for Professional Services – Design/Build Project
- EJCDC® D-505, Subagreement Between Design/Builder and Engineer for Professional Services

The structure, format, terms, and risk allocations in these publications are generally consistent with the corresponding elements of the EJCDC E-series documents that are discussed in this Commentary. Specific discussion of the two Design-Build series documents may be found in EJCDC® D-001, Guide to Use of EJCDC Design/Build Documents.

Chapter 2: General Comments on Using the EJCDC Engineering Services Documents

A. *Standard Terms and Format*

EJCDC's engineering services documents are intended to be consistent with other EJCDC contract documents, most notably those used to establish the legal relationship between the Owner and Contractor (e.g., EJCDC® C-700, Standard General Conditions of the Construction Contract). The use of congruent EJCDC contract documents generally will allow the parties to allocate responsibilities in a systematic fashion and avoid disagreements regarding definitions of terms, indemnification, insurance, and other items of project-wide importance.

In the EJCDC documents, the principal parties to the construction process are identified, defined, and referred to in shorthand form using initial capital letters: Owner; Engineer; Contractor; Consultant; Resident Project Representative; and others. Various other terms are also defined and referred to in the same manner: Contract Documents; Project; Substantial Completion; Change Order; and others. Readers may refer to the specific EJCDC documents for detailed definitions of terms and terminology.

In general, each EJCDC E-Series document consists of a principal document containing terms and conditions (referred to in this Commentary as the "Main Text" of the agreement), supplemented by exhibits that set forth Project-specific provisions such as the scope of services, the Engineer's compensation, dispute resolution procedures, and insurance requirements. The format of the exhibits is flexible and, when necessary, the principal documents themselves may also be modified, allowing the parties to express their agreement with precision and specificity; also refer to Chapter 2, Part B of this Commentary, below.

B. *Preparing an Agreement*

As indicated on the covers of EJCDC's E-Series publications, and as is true for all standard published contract documents, the E-Series documents have important legal consequences; consultation with an attorney is encouraged with respect to their use, completion, or modification. EJCDC E-Series documents should be adapted to the particular circumstances of the contemplated project and the applicable laws of the jurisdiction in which the professional services for the project are to be performed, and of the jurisdiction where the project's construction (if any) will occur.

Professional services agreements are usually drafted with input from both of the contracting parties. Either the Owner or the Engineer may take the lead in obtaining the base EJCDC standard document and preparing an initial draft for the specific project. Some conditions may need to be discussed and negotiated between the parties, such as compensation, limitations on liability, and the scope of services. The document is typically exchanged between the parties a few times before it is finalized and executed (signed).

The standard text of the principal EJCDC documents is well known in the design and construction industry, and EJCDC documents are written to be, and are generally accepted as, fair and reasonable. These facts can be advantageous in speeding up the process of preparing a Project-specific agreement. If (1) a draft indicates that it is a specific EJCDC document (for example, EJCDC® E-500, 2008), (2) changes to the standard EJCDC text are kept to a manageable minimum, and (3) all such changes are shown in a plain, obvious manner (through the use of redline/strikeout, highlighting, or similar means) during the process of preparing the Project-specific agreement(s), so that both parties are aware of non-standard provisions, then the time required for reviewing, responding, and negotiating is usually reduced.

In some cases, the party that takes the lead in preparing the Project-specific agreement may prefer to present a customized professional services agreement that is based on an EJCDC document, but with substantial modifications to some of the EJCDC standard provisions. This is a relatively common practice, as many engineering firms and owners develop their own “standard” services agreements, consisting of an EJCDC foundation supplemented by custom terms and conditions that reflect local practices, special risk management philosophies, conformance with laws in the governing jurisdiction, lessons learned, and other specific purposes. In such cases it is important to avoid giving the other party the incorrect impression that the customized agreement is an EJCDC standard document. This can be accomplished either by plainly and obviously showing all changes during the drafting process, as described above, **or** by stripping out all references to EJCDC, including the cover pages, logos, EJCDC document number and title, and EJCDC footers (except for attribution of copyright).

Summary:

- During the process of preparing a project-specific agreement, if a contract draft purports to be or appears to be an EJCDC standard agreement, clearly show all changes to the EJCDC standard text.
- If the user removes all EJCDC references and does not imply that a draft document is an EJCDC standard document, then there is no need to show changes.

Examples of Appropriate Use:

- Engineering Firm X has reached a tentative agreement to provide engineering services to a new client, and wants to lock in the engagement with a written contract. Firm X takes EJCDC® E-500 (2008), fills in specific project information (such as compensation, insurance limits, etc.), makes a few modifications to EJCDC’s standard text using redline/strikeout, retains EJCDC’s footers and other indicators that the document is EJCDC E-500, and presents it to the client for review. The client and its legal counsel are familiar with E-500 and are able to swiftly assess the proposed deviations from the standard text, and also propose a few revisions or added clauses that the client customarily requires.

- Engineering Firm Y purchased the current edition of EJCDC® E-500 and has used it as a platform for creating an in-house “standard” services contract: “Agreement between Firm Y and Client for Professional Services.” Firm Y’s document retains many EJCDC clauses and elements, but also includes Firm Y’s preferred clauses regarding ownership of the design documents, invoicing and payment procedures, termination, and other subjects. Firm Y’s document in its draft form does not refer to EJCDC or E-500 in any manner and contains no EJCDC-related logos. When a new engagement arises, Firm Y fills in specific project information and presents the in-house agreement for the client’s review and acceptance. Existing clients have seen Firm Y’s document previously and can readily respond. New clients either take the time to conduct a thorough clause-by-clause review; check to see how Firm Y has addressed a few “hot-button” provisions, and otherwise rely on a quick skim through the text; or counter by proposing the use of a standard published document, such as E-500, or of some other owner-engineer agreement that the client has used in the past.

C. *Four Drafting Tips*

The following points will aid in the process of preparing project-specific EJCDC engineering services agreements:

1. **Trim down Exhibit C.** EJCDC’s E-series documents as published contain a lengthy Exhibit C, comprised of numerous options for detailing the Engineer’s (or as applicable Consultant’s, Geotechnical Engineer’s, Land Surveyor’s, etc.) compensation. For example, Exhibit C of EJCDC® E-500 is 33 pages long. Retain only the few pages that will apply to the project-specific contract that is being prepared, and discard the rest. The Compensation Decision Guide that is included at the beginning of Exhibit C presents guidance on the process of selecting the pages to retain for the specific contract. At the end of the contract preparation process, Exhibit C should typically be approximately five to eight pages long.
2. **Delete all the Notes to User.** EJCDC includes various notes in the E-series documents as published to assist the user in adapting the EJCDC document for use on a specific project. Notes to User provide assistance in filling in blanks, making selections when alternative provisions are presented, and arriving at a final contract for the project-specific agreement. Refer to such Notes to User during the contract preparation process, especially in the initial stages; then delete the Notes to User before finalizing the project-specific agreement. **The final document that the parties sign should not contain any Notes to User.**
3. **Customize Exhibit A.** This exhibit contains the Engineer’s scope of services (or in the case of the subagreements, as applicable the Consultant’s, Geotechnical Engineer’s, Land Surveyor’s, etc., scope of services). It is almost always necessary to modify the scope of services to some extent. Each EJCDC E-Series Exhibit A as published is meant to be comprehensive, but may nonetheless omit some services that will be provided under the specific contract. In other cases, the scope of services may need to be narrowed—for example, for an engagement under which the parties are using EJCDC® E-500, if the Owner will take exclusive charge of Contractor selection, it may be appropriate to delete Exhibit A’s Paragraph A1.04, concerning Bidding or

Negotiating Phase services. Also, note that some services in Exhibit A are “Basic Services” (and must be provided at base rates or without additional compensation); while others are “Additional Services” (requiring special rates or additional compensation to the Engineer). To fit the needs and cost objectives of the specific project, it may be advisable to shift services between “Basic Services” and “Additional Services.”

Exhibit A when completed should represent in detail the exact scope of services agreed to by the parties. Subsequent readers of the final document should be able to fully understand what specific scope of services the Engineer (or as applicable Consultant, Geotechnical Engineer, Land Surveyor, etc.) has committed to provide or furnish.

4. **Avoid Renumbering.** The numbering and lettering of paragraphs, articles, and exhibits is governed by the automatic numbering feature of Microsoft Word. If one of these sections is deleted in its entirety, typically some or all of the sections that follow will automatically be renumbered. This can result in confusion in locating provisions, and can affect the accuracy of cross-references. In addition, EJCDC attempts to maintain consistency throughout the EJCDC E-Series documents regarding identification of parallel provisions: for example, insurance requirements are addressed in Exhibit G; schedule issues are addressed in Article 3 of the Main Text; and so on. For these reasons, if a provision is to be deleted, it is often best to delete the text only and insert a placeholder such as “Reserved” or “Not Used” to avoid the renumbering of subsequent provisions. For example, Article 5 of EJCDC E-500 is “Opinions of Cost.” If, on a specific project, the Owner and Engineer have decided during the contract preparation process to delete Article 5, then rather than deleting Article 5 in its entirety (which would result in the automatic renumbering of the remaining provisions of the Main Text), delete the text and insert “Reserved” or “Not used” in place of the Article title.

Chapter 3: The EJCDC Professional Services Agreements— Contents of the Main Text of the Agreement

The Main Text of the various EJCDC professional services agreements contains the principal terms and conditions. For purposes of this commentary, “Main Text” will refer to the first 15 to 20 pages of the various professional services agreements (not including the Short Form), starting with page 1 where the parties and the Project are identified, and ending with the signature page. The Main Text and the miscellaneous cover pages that precede it will be reviewed here in Chapter 3. The contents of the standard exhibits to the professional services agreements are covered in Chapter 4. The Short Form, Engineer-Subcontractor, Peer Review, and Teaming Agreement/Joint Venture agreements are addressed in separate chapters.

- **Instructions and License Agreement:** Sometimes referred to as the “shrink wrap,” these items set out the terms of use for the document, and provide instructions regarding the copyright, modifications, and similar matters. When an EJCDC document is purchased, the pages containing the instructions and licensing agreement are prominently included. EJCDC allows multiple uses of purchased documents: the licensing agreement and instructions apply to all such uses. The purchaser must review and follow the licensing agreement and instructions. However, the shrink wrap is not intended to be part of any engineering contract, and should not be included with the drafts or final version of any specific contract produced from the purchased EJCDC document.
- **Title page:** The outside title page (cover page) may be discarded during the contract drafting or finalization process.
- **Inside front cover page:** This is the page containing the principal copyright information, and the addresses of the four EJCDC supporting organizations. It may be discarded during the contract drafting or finalization process.
- **Table of Contents:** This page may be discarded during the contract drafting or finalization process.
- **Page 1:** This is typically the first page of the actual finalized agreement. As noted above in Chapter 2, part B, in some cases the user may choose to delete the EJCDC logo and other references during the drafting process. The final contract document should always include the statement described above in Chapter 2, part C, acknowledging the EJCDC copyright and noting that the document has been modified, preferably on page 1 or as a footer on p.1 and continuing throughout the final document.
- **Project information:** Identify the parties, using the correct, formal entity names; establish an effective date; describe the Project (typically consisting of planning, design, and construction—the engineering services generally being a subset of the Project as a whole), for example, “West Side Interceptor Project”; describe the Engineer’s services, for example, “Design of West Side Interceptor, and related construction-phase professional services.” Note that the contractual scope of services is in Exhibit A and it is

best not to state too much regarding scope in the main text, such that its terms might inadvertently conflict with Exhibit A.

- Article 1—Services of Engineer. Refers the reader to Exhibit A, where Engineer’s scope of services for the specific project should be set out. Note that the wording makes plain that Engineer will itself provide some services, but will merely “cause to be provided” other services, typically through subconsultants.
 - In EJCDC® E-530 (Owner-Geotechnical Engineer) and EJCDC® E-564 (Engineer-Geotechnical Engineer), Article 1 is “Services of Geotechnical Engineer,” and includes a clause regarding scope changes (for example, extra borings) resulting from field conditions encountered.
 - In the various subagreements, Article 1 addresses the services of the Consultant (EJCDC® E-570, Engineer-Consultant), the Land Surveyor (EJCDC® E-560, Engineer-Land Surveyor), and the Architect (EJCDC® E-568, Engineer-Architect).
- Article 2—Owner’s Responsibilities. Refers the reader to Exhibit B, where Owner’s specific duties are set out. The primary Owner obligation is to pay for services rendered by the Engineer. Also includes the Owner’s responsibility for the accuracy of any information that Owner provides to Engineer for performance of its services.
 - In the subagreements, Article 2 addresses the responsibilities of the Engineer with respect to the various subs that provide professional services to Engineer.
- Article 3—Schedule for Rendering Services. Addresses the commencement of the professional services, the time for completion, and consequences of not meeting the established completion time.
- Article 4—Invoices and Payments. Provides standard procedures and requirements for invoicing, payment, and consequences of failure to pay. The design professional’s compensation for services is addressed in Exhibit C.
 - Article 4 of the subagreements notes that the user must address the issue of the Engineer’s obligation to pay the Consultant (Architect, Geotech, Land Surveyor) in cases in which the Owner has failed to pay the Engineer. The choices of approach to this issue are set out in Exhibit C.
- Article 5—Opinions of Cost. It is often difficult for design professionals to predict the cost to construct the facilities that they design. Article 5 addresses the limited extent of reliance that may be placed on such opinions of construction cost. Reference is made to optional Exhibit F, “Construction Cost Limit,” in which the parties can spell out procedures for redesign services or other response when construction bid costs exceed the Owner’s expectations.
 - The Engineer-Land Surveyor agreement (EJCDC® E-560) does not include an Opinion of Costs section, because land surveyors are rarely called upon to estimate construction costs.

- Designing to a construction cost limit is not considered relevant to the Owner-Engineer Agreement for Study and Report Services (EJCDC® E-525), or the geotechnical agreements (EJCDC® E-530, Owner-Geotech, and EJCDC® E-564, Engineer-Geotech), and therefore no Exhibit F, “Construction Cost Limit,” is included with those agreements.
- Article 6—General Considerations. A substantial number of important provisions are located in Article 6 of the professional services agreements (in the Engineer-Land Surveyor agreement, E-560, “General Considerations” are in Article 5). These should be reviewed in detail. Highlights are listed below:
 - Standard of Care. Expressly states the standard by which the design professional’s services will be analyzed. The professional standard of care originated in the courts through common law decisions. Because of the nature of professional services, engineers and other design professionals cannot warrant or guarantee their work (in contrast to construction contractors), but rather commit to providing the care and skill used by other members of the profession.
 - Consultants. The standard documents allow the primary design professional to delegate (“sub out”) services to third parties, referred to as “consultants” in the prime agreements (Owner-Engineer, Owner-Geotech, etc.), and as “subconsultants” in the various subagreements.
 - Responsibility for construction safety and the contractor’s work. Article 6 confirms the customary point that the construction contractor is responsible for performing the construction work in compliance with the construction contract with the owner, and for site and workforce safety; and that the design professional **is not** responsible for the contractor’s failure to perform the construction work adequately, or for any aspect of site and workforce safety. This “bright line” separation of duties benefits Owner, Engineer, Contractor, and the workforce by leaving no doubt or ambiguity about roles, and placing decisions and practices in the hands of the party best able to exercise them properly.
 - Ownership and use of design documents. The EJCDC standard provision grants ownership of the design to the designing party, but also provides the Owner with an express license to use the design. Any reuse by the Owner is at the Owner’s sole risk.
 - Insurance, Bonding. Two points are emphasized. First, design professionals are not experts in insurance or surety, and therefore do not have any responsibilities under any of the EJCDC documents for providing insurance or bonding advice, or recommendations, or for enforcing any insurance or bonding requirements placed on the construction contractor. Second, general provisions address the obligations of the two parties to obtain certain indicated types of insurance, and of the Owner to require that the construction contractor maintain certain insurance. Specific insurance requirements should be set out in Exhibit G, Insurance.

- Termination. This section details the procedures for termination, and specifies the compensation owed in the wake of a termination.
- Dispute resolution. EJCDC requires the parties to engage in direct negotiation of disputes as a preliminary step toward resolution. The parties should specify any further dispute resolution steps in Exhibit H. If no further steps are indicated, then the parties are left to their rights at law, which typically would mean taking the dispute to conventional litigation.
- Hazardous environmental conditions. Article 6 addresses the rights of the parties if hazardous substances are found at the site. The standard default assumption in the EJCDC E-series documents is that the design professional has been engaged for services other than responding to hazardous substances. (EJCDC also publishes Environmental Remediation contract documents—the EJCDC R-series.)
- Indemnification. The standard documents provide that Engineer will indemnify the Owner for injury and property damage claims, to the extent of Engineer’s negligence. Unless the parties modify the standard text, the Owner’s indemnity duties are limited to those required by law, and to the special case of indemnifying Engineer with respect to hazardous environmental conditions at the site. See also the discussion below regarding Exhibit I, Limitations of Liability.
- Article 7—Defined Terms. Various terms used in the agreement are defined. In most cases the definitions are the same as or consistent with definitions used in other EJCDC standard documents.
- Article 8—Exhibits and Special Provisions. The exhibits used in the document are listed. Some exhibits, such as Exhibit A, *Engineer’s Services*, are used on nearly every engagement. Others, such as Exhibit D, *Duties, Responsibilities, and Limitations of Authority of Resident Project Representative*, are used only on select projects.
 - In addition to listing the included exhibits, Article 8 also includes a few other provisions, including a certification that the contract has not been procured through corrupt, coercive, or fraudulent practices.
- Signatures. Representatives of the parties with authority to sign should execute the document, and provide their names and titles. In those states where it is required to be included in the contract, the design firm that will be providing services should also state its certificate number (certificate of authority to practice engineering, for example); in the case in which the contracting design professional is an individual, provide the license number.

Chapter 4: The EJCDC Professional Services Agreements— Contents of the Standard Exhibits

A. *Standard Exhibits*

There are eleven standard exhibits used with EJCDC® E-500, Agreement between Owner and Engineer for professional Services. Similar exhibits, expressly drafted for the particular E-series document, accompany the other EJCDC professional services agreements, including the subagreements (exceptions are noted below in brackets). (The contents of the Engineer-Subcontractor Agreement, the Teaming/Joint Venture Agreement, and the Peer Review document are addressed in the chapters that follow.)

- Exhibit A, “*Engineer’s Services*” [all except E-520, Short Form, use this or a specific variant such as “Geotechnical Engineer’s Services”]
- Exhibit B, “*Owner’s Responsibilities*” [all except E-520, Short Form, and E-525, Owner-Engineer, Study/Report Phase, use this; in the subagreements such as E-570, Engineer-Consultant Agreement, it is “Engineer’s Responsibilities.”]
- Exhibit C, “*Payments to Engineer for Services and Reimbursable Expenses*” [all except E-520, Short Form]
- Exhibit D, “*Duties, Responsibilities and Limitations of Authority of Resident Project Representative*” [Exceptions: E-520, Short Form; E-525, Owner-Engineer, Study/Report Phase; E-560, Engineer-Land Surveyor]
- Exhibit E, “*Notice of Acceptability of Work*” [Exceptions: E-520, Short Form; E-525, Owner-Engineer, Study/Report Phase; E-560, Engineer-Land Surveyor]
- Exhibit F, “*Construction Cost Limit*” [Exceptions: E-520, Short Form; E-525, Owner-Engineer, Study/Report Phase; E-560, Engineer-Land Surveyor]
- Exhibit G, “*Insurance*” [all except E-520, Short Form, and E-525, Owner-Engineer, Study/Report Phase]
- Exhibit H, “*Dispute Resolution*” [all except E-520, Short Form, and E-525, Owner-Engineer, Study/Report Phase]
- Exhibit I, “*Limitations of Liability*” [all except E-520, Short Form, and E-525, Owner-Engineer, Study/Report Phase]
- Exhibit J, “*Special Provisions*” [all except E-520, Short Form, and E-525, Owner-Engineer, Study/Report Phase]

- Exhibit K, “*Amendment to Owner-Engineer Agreement*” [all except E-520, Short Form, and E-525, Owner-Engineer, Study/Report Phase, use this or a variant such as “Amendment to Engineer-Consultant Agreement”]

Note that Exhibits A, B, C, and G are intended to be used on all projects. The reasoning behind having these essential subjects covered by exhibits is that they are project-specific, and thus they should be separately considered and addressed for each project. The other exhibits are commonly used, but in specific engagements may be unnecessary. As noted elsewhere, if an exhibit is not used, consider deleting the text and marking it as “Reserved,” “Not used,” or “intentionally omitted.” Also revise the list of included exhibits in Article 8 using consistent terms.

B. *Paragraph Numbering System for Exhibits*

The paragraphs of each exhibit are numbered to correspond to the relevant paragraph number in the body of the Agreement, and are preceded by the letter designating the particular exhibit. Where a provision is intended to add new information on a subject not otherwise covered in a standard paragraph of the Agreement, it is numbered as if added at the end of that Section.

C. *Comments Regarding the Exhibits:*

- 1. Exhibit A:** This is the scope of services exhibit. The EJCDC text is comprehensive, and tailored for the specific professional discipline when appropriate—for example, the Engineer-Land Surveyor Agreement’s Exhibit A is comprised of services that a land surveyor would typically provide. Nonetheless, it is expected that the user will modify Exhibit A, sometimes extensively, to fit the scope of services needed on a specific project.

In most cases Exhibit A is divided into two parts. Part 1, Basic Services, are those tasks that are expected to be performed as part of the ordinary course of the engagement. In the comprehensive documents, this would include Study and Report services; Preliminary and Final design; assistance with Bidding or Negotiating the construction contract; Construction Phase tasks, including administrative, observation, and payment application tasks; and post-construction visits to the site. Part 2, Additional Services, are possible tasks that may be authorized if needed. A few Additional Services tasks, such as responding to emergencies, are categorized as pre-authorized, though the Owner always retains the right to call a halt to such services.

- 2. Exhibit B:** EJCDC has identified twenty or so responsibilities that the Owner (or in the case of the subagreements, the Engineer) commonly undertakes. The Owner’s responsibilities typically vary less by type of project than those of the design professional. Note that if the Owner will be using a construction manager or other independent representative, Exhibit B calls on the Owner to clarify the respective roles of the CM and the Engineer.

3. **Exhibit C:** In Exhibit C, the parties must specify how the design professional will be compensated for its services. EJCDC breaks this down into compensation for Basic Services, as defined in Exhibit A; compensation for the services of a Resident Project Representative (if any); and compensation for any Additional Services, as defined in Exhibit A. There are typically several possible ways of paying for services; Exhibit C includes “Compensation Packets” for the various methods. Each Compensation Packet contains the terms and conditions that apply to the specific means of compensation, and when appropriate incorporates appendices for hourly rates and reimbursable expenses. Users should follow the Compensation Decision Guide that is provided at the beginning of Exhibit C.

The six Compensation Packets typically included in Exhibit C for Basic Services are:

- Lump Sum
- Standard Hourly Rates
- Percentage of Construction Costs
- Direct Labor Costs Times a Factor
- Direct Labor Costs Plus Overhead Plus a Fixed Fee
- Salary Costs Times a Factor

During the drafting process the user should **select one** of these six Compensation Packets and **discard (delete) the remaining five**.

The choices for compensating a Resident Project Representative are similar, with five RPR Compensation Packets typically available:

- Lump Sum
- Standard Hourly Rates
- Percentage of Construction Costs
- Direct Labor Costs Times a Factor
- Salary Costs Times a Factor

During the drafting process the user should **select one** of these five RPR Compensation Packets and **discard (delete) the remaining four**.

The choices for compensating the design professional for Additional Services are narrower:

- Standard Hourly Rates
- Direct Labor Costs Times a Factor
- Salary Costs Times a Factor

The user should **select one** of these three Additional Services Compensation Packets and **discard (delete) the remaining two**.

4. **Exhibit D: Resident Project Representative.** If the design professional’s scope of services in Exhibit A includes the assignment of a resident project representative (RPR) to provide services at the site, use Exhibit D to describe the specific RPR services that will be provided. If the scope as set out in Exhibit A does not include RPR services, then do not include Exhibit D. Note: In the subagreements, the RPR services under Exhibit D correspond to the narrow scope of the Consultant’s (Geotech’s, Architect’s, etc.) services. For example, if the consultant under EJCDC® E-570, Agreement between Engineer and Consultant for Professional Services, is a structural engineer, providing structural design and structural-related construction phase professional services, then the RPR services under Exhibit D (if used) are intended to be limited to structural construction issues.

In most cases an Engineer will use an individual from its own organization to provide RPR services. If the RPR services are to be subbed out, Engineer may use EJCDC® E-570 to retain the RPR. In that case the scope of services (RPR services) should be set out in E-570’s Exhibit A, and there is no need to use Exhibit D in E-570, since the scope in A is not being supplemented.

5. **Exhibit E: Notice of Acceptability of Work.** It is common for the Engineer’s scope to include assessing whether the construction contractor’s work is acceptable. Exhibit E is a form for providing notice of acceptability. It should not be included in a specific contract if making this assessment is not within the Engineer’s scope—for example, if Owner’s staff, or a construction manager, will be evaluating the work. The form includes important limitations on the Engineer’s assessment of the work; ultimate responsibility for the quality of the work continues to reside with the contractor.
6. **Exhibit F: Construction Cost Limit.** In some cases the Owner may wish to specify a construction cost limit at the time the Engineer is engaged. (In many cases this will be difficult to do, because insufficient study and design has occurred to understand the likely scope or approximate costs of construction.) This can be done in Exhibit F. The Engineer then designs to that cost. If bids exceed the specified cost limit, the terms of Exhibit F indicate the Owner’s options, and address the limits on Engineer’s liability for excess costs.
7. **Exhibit G: Insurance.** The policies required, and the policy limits (in dollars), are specified here.
8. **Exhibit H: Dispute Resolution.** The user is asked to select between two dispute resolution options: (a) mediation followed by litigation, or (b) arbitration. If Exhibit H is not used, or neither option is selected, the default provision in the Main Text is that the parties are left to their rights at law—typically litigation. If other dispute resolution options are preferred, these can be located in Exhibit H and both standard options deleted.

Note that both mediation and arbitration call on the user to identify the name of a preferred neutral. If it is not possible to do so at the time the agreement is finalized, the parties may insert “to be determined” or words of similar effect.

9. **Exhibit I: *Limitations of Liability*.** In some cases the parties may agree that the Engineer's liability should be limited. Limiting liability is usually the result of policy considerations. Design professionals can be exposed to risks that are starkly out of proportion to the potential profit that can be earned. Limiting liability can protect individual design professionals and their colleagues from personal losses arising from business activities. In Exhibit I, EJCDC offers three options for limiting liability: (a) liability no greater than compensation, (b) liability no greater than available insurance proceeds, and (c) liability limited to a fixed amount. These provisions can also be supplemented by selecting wording limiting specific risks.

Note that the Owner-Geotechnical Engineer agreement and the Short Form include limitations of liability as standard provisions in the Main Text.

Exhibit I also supplies wording for a cross-indemnification in which the Owner indemnifies Engineer, using parallel wording to the Engineer's indemnification of Owner in the Main Text.

10. **Exhibit J: *Special Provisions*.** This exhibit can be used to incorporate supplemental terms and conditions that the parties wish to highlight in a separate document. In the alternative supplemental terms and conditions may be inserted directly into the Main Text or an appropriate standard exhibit.
11. **Exhibit K, *Amendment*.** This is a form that can be used as the project progresses to amend the agreement, by changing the scope of services, the compensation, the schedule, or other terms.

Chapter 5: The Short Form of Agreement Between Owner and Engineer

EJCDC® E-520, the Short Form, does not include scope of services provisions. The scope should be defined at page 1 or by an addendum. Four compensation options are provided, in the Main Text at Paragraph 7.01: Lump Sum, Standard Hourly Rates, Percentage of Construction Costs, and Direct Labor Costs Times a Factor. The user should select one of the four options and delete the other three. Additional services are stipulated to be compensable at hourly rates, which should be stated in the sole standard attachment to the Short Form, the Standard Hourly Rates appendix.

When contemplating use of E-520, consider the following comment that appears on the documents inside cover page:

“This abbreviated Agreement form [E-520] is intended for use only for professional services of limited scope and complexity. It does not address the full range of issues of importance on most projects. In most cases, Owner and Engineer will be better served by the Standard Form of Agreement Between Owner and Engineer for Professional Services (EJCDC® E-500, 2008 Edition), or one of the several special purpose EJCDC professional services agreement forms.”

Chapter 6: EJCDC Subagreements

A. *Flowdown of the Terms of the Prime Agreement.*

The EJCDC professional services subagreements (Engineer-Geotech, Engineer-Consultant, Engineer Architect, and Engineer-Land Surveyor) require the Engineer to include a copy of the prime agreement between Engineer and Owner as part of the subcontract (confidential terms such as pricing may be blacked out (redacted)). The subagreements expressly state that the terms of the prime agreement are incorporated, and therefore “flow down” to the subagreement.

The subagreements give the Engineer the obligation to coordinate the activities of the various subconsultants. Careful coordination is essential to the success of the design.

B. *Options for Payment Obligations.*

If the Owner fails to pay the Engineer, the Engineer is in the difficult position of having to pay the Consultant (or Geotech, Land Surveyor, etc.) out of Engineer’s own funds. In Exhibit C of the subagreements, EJCDC offers four options for addressing this situation: (1) Engineer may delay payment until paid by Owner, but after 120 days must pay the consultant unless the reason for nonpayment is Owner’s bankruptcy or similar financial failure; (2) Engineer may indefinitely delay payment until receipt of funds from Owner; typically courts allow such delays only for a “reasonable” period of time; (3) Engineer may delay payment until paid by Owner, but after 120 days must pay the consultant, regardless of receipt from Owner, and regardless of the reasons for Owner’s nonpayment; and (4) Engineer need not pay the sub unless it receives payment from Owner.

Chapter 7: Agreement between Owner, Design Engineer, and Peer Reviewers for Peer Review of Design

EJCDC® E-581, the Peer Review agreement, contemplates that the contracting peer reviewers will be entities (engineering firms); because of the specialized nature of peer review services it is also critical to identify the individual peer reviewers who will provide the services.

The peer review services are directly for the Owner's benefit, and thus compensation is owed by the Owner to the peer reviewers; the Engineer is not obligated to pay the peer reviewers. When a peer review occurs, the design engineer is called upon to assist the peer reviewers by making its design and its design professionals available, and for interaction regarding comments and recommendations. These activities are expressly treated as compensable.

By its very nature, calling upon outside reviewers to assess an engineer's design has the potential to create conflicts and friction. To induce potential reviewers to participate, and to encourage an independent and candid review, E-581 includes a waiver of claims by the Engineer, and an indemnification commitment by Owner. The document also stipulates that the peer reviewers will not exploit their position as a means of supplanting the design engineer on the project.

EJCDC® E-581 has the following exhibits:

1. **Exhibit A:** "Description of Basic Services of Design Engineer and Peer Reviewers in Connection with Peer Review of Design."
2. **Exhibit B:** "*Authorization of Technical Support Personnel to Assist Peer Reviewers.*" Allows the individual peer reviewers to delegate some tasks to support staff.
3. **Exhibit C:** "*Compensation of Design Engineer and Peer Reviewers.*" As to design engineer, the underlying professional services agreement may already address compensation for the additional services involved in a peer review; if not, E-581 provides that the design engineer be compensated on an hourly rates basis. Peer reviewers are also to be compensated on an hourly basis. If compensation is to be based on some other method (for example, lump sum), Exhibit C will need to be replaced with the selected provisions.
4. **Exhibit D:** "Disclosure and Acceptance of Potentially Conflicting Relationships of Design Engineer and Peer Reviewers."
5. **Exhibit E:** "*Insurance.*"
6. **Exhibit F:** "*Amendment for Additional Services of Design Engineer and Peer Reviewers.*"

Chapter 8: Teaming Agreement to Pursue Joint Business Opportunity and Joint Venture Agreement Between Engineers

As published, EJCDC[®] E-580 is two separate agreements for use by collaborating engineering firms: a teaming agreement for pursuing work, and a joint venture agreement to be used if work is secured from a client. The teaming agreement is intended for rapid execution and a limited purpose. The joint venture agreement is a detailed business document, with the following exhibits:

1. ***Exhibit A1: "First Partner's Services."***
2. ***Exhibit A2: "Second Partner's Services."***
3. ***Exhibit B: "Property of Individual Partners."***
4. ***Exhibit C: "Reimbursable Costs and Expenses."***
5. ***Exhibit D: "Insurance."***
6. ***Exhibit E: "Dispute Resolution."***
7. ***Exhibit F: "Professional Services Agreement," incorporated by reference only.***

Chapter 9: Agreement between Engineer and Engineer's Subcontractor

EJCDC® E-562, Agreement between Engineer and Engineer's Subcontractor, is intended for Engineer's use in procuring non-professional services. If the services are being subbed out as part of the Engineer's obligations to a client, then the subcontractor is entitled to payment within ten calendar days of Engineer's receipt of payment from Owner—but in any event within 120 days. If the services are a direct procurement unrelated to a specific overlying project, then payment for subcontractor's services is due within 30 days. One of these two options should be selected as Paragraph 1.02.

Three compensation options are provided: (1) lump sum, (2) standard hourly rates, and (3) unit prices. These options are located in the Main Text at Paragraph 2.01; delete two and complete and retain the selected option. Additional services are on an hourly rates basis.

Because the services under E-562 are not professional services, they are subject to warranty against defect. Paragraph 3.03.G.

Insurance requirements are addressed in the Main Text at Paragraph 3.06. Professional Liability Insurance is not required.

EJCDC® E-562 includes the following exhibits:

1. **Exhibit A:** Scope of Engineer's Subcontractor's Services
2. **Exhibit B:** Engineer's Responsibilities
3. **Exhibit C:** Engineer's Subcontractor's Hourly Rates. Exclude Exhibit C, Engineer's Subcontractor's Hourly Rates, only if hourly rates are not to be used for either basic compensation (Paragraph 3.01) or additional services (Paragraph 3.02).