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**STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
ON THE BASIS OF A STIPULATED PRICE**

**FUNDING AGENCY EDITION**

*Prepared by*

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly By

[insert seals]

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*a practice division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

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

This Standard Form of Agreement has been prepared for use with the Standard General Conditions of the Construction Contract, Funding Agency Edition (No. 1910-8-FA, 1997 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. The suggested language for instructions to bidders contained in the Guide to the Preparation of Instructions to Bidders (No. 1910-12, 1996 Edition) is also carefully interrelated with the language of this Agreement. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). See also Guide to the Preparation of Supplementary Conditions (No. 1910-17, 1996 Edition).

Rural Development

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National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2715

American Consulting Engineers Council  
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400

## Introduction

This Funding Agency Edition of the Agreement between Owner and Contractor on the Basis of a Stipulated Price (“Agreement”) has been prepared for use with the Guide to the Preparation of Instructions to Bidders (“Instructions”) (No. 1910-12, 1996 Edition) and with the Standard General Conditions of the Construction Contract, Funding Agency Edition (“General Conditions”) (No. 1910-8-FA, 1997 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the others. For guidance in the preparation of Supplementary Conditions and coordination with Instructions to Bidders, see Guide to the Preparation of Supplementary Conditions (“Supplementary Conditions”) (No. 1910-17, 1996 Edition). See also Guide to Preparation of the Bid Form (“Bid Form”) (No. 1910-18, 1996 Edition). The EJCDC has not prepared a suggested form of Advertisement or Invitation to Bid because such documents will vary widely in response to statutory requirements.

This form and the other Bidding Documents prepared and issued by the EJCDC assume acceptance of the Project Manual concept of the Construction Specifications Institute which provides for an organizational format for location of all bound documentary information for a construction project, namely: Bidding Requirements (which term refers to the Advertisement or Invitation to Bid, the Instructions, and any bid form that may be suggested or prescribed, all of which provide information and guidance for all Bidders) and the Contract Documents (defined in Article 1 of the General Conditions), which include the Agreement, Bonds and Certificates, the General Conditions, the Supplementary Conditions, the Drawings, and the Specifications. The Bidding Requirements are not considered part of the Contract Documents because much of their substance pertains to the relationships prior to the award of the Contract and has little effect or impact thereafter and because many contracts are awarded without going through the bidding process. In some cases, however, the actual Bid may be attached as an exhibit to the Agreement to avoid extensive retyping. (The terms “Bidding Documents” and “Bidding Requirements” are defined in Article 1 of the General Conditions.) The Project Manual concept is explained in the *Manual of Practice* issued by the Construction Specifications Institute.

The following “Notes to User” may be of assistance in preparing the Agreement. Much of the standard language should be usable on most projects, but modifications and additional provisions will often be necessary. The suggested language has been coordinated with certain other standard forms produced by the EJCDC. When modifying the suggested language or writing additional provisions, the user must check the other documents thoroughly for conflicts and coordination of language usage and make appropriate revisions in all affected documents. For brevity, referenced paragraphs of the Instructions to Bidders are designated with the prefix “I,” those of the Bid Form with the prefix “BF,” those of the General Conditions with the prefix “GC,” and those of this Agreement with the prefix “A.”

## Notes to User

- Cover, pages i-ii:
1. The first two sheets of the printed edition of this document, consisting of the cover, inside cover, Introduction and Notes to User, are not contractual and need not be included in any Project Manual. That is why the page numbering begins with 00500-1 (the prefix 00500 is the designation for Agreements assigned by the Construction Specifications Institute).
- 4.02.A:
1. Customary practice on projects funded in part by the Rural Utilities Service is to have just one Contract Time -- for Substantial Completion. In such a circumstance the last three words of the heading, the letter “s” on Times and the text following the first usage of the term General Conditions would be deleted. If such a deletion is made, it may require a change in GC ¶ 1.01.A.15 and GC ¶¶ 12.02-12.05.
- 4.03.A:
1. Customary practice on projects funded in part by the Rural Utilities Service is not to have a liquidated damages provision for failure to complete the Work by a designated period of time after Substantial Completion. If this option is elected, then the last sentence of this paragraph would be deleted. Under these circumstances, if Contractor does not diligently and competently deal with the tentative list prepared under GC ¶ 14.04.A., the Owner may need to invoke the provisions of GC ¶ 13.09 to achieve final completion.
  2. Where failure to reach a Milestone on time is of such consequence that the assessment of liquidated damages for failure to reach one or more Milestones on time is to be provided, appropriate amending or supplementing language should be inserted here.

- 5.01.C.: 1. If adjustment prices for variations from stipulated Base Bid quantities have been agreed to, insert appropriate provisions. See BF-4.
2. Depending upon the particular project bid form used, use A-5.01.A alone, A-5.01.A and A-5.01.B together, A-5.01.B alone, or A-5.01.C alone, deleting those not used and renumbering accordingly. If A-5.01.C is used, CONTRACTOR's Bid is attached as an exhibit and listed in A-9.
- 8.02.D.: 1. If the reports and/or drawings referred to in A-8.01.D do not exist, either modify A-8.01.D or delete A-8.01.D and renumber accordingly.
- 8.02.E.: 1. If the reports and/or drawings referred to in A-8.01.D do not exist, delete the phrase "additional or supplementary" in the first sentence of A-8.01.E.
- 10.05: 1. Insert other provisions here if applicable.
- Signature Page: 1. See I-21 and correlate procedures for format and signing between the two documents.

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**EJCDC  
STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
ON THE BASIS OF A STIPULATED PRICE**

**FUNDING AGENCY EDITION**

**THIS AGREEMENT** is by and between \_\_\_\_\_  
(hereinafter called OWNER) and \_\_\_\_\_  
(hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1 - WORK**

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**ARTICLE 2 - THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

### ARTICLE 3 - ENGINEER

3.01 The Project has been designed by

who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

### ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

A. The Work will be substantially completed within \_\_\_\_\_ days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within \_\_\_\_\_ days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the time(s) specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER \$\_\_\_\_\_ for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$\_\_\_\_\_ for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

**ARTICLE 5 - CONTRACT PRICE**

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 5.01.A, 5.01.B, and 5.01.C below:

A. For all Work other than Unit Price Work, a Lump Sum of:

\_\_\_\_\_ (\$ \_\_\_\_\_)  
(use words) (figure)

All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.02 of the General Conditions.

B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 5.01.B:

UNIT PRICE WORK

| <u>No.</u> | <u>Item</u> | <u>Unit</u> | <u>Estimated<br/>Quantity</u> | <u>Unit Price</u> | <u>Total<br/>Estimated</u> |
|------------|-------------|-------------|-------------------------------|-------------------|----------------------------|
|------------|-------------|-------------|-------------------------------|-------------------|----------------------------|

TOTAL OF ALL UNIT PRICES \_\_\_\_\_ \$ \_\_\_\_\_ (dollars)  
(use words)

As provided in paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

C. For all Work, at the prices stated in CONTRACTOR's Bid, attached hereto as an exhibit.

## ARTICLE 6 - PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

### 6.02 *Progress Payments; Retainage*

A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the \_\_\_\_\_ day of each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:

- a. 95% of Work completed (with the balance being retainage); and
- b. 95% of cost of materials and equipment not incorporated in the Work but delivered and suitably stored in a location and manner agreed to in writing and pursuant to paragraph 14.02.A.1 of the General Conditions (with the balance being retainage).

2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions.

### 6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

## ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of \_\_\_\_\_% per annum.

## ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.

H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**ARTICLE 9 - CONTRACT DOCUMENTS**

9.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to \_\_\_\_\_, inclusive);
2. Performance Bond (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
3. Payment Bond (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
4. Other Bonds (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
  - a. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
  - b. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
  - c. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
5. General Conditions (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
6. Supplementary Conditions (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
7. Specifications as listed in the table of contents of the Project Manual;
8. Drawings consisting of a cover sheet and sheets numbered \_\_\_\_\_ through \_\_\_\_\_, inclusive, with each sheet bearing the following general title: \_\_\_\_\_;
9. Addenda (numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive);
10. Exhibits to this Agreement (enumerated as follows):
  - a. Notice to Proceed (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
  - b. CONTRACTOR's Bid (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
  - c. Documentation submitted by CONTRACTOR prior to Notice of Award (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
  - d. \_\_\_\_\_;
11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a. Written Amendments;
  - b. Work Change Directives;
  - c. Change Order(s).

B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.05 of the General Conditions.

## **ARTICLE 10 - MISCELLANEOUS**

### *10.01 Terms*

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

### *10.02 Assignment of Contract*

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### *10.03 Successors and Assigns*

A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### *10.04 Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### *10.05 Other Provisions*

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on \_\_\_\_\_, \_\_\_\_\_ (which is the Effective Date of the Agreement). (This Agreement shall not be effective unless and until concurred in by AGENCY's designated representative.)

OWNER:

CONTRACTOR:

By: \_\_\_\_\_

By: \_\_\_\_\_

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices: \_\_\_\_\_

Address for giving notices: \_\_\_\_\_

If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of OWNER-CONTRACTOR Agreement.)

License No. \_\_\_\_\_  
(Where applicable)

Agent for service of process: \_\_\_\_\_

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:

Designated Representative:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

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.

By: \_\_\_\_\_

Title: \_\_\_\_\_

AGENCY Official

Date: \_\_\_\_\_