

ATTACHMENT I – DELIVERY ORDER SAMPLE AGREEMENT



This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

Prepared by



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Endorsed by



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INTRODUCTION

This Agreement between Owner and Contractor for Construction Contract (Stipulated Price) ("Agreement") has been prepared for use with the Suggested Instructions to Bidders for Construction Contracts ("Instructions to Bidders") (EJCDC® C-200, 2013 Edition); the Suggested Bid Form for Construction Contracts ("Bid Form") (EJCDC® C 410, 2013 Edition); and the Standard General Conditions of the Construction Contract ("General Conditions") (EJCDC® C-700, 2013 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the others. See also the Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition), and the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

In construction contracting, as a general matter the "agreement" is the legal instrument executed (signed) by the project owner and the construction contractor, binding the parties to the terms of the contract. See CSI Project Delivery Practice Guide (2011), Section 11.1.2, p. 210, and CSI Construction Specification Practice Guide (2011), Section 5.1, p. 75. This EJCDC Agreement form serves that basic function, by identifying the parties and Contract Documents, and establishing the Contract Price and Contract Times. This Agreement form is specifically intended for stipulated price (fixed price) contracts—that is, contracts in which Owner and Contractor identify specific lump sums and unit prices as Contractor's compensation for performing the Work. For construction contracts in which the Contract Price is primarily based on costs incurred during construction, users should select EJCDC® C-525, Agreement between Owner and Contractor for Construction Contract (Cost-Plus).

This Agreement form is drafted to be flexible enough to be used on projects that are competitively bid, and for public and private contracts that are negotiated or awarded through a proposal process or otherwise. On competitively bid projects, the following documentary information would typically be made available to bidders:

- Bidding Requirements, which include the Advertisement or invitation to bid, the Instructions to Bidders, and the Bid Form that is suggested or prescribed, all of which provide information and guidance for all Bidders, and Bid Form supplements (if any) such as Bid Bond and Qualifications Statement.
- Contract Documents, which include the Agreement, performance and payment bonds, the General Conditions, the Supplementary Conditions, the Drawings, and the Specifications.
- Documents referred to in the Supplementary Conditions or elsewhere as being of interest to bidders for reference purposes, but which are not Contract Documents.

Together, the Bidding Requirements and the Contract Documents are referred to as the Bidding Documents. (The terms "Bidding Documents," "Bidding Requirements," and "Contract Documents" are defined in Article 1 of the General Conditions.) The Bidding Requirements are not 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. Many contracts are awarded without even going through a bidding process, and thus have no Bidding Requirements, illustrating that the bidding items are typically superfluous to the formation of a binding and comprehensive construction contract. In some cases, however, a bid or proposal will contain numerous line items and their prices; in such case the actual bid or proposal document may be attached as an exhibit to the Agreement to avoid extensive rekeying.

Suggested provisions are accompanied by “Notes to User” and bracketed notes and prompts to assist in preparing the Agreement. The provisions have been coordinated with the other forms produced by EJCDC. Much of the language should be usable on most projects, but modifications and additional provisions will often be necessary. When modifying the suggested language or writing additional provisions, the user must check the other documents thoroughly for conflicts and coordination of terms, and make appropriate revisions in all affected documents.

All parties involved in construction projects benefit significantly from a standardized approach in the location of subject matter throughout the documents. Experience confirms the danger of addressing the same subject matter in more than one location; doing so frequently leads to confusion and unanticipated legal consequences. When preparing documents for a construction project, careful attention should be given to the guidance provided in EJCDC® N-122/AIA® A521, Uniform Location of Subject Matter (2012 Edition), available at no charge from the EJCDC website, www.ejcdc.org, and from the websites of EJCDC’s sponsoring organizations.

CSI MasterFormat™ (50-Division format) designates Document “00 52 XX” for various forms of the owner-contractor agreement. If this format is used, the first page of the Agreement would be numbered 00 52 13-1 (or other appropriate third pair of numbers, in accordance with MasterFormat™).

Instructions and restrictions regarding the use of this document are set out in the License Agreement that accompanied the document at the time of purchase. To prepare the Agreement for inclusion in a Project Manual or for use in a specific contractual engagement, (1) remove the cover pages and this Introduction, (2) fill in Project-specific information and make revisions to the Agreement, following the guidance in the Notes to Users and bracketed notes and prompts, and the advice of legal counsel, and (3) delete the Notes to Users and bracketed notes and prompts.

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between _____ (“Owner”) and
_____. (“Contractor”).

Owner and Contractor hereby 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, of which the Work under the Contract Documents is a part, is generally described as follows: _____

ARTICLE 3 – ENGINEER

- 3.01 The part of the Project that pertains to the Work has been designed by _____.

- 3.02 The Owner has retained _____ (“Engineer”) 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.

NOTE(S) TO USER:

If an entity or individual other than the design engineer will serve as Owner’s representative during construction, then make appropriate revisions and additions to this Agreement, the General Conditions, the Supplementary Conditions, and other Contract Documents regarding the construction-phase roles and duties of the design engineer and such other entity or individual.

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.

NOTE(S) TO USER:

- 1. Select one of the two alternative Paragraphs 4.02 below, and delete the other. The first uses dates for the time of completion; the second uses number of days.*
- 2. If Owner elects to predetermine fixed dates or fixed number of days for completion of the Work, such dates or number of days should be inserted in*

the appropriate Paragraph 4.02 below prior to the bidding or other contractor selection process. If the time for completion will be determined through negotiation or a bidding process that allows bidders to specify the time for completion, then leave the blanks below open until the Contract is finalized (e.g., until after the Successful Bidder has been determined and its proposed completion time accepted).

4.02 *Contract Times: Dates*

- A. The Work will be substantially completed on or before _____, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before _____.

[or]

4.02 *Contract Times: Days*

- A. The Work will be substantially completed within _____ days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within _____ days after the date when the Contract Times commence to run.

NOTE(S) TO USER:

If the Contract includes Milestones, add the following Paragraph 4.02.B to the selected version of Paragraph 4.02.A:

- B. Parts of the Work shall be substantially completed on or before the following Milestone(s):
1. Milestone 1 [event & date/days]
 2. Milestone 2 [event & date/days]
 3. Milestone 3 [event & date/days]

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. 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):
1. Substantial Completion: Contractor shall pay Owner \$_____ for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$_____ for each day that expires after such time until the Work is completed and ready for final payment.

3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.
4. Milestones: Contractor shall pay Owner \$ [REDACTED] for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved.

NOTE(S) TO USER:

1. *At Substantial Completion, the Owner is able to use the Work for its intended purpose, by definition. See General Conditions, Paragraph 1.01.A. Achieving Substantial Completion is typically a critical deadline, and the associated damages for missing this deadline are typically significant. The subsequent failure to complete the punch list tasks and bring the Work to a complete close by the final completion date may also result in some degree of damages to Owner—though typically these damages are significantly less than the daily damages for not achieving Substantial Completion on time. Some users may choose to establish liquidated damages only for the failure to achieve Substantial Completion. If that is the case, delete paragraphs 4.03.A.2 and .3 above.*
 2. *If failure to achieve a Milestone on time is of such consequence that the assessment of liquidated damages is warranted for the failure to reach the Milestone on time, then retain and complete Paragraph 4.03.A.4; if not, delete it. Add additional similar paragraphs for any additional Milestones subject to a liquidated damages assessment. Liquidated damages for Milestones might, in some cases, be additive to liquidated damages for failing to timely attain Substantial Completion; if so this should be specifically noted.*
- B. *Bonus: Contractor and Owner further recognize the Owner will realize financial and other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and Contractor agree that as a bonus for early completion, Owner shall pay Contractor \$ [REDACTED] for each day prior to the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract) that the Work is substantially complete. The maximum value of the bonus shall be limited to \$ [REDACTED].*

NOTE(S) TO USER:

If early completion would be a benefit to Owner, then consider retaining and completing the bonus clause above as 4.03.B. The daily bonus for early completion need not be exactly the same as the daily post-Substantial Completion liquidated damages amounts, but presumably the two amounts will be reasonably compatible. If no bonus will be offered, then delete 4.03.B.

4.04 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02

for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

NOTE(S) TO USER:

EJCDC recommends developing daily liquidated damages amounts that comprehensively account for the full range of Owner's damages, including costs of additional engineering, construction observation, inspection, and administrative services, and potential fines or penalties. Some Owners, however, prefer to charge a Contractor that has not completed the Work on schedule for Owner's additional hard-dollar costs for fines and penalties, and for extended engineering, construction observation, inspection, and administrative services; these charges are levied on top of the daily liquidated damages amount. It is very important if this practice is followed to be certain that the liquidated damages amount does not already include or rely in part on the potential for incurring these very same hard-dollar costs; if it does, then the separate charge for actual costs may be regarded as "double dipping" and the entire framework of liquidated damages for late completion may be called into question.

*Those users that choose the "liquidated damages plus actual hard dollar costs" approach may use the preceding "Special Damages" provisions, together with the liquidated damages provisions in Paragraph 4.03, Liquidated Damages, above. **Those users that follow the more conventional path of relying on comprehensive daily liquidated damages to cover the full scope of damage done by late Contractor completion should delete the "Special Damages" provisions—Paragraph 4.04—and rely solely on Paragraph 4.03, Liquidated Damages, above.***

Finally, note that Paragraph 4.04.B above does not refer to fines or penalties. In the typical case, fines and penalties are linked to Substantial Completion, and are not applicable to delays in final completion of the Work.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Work other than Unit Price Work, a lump sum of: \$.

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

- B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) \$.
- D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

NOTE(S) TO USER:

1. If adjustment prices for variations from stipulated Base Bid or other baseline quantities have been agreed to, insert appropriate provisions.
2. Depending upon the particular project's pricing structure, use 5.01.A alone; 5.01.A, 5.01.B, and 5.01.C together; 5.01.B alone; or 5.01.D alone, deleting those not used and renumbering accordingly. If 5.01.D is used, Contractor's Bid is attached as an exhibit and listed as a Contract Document in Article 9 below.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 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 Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in 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 elsewhere in the Contract.
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 Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract

- a. [] percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. [] percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to [] percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less [] percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

NOTE(S) TO USER:

Typical values used in Paragraph 6.02.B are 100 percent and 200 percent respectively, subject to Laws and Regulations specific to the Project.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of [] percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, 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 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 adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

NOTE(S) TO USER:

Modify the above paragraph if there are no such reports or drawings.

- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

NOTE(S) TO USER:

If the Contract Documents do not identify any Site-related reports and drawings, modify this paragraph accordingly.

- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no 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.
- 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 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.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to [REDACTED], inclusive).
 2. Performance bond (pages [REDACTED] to [REDACTED], inclusive).
 3. Payment bond (pages [REDACTED] to [REDACTED], inclusive).
 4. Other bonds.
 - a. [REDACTED] (pages [REDACTED] to [REDACTED], inclusive).

NOTE(S) TO USER:

Such other bonds might include maintenance or warranty bonds intended to manage risk after completion of the Work.

5. General Conditions (pages [REDACTED] to [REDACTED], inclusive).

6. Supplementary Conditions (pages [] to [], inclusive).
7. Specifications as listed in the table of contents of the Project Manual.
8. Drawings (not attached but incorporated by reference) consisting of [] sheets with each sheet bearing the following general title: [] **[or]** the Drawings listed on the attached sheet index.
9. Addenda (numbers [] to [], inclusive).
10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages [] to [], inclusive).

NOTE(S) TO USER:

1. *As noted in the introduction to this Agreement, in the typical case bidding-related documents such as the Instructions to Bidders and Bid are not included as Contract Documents. Include Contractor's Bid as a Contract Document here only as a matter of necessity, for example if the Bid contains numerous line items and their prices, and rekeying such information would be burdensome and susceptible to error.*
 2. *List other required attachments (if any), such as documentation submitted by Contractor prior to Notice of Award and documents required by funding or lending agencies.*
 3. *If a Geotechnical Baseline Report or a Geotechnical Data Report is used, include them as lettered Items under Paragraph 9.01.A.10.a. For a further discussion of GBRs and GDRs see EJCDC C-001, Commentary on the 2013 EJCDC Construction Documents.*
11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
- a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.

NOTE(S) TO USER:

If any of the items listed are not to be included as Contract Documents, remove such item from the list and renumber the remaining items.

- 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 the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, 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, money that may become due and money that is 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 successors, assigns, and legal representatives to the other party hereto, its 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 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 Other Provisions

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

NOTE(S) TO USER:

1. *Delete Paragraph 10.06.A if inapplicable.*
2. *Insert other provisions here if applicable.*
3. *When the Contractor is required in this Contract to accept assignment of a procurement contract, previously entered into by the Owner (as “Buyer”) with a manufacturer or distributor (as “Seller”) for the direct purchase of goods (most commonly equipment) and related special services, insert at this location in the Agreement language regarding the assignment. For model language, refer to EJCDC® P-200 (Suggested Instructions to Bidders for Procurement Contracts), Notes to User at Article 23. For additional information on assigning a procurement contract, refer to EJCDC® P-001, Commentary on the EJCDC Procurement Documents.*
4. *Performance Requirements and Damages. In some cases the construction contract will contain performance requirements that must be met by the equipment, systems, or facilities constructed or furnished by Contractor. The Owner’s remedies for Contractor’s failure to meet the performance requirements may include rejection of the items in question; correction remedies; exercise of warranty rights; and acceptance of the underperforming items coupled with a reduction in Contract Price or imposition of damages to compensate Owner for not receiving its full contractual entitlement. Typical damages might be for reduced production or treatment, or for the costs of increased electricity or chemical consumption over the life of the equipment. On some projects the Owner and Contractor may contractually stipulate specific damages that will be owed in the event of specific levels of underperformance. It is important when drafting such provisions to clarify whether the availability of underperformance damages is meant to close off other potential remedies. Most commonly performance provisions (and any stipulated damages amounts) will be located in the Specifications. It may be useful to provide a cross-reference to such provisions here in the Agreement, or in some cases to state the stipulated damages amounts here because of their importance to the pricing of the Contract, which is one of the primary subjects of the Agreement.*

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

NOTE(S) TO USER:

- 1. See Article 21 of the Instructions to Bidders and correlate procedures for format and signing of the documents.*
- 2. The Effective Date of the Contract stated above and the dates of any construction performance bond (EJCDC® C-610 or other) and construction payment bond (EJCDC® C-615 or other) should be the same, if possible. In no case should the date of any bonds be earlier than the Effective Date of the Contract.*

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

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

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____
(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.