

Funding Agency Clauses to Modify E-500, “Agreement between Owner and Engineer for Professional Services”

(Formatted for use with E-500, 2014 Edition on RUS funded projects)

The following clauses replace, modify or supplement existing clauses in the subject Agreement.

- Amend paragraph 4.01.A by inserting the following text after the first sentence: “Invoices must include a breakdown of services provided. At a minimum Engineer will provide a breakdown of Basic, RPR and Additional Services being billed on each invoice.” Change 30 days to 60 days.
- Amend paragraph 4.02 B Failure to Pay: Change 30 days to 60 days.
- In paragraph 6.04.B replace “shall” with “may”.
- **In paragraph 6.05.B, delete the second sentence of this paragraph.** No additional persons or entities shall be listed as additional insureds in accordance with Article VIII, Section 4 of the Idaho Constitution.
- **Delete paragraph 6.05.E in its entirety.**
- **Delete paragraphs 6.11.B, C and F in their entirety.**
- **Add paragraph 7.01.A.38 to the Agreement as follows:**

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

- Add paragraph 8.05 to the Agreement as follows:

8.05 Federal Requirements

- A. Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency’s applicable requirements. This Agreement shall not be effective unless the Funding Agency’s designated representative concurs. No amendment to this Agreement shall be effective unless the Agency’s designated representative concurs.
- B. Audit and Access to Records. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

- C. Restrictions on Lobbying. Engineer and each Consultant shall comply with “Restrictions on Lobbying” if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. Suspension and Debarment. Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions,” to the Owner who will forward it the USDA, Rural Development processing office.

- **Add paragraph 8.06 to the Agreement as follows:**

8.06 Certifications

For convenience the “Compliance Statement & Certification of Non-Segregated Facilities” (Form RD 400-6), “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions” (Form AD-1048), and RD Instruction 1940-Q, Exhibit A-1, “Certification for Contracts, Grants, and Loans” are included as part of this bid form (Note: Lower tier, means lower tier to the owner). By signing the Agreement the Engineer represents that they are also signing the below documents, as they apply, depending on the contract amount.

If the bid amount exceeds \$10,000, then Compliance Statement (RD 400-6) applies (7.02.A of this part);

If the bid amount exceeds \$25,000, then Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions (AD-1048) also applies (7.02.B of this part);

If the bid amount exceeds \$100,000, then RD Instruction 1940-Q, Exhibit A-1, Certification for Contracts, Grants, and Loans also applies (7.02.C of this part).

A. Compliance Statement

USDA Form Approved, COMPLIANCE STATEMENT, Form RD 400-6

This statement relates to a proposed contract with {City of New Meadows, Idaho}

who expects to finance the contract with assistance from the Rural Utilities Service (RUS) or their successor agencies, United States Department of Agriculture (whether by a loan, grant, loan insurance, guarantee, or other form of financial assistance). I am the undersigned bidder or prospective contractor, I represent that:

(1) I have, ~~have not~~, participated in a previous contract or subcontract subject to Executive Order No. 11246 (regarding equal employment opportunity), as amended by Executive Order No. 13672, 79 Fed. Reg. 42971 (July 21, 2014) or a preceding similar Executive Order.

(2) If I have participated in such a contract or subcontract, I have, ~~have not~~, filed all compliance reports that have been required to file in connection with the contract or subcontract. If the proposed contract is for \$50,000 or more and I have 50 or more employees, I also represent that:

(3) I have, ~~have not~~ previously had contracts subject to the written affirmative action programs requirements of the Secretary of Labor.

(4) If I have participated in such a contract or subcontract, I have, ~~have not~~ developed and placed on file at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor.

I understand that if I have failed to file any compliance reports that have been required of me, I am not eligible and will not be eligible to have my bid considered or to enter into the proposed contract unless and until I make an arrangement regarding such reports that is satisfactory to either the RHS, RBS or RUS, or to the office where the reports are required to be filed.

I also certify that I do not maintain or provide for my employees any segregated facilities at any of my establishments, and that I do not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I certify further that I will not maintain or provide for my employees any segregated facilities at any of my establishments, and that I will not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I agree that a breach of this certification is a violation of the Equal Opportunity clause in my contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and wash rooms, restaurants and other eating areas time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin, because of habit, local custom, or otherwise. I further agree that (except where I have obtained identical certifications for proposed subcontractors for

specific time periods) I will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that I will retain such certifications in my files; and that I will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods).

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR
CERTIFICATIONS OF NON-SEGREGATED FACILITIES**

A certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

- B. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

U.S. DEPARTMENT OF AGRICULTURE

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS
USDA Form AD-1048**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

Before signing the bid form, read instructions for Form AD-1048, available for download at: <http://www.usda.gov/rus/water/ees/englib/pdf/usda1048.pdf>

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor 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.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

- C. Certification for Contracts, Grants and Loans

CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS
RD Instruction 1940-Q, Exhibit A-1

The bidder certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including contracts, subcontracts, and sub grants under grants and loans) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The following clauses modify or supplement existing clauses in the Exhibit A.

- Replace paragraph A1.01.A.1.b with “In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree, with Agency concurrence, that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.”
- Delete paragraph A1.01.A.1.c.
- Insert the following additional text at the end of Article A1.01.A.8: “The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Facility Planning Study as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency.”
- Modify paragraph A1.01.A.10 by inserting “and approved by the Agency” after “When mutually agreed.”

- Add the following immediately after paragraph A1.01.A.14: “Provide an Environmental Report as defined at 7 CFR 1794 and RUS Bulletin 1794A-602 or other Agency approved format. The Environmental Report must be concurred in by the Agency.”
- Replace paragraph A1.01.A.16 with “Revise the Report and any other Study and Report Phase deliverables in response to Owner’s and Agency’s comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within **15 calendar** days of receipt of Owner’s and Agency’s comments.”
- Modify paragraph A1.02.A by inserting “and concurrence by Agency” after the words “acceptance by Owner.”
- Modify paragraph A1.02.A.2 by inserting “and Agency” after “authorized by Owner.”
- Add the following to the end of paragraph A1.02.A.8: “Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.”
- Add the following to paragraph A1.02.A.10 and A1.02.A.11: “In addition to hard copies provide one (1) electronic copy to the Owner and Agency.”
- Add the following immediately after paragraph A1.03.A.9: “The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards.”
- Modify paragraph A1.03.A.10 by adding the “and Agency” after the word “counsel.”
- Add the following to paragraph A1.03.A.10 and A1.03.A.11: “In addition to hard copies provide one (1) electronic copy to the Owner and Agency.”
- Insert paragraph A1.03.A.12 stating, “Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer’s Certification of Final Plans and Specifications for this purpose. It can be found in the Supplementary Conditions for construction, RD Idaho Attachment 4.”
- Modify paragraph A1.03.B by deleting the period at the end of the paragraph and adding: “and all final design phase deliverables have been accepted by Owner.”
- Add the following to the end of paragraph A1.04.A.2: “Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible.”
- Replace paragraph A1.04.A.6 with the following: “The Engineer shall evaluate and determine the acceptability of “or equals” and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved “or equals” and substitutes. Review of substitutes and “or equals” shall be in accordance

with the General Conditions of the Construction Contract and applicable Agency regulations.
Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.”

- Add the following sentence immediately after paragraph A1.04.A.9: “Upon award of the Construction Contract, the Engineer shall furnish to Owner at least one executed copy and two additional copies of the complete Project Manual and Plans.”
- Paragraph A1.05.A.4: Insert “and chair” after “Participate in” regarding the preconstruction conference.
- Delete “If requested by Owner to do so” from Article A1.05.A.6 regarding the Engineer maintaining a set of Drawings and Specifications.
- Insert paragraph A1.05.A.9.c stating “The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.”
- Add the following text at the end of paragraph A1.05.A.18: “Review of substitutes and “or equals” shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations.”
- Insert paragraph A1.05.A.24.a: “Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.”
- Delete the second sentence of A1.05.A.22 and replace it with the following: “Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner.”
- Add the following text after “preparation or review of environmental assessments and impact statements” in A2.01.A.1: “not including preparation of the Environmental Report defined under Basic Services.”
- Replace the period at the end of Article A2.01.A.4 with a comma and add the following text to the end of the Article: “but only if the Owner’s request is made after completion of the Study and Report Phase.”
- Mark paragraph A2.01.A.17 as “[Deleted].”
- Replace paragraph A2.02.A.2 with the following: “Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than “or equal” items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.”

The following clauses modify or supplement existing clauses in the Exhibit C.

- **Delete the following Compensation Packets from Exhibit C: BC-3, BC-4, BC-5, BC-6, RPR-1, RPR-3, RPR-4, RPR-5, AS-2, and AS-3. Only the following Compensation Packets are allowed for use with RUS funded projects (other compensation packets are not allowed):**
 - Allowed for Basic Services:
 - ~~Lump Sum (Compensation Packet BC-1)~~
 - Standard Hourly Rates (Compensation Packet BC-2)
 - Allowed for RPR Services:
 - Standard Hourly Rates (Compensation Packet RPR-2)
 - Allowed for Additional Services:
 - Standard Hourly Rates (Compensation Packet AS-1)
- Modify Exhibit C, Compensation Packet BC-1, paragraph C2.01.A.2, by adding “and Agency” after “approved in writing by the Owner.”
- Modify Exhibit C, Compensation Packet BC-1, paragraph C2.01.B by inserting “with concurrence of the Owner and Agency” after “the compensation amount for Engineer’s services shall be appropriately adjusted.”
- Modify Exhibit C, Compensation Packet BC-1, paragraph C2.01.A.3 by deleting “(other than any expressly allowed Reimbursable Expenses)” and replace it with “,reimbursable expenses for which rates and charges have been identified in Appendix 1”
- Modify Exhibit C, Compensation Packet BC-1, by replacing paragraph C2.01.A.4 with the following:

“Reimbursable Expenses include only those expenses in Appendix 1 for which rates and charges have been identified. All reimbursable costs are included in the Lump Sum compensation identified in paragraph C2.01.A.1.”
- Modify Exhibit C, Compensation Packet BC-2, paragraph C2.01.A.5, by inserting “and Agency” after “approved in writing by Owner.”
- Modify Exhibit C, Compensation Packet BC-2, paragraph C2.01.A.8, by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Modify Exhibit C, Compensation Packet BC-2, by replacing paragraph C2.02.B with the following:

“Reimbursable Expenses include only those expenses in Appendix 1 for which rates and charges have been identified. All reimbursable costs are included in the compensation identified in paragraph C2.01.A.4. All other reimbursable costs are included in the hourly rates identified in Appendix 2.”
- Modify text of Exhibit C, Compensation Packet BC-2, paragraph C2.03.C.2 by inserting “and Agency” after Owner in “Engineer shall give Owner written notice thereof.”

- Modify Exhibit C, Compensation Packet RPR-2, by replacing paragraph C2.04.B.2 with the following:

“Reimbursable Expenses include only those expenses in Appendix 1 for which rates and charges have been identified. All reimbursable costs are included in the compensation identified in paragraph C2.04.A.1. All other reimbursable costs are included in the hourly rates identified in Appendix 2.”
- Modify Exhibit C, Compensation Packet RPR-2, paragraph 2.04.B.4, by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Modify Exhibit C, Compensation Guide RPR-2, paragraph 2.04.C.3.B by inserting “and Agency” after Owner in “Engineer shall give Owner written notice thereof.”
- Modify Exhibit C, Compensation Packet RPR-2, paragraph C2.04.C.4 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.
- Exhibit C, Compensation Packet AS-1, Replace paragraph C2.05.A.1 with the following:

(1) General. For services of Engineer’s employees engaged directly on the Project pursuant to paragraph A.2.01 or A.2.02 of Exhibit A, except for services as a consultant or witness under paragraph A.2.01.A.20, an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer’s Consultant’s charges, if any. The total compensation under this paragraph is estimated to be \$ {90,000 } and this amount shall not be exceeded without written approval of Owner and concurrence of Agency. Following is an itemized breakdown with line item estimates for each additional services task:

 - ~~a. Record Drawings \$~~
 - ~~b. O&M Manuals \$~~
 - ~~c. Construction Staking other than required in paragraph A.1.05.A.8, Baselines and Benchmarks \$~~
 - ~~d. Add additional itemized breakdown for any other additional services provided.~~
 - a. Survey-\$15,000
 - b. Geotechnical Engineering-\$10,000
 - c. Discharge Permitting-\$25,000
 - d. Environmental Permitting/Flood Plain Analysis-\$7,500
 - e. Archeological Monitoring-\$7500
 - f. Administration-\$25,000
 - g.
- Modify Exhibit C, Compensation Packet AS-1, by replacing paragraph C2.05.B.2 with the following:

“Reimbursable Expenses include only those expenses in Appendix 1 for which rates and charges have been identified. All reimbursable costs are included in the compensation identified in paragraph C2.05.A.1. All other reimbursable costs are included in the hourly rates identified in Appendix 2.”

- Modify Exhibit C, Compensation Packet AS-1, paragraph C2.05.B.4, by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Modify Exhibit C, Compensation Packet AS-1, paragraph C2.05.C.3 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.

The following clauses modify or supplement existing clauses in the Exhibit D.

- Add the following to the end of Exhibit D, Article D1.01.A: “Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.”
- Mark paragraph D1.01.C.12.b as [Deleted] regarding Resident Project representative role in Change Orders, Work Change Directives, and Field Orders.

The following clauses modify or supplement existing clauses in the Exhibit F.

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

The following clauses modify or supplement existing clauses in the Exhibit G.

- **Delete Paragraph G6.05.B in its entirety.**

The following clauses modify or supplement existing clauses in the Exhibit I.

- **Delete Exhibit I in its entirety.**

RUS CERTIFICATION PAGE

PROJECT NAME: City of New Meadows, Idaho 2015 Wastewater Improvements Project

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

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

Signature Page

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

Engineer Date

Name and Title

Owner Date

Name and Title

Agency Concurrence:

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

Agency Representative Date

Name and Title