



Standard Terms and Conditions for Agreements between Owner and Designer

Article 1 FEES

1-1 The Owner shall compensate the Designer, in accordance with the Terms and Conditions as follows:

- (a) For the Designer's **Basic Services**, as defined in the Terms and Conditions, and comprising those paragraphs specifically cited in the Agreement or Supplement, the fee shall be either:

A lump sum amount computed in accordance with the Standard State Fee Schedule as described in the Terms and Conditions; or,

A Multiple of Direct Expense with a Maximum Fee not to exceed, and based upon the unit prices stipulated in this Agreement.

- (b) Extra fees for the Designer's **Additional Services** as described in these Terms and Conditions, a fee in addition to the Basic Services Fee may be allowed and computed based upon the unit prices stipulated in the Contract.
- (c) For the Designer's **reimbursable expenses** an amount expended at actual cost as defined in the Terms and Conditions.
- (d) Conditions of payment shall be as described in the Terms and Conditions.

1-2 When a project is composed of more than one building type, or involves mixes of renovations, new construction, and/or repetitive designs, an attachment showing the fee computation shall be made part of the Agreement.

1-3 If this Agreement provides for the payment of a Lump Sum Fee, it shall have been computed as follows:

- (a) The Owner agrees to pay the Designer a lump sum calculated as a percent of the Maximum Allowable Construction Cost from the Basic Services fee formula $35/\log P - 1.15$ wherein P is the Maximum Allowable Construction Cost indicated in this Agreement.
- (b) For renovations, repairs, alterations, etc., the fee is 125% of the Basic Services fee.
- (c) For repetitive buildings bid under a single construction contract, the fee for the first building will be calculated using the basic rate; the fee for the second building will be calculated using 75% of the basic rate; the fee for additional buildings three (3) through ten (10) will be calculated using 50% of the basic rate; the fee for each building above ten (10) will be negotiated.

- (d) For projects with more than one building type, the fee shall be calculated using the different building types as separate projects unless special circumstances warrant otherwise.
- (e) If the project is to be awarded under multiple contracts, the lump sum fee shall be separately calculated for each, unless special circumstances warrant otherwise.
- (f) The Owner and the Designer shall negotiate a reduced fee for duplicated work to reflect an appropriate adjustment for reduced effort and for revisions required to adapt a specific project.

Article 2 DESIGNER'S SERVICES

2-1 Basic Services

2-1-1 The Designer agrees to begin work upon receipt of the fully executed copy of this Agreement and to pursue the work with diligence. The Designer will provide accessible communications at their office during normal working hours, which must include, as a minimum, an office phone with answering device/service and a FAX machine. The Designer agrees to a schedule in accordance with that set forth in Part D of this Agreement. Dates of completion shall be extended by the length of delays caused by fire, acts of God, unavoidable casualty, or unreasonable delays by Owner. The Designer shall inform the Owner in writing of any situation potentially causing a delay within twenty-one (21) days of its occurrence. The durations in Part D of this Agreement may not be altered without a letter of written Agreement from the State Architect or the State Architect's Designee.

2-1-1a The Designer's basic services consist of seven (7) phases described in this Article and include the approved Architectural/Engineering consulting services listed in this Agreement and meeting requirements of Paragraphs 2-1-40 and 2-1-41.

2-1-1b Surveys, Reports, and Tests:

- (1) The Owner shall furnish the Designer with available information indicating boundaries of the building site and all rights, easements, and restrictions pertaining thereto.
- (2) The Designer shall be responsible for obtaining a survey of the building site from qualified consultants acceptable to the Designer, which shall include applicable grades and lines of

streets, alleys, pavements, adjoining property, rights of way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site, locations, dimensions, and data pertaining to existing buildings, utilities, other improvements, locations of trees, and information concerning available service and utility lines, both public and private.

- (3) The Designer shall be responsible for obtaining reports on subsurface conditions including test borings or pits, environmental, mechanical, laboratory, or other tests for determining subsurface soil bearing capacities, and other soil or subsoil conditions required for the design of the project from qualified consultants acceptable to the Designer.
- (4) The Designer shall be responsible for obtaining structural, mechanical, environmental and other laboratory tests, field tests, inspections, and reports from qualified consultants known to and acceptable to the Designer as required by the Contract Documents.
- (5) The obtaining of surveys, tests, reports, engineering data, and any other information obtained by the Designer and described under sub-paragraphs 2-1-1b (2), (3), and (4) above is the responsibility of the Designer. The Owner shall reimburse the Designer at a multiple, as set forth in this Agreement, of the direct cost for obtaining this information from competent laboratory, engineers, and licensed surveyors selected by and responsible to the Designer, provided the selection and cost is approved by the Owner before it is ordered.

2-1-2 The Designer shall secure written approval of the Owner before proceeding with each phase of the project and, upon written request by the Owner, shall furnish to the Owner evidence of payment to its consultants for their work in the preceding phase.

2-1-3 The Owner is not obligated to proceed with any phase beyond the last phase specifically approved in writing.

2-1-4 The Designer shall conform to and be bound by standards, criteria, and memoranda of policy consistent with this Agreement and provided to the Designer by the Owner at the start of the project. Subsequent revisions and updates may result in a change in scope. The Designer shall, in accordance with generally accepted design standards of care, design the work in compliance with all applicable laws and codes. Any conflicts shall be promptly reported in writing to the Owner with proposed strategies for resolution.

2-1-5 Design and Construction meetings shall be attended by a representative of the Design Team having authority and credentials to act on behalf of the Designer. Failure to provide the required representatives of the Design Team for a scheduled

substantial or final inspection shall cause the cancellation and rescheduling of the inspection at the Designer's expense.

2-1-6 The specific duties and responsibilities of the Designer shall include those outlined as follows and others as necessary depending on the scope of the project.

2-1-7 Designer-provided documents

(a) As a part of Basic Services, the Designer shall provide, at no cost to the Owner:

- Documents as required by regulatory authorities;
- Partial submittals and intra-phase submittals as required by the project;
- Four complete sets of documents demonstrating suitable progress in a design Phase, when requesting incremental payments as permitted in Article 7, and
- Four complete sets of documents for each Phase submittal, demonstrating the deliverable product required for the Phase.

Incomplete sets of documents or documents that cannot be approved will not be considered as a set of Documents. Additional sets of documents requested by the Owner will be a reimbursable expense.

(b) The Designer shall furnish as many complete sets of drawings, Project Manuals and other bidding documents, as are necessary for bidding purposes according to the policy of the Owner. Reimbursement for these bidding documents shall be in accordance with Article 6.

(c) A copy of documents for bidding that are available on electronic media shall be provided to the Owner at no cost.

Program Phase

2-1-8 The Designer shall meet with the Owner to ascertain the general requirements for the project and shall meet with the project program committee to understand and verify the functional and departmental objectives of the project, to advise, with respect to time and budget, the following: selection of the site; the relationship of the project to other structures and facilities; and scope and functional aspects of the program.

2-1-9 The Designer shall show the progress to date, confirm the remainder of the schedule and obtain written approval of the Program Phase before proceeding with the Schematic Design Phase.

Schematic Design Phase

2-1-10 The Designer shall develop and submit to the Owner an analysis of the site describing significant physical and geologic features and characteristics, i.e., climate-topography-soils and conditions-

ecology-utilities-circulation-views-noise and existing structures and shall describe the implication of the above factors on design.

2-1-11 The Designer shall develop and submit to the Owner conceptual diagrams of alternative approaches for translating programmatic requirements into conceptual design solutions. These diagrams shall include, but not be limited to, consideration of land use, functional relationships within the program, consideration of relationships to Master Plans and the Environment, relative volumes of circulation, land use, traffic, parking, transportation, utilities, and systems described in Paragraph 2-1-15 of this Article, and organization of major building functions.

2-1-12 The Designer shall prepare and submit to Owner visual studies illustrating the scale and relationship of the project components required in Paragraph 2-1-11 of this Article. Sketches of design concepts showing elevations and exterior appearances, and any other sketches or visual studies necessary for evaluation of the alternative concepts shall be submitted to the Owner. If necessary to communicate the design intent, massing studies in model and/or diagrammatic form shall be submitted to the Owner.

2-1-13 Upon written approval by the Owner of a design concept, the Designer shall prepare and submit to the Owner schematic drawings of the approved concept.

2-1-14 The schematic drawings required by Paragraph 2-1-13 of this Article shall include, but not be limited to, the following information: the basic design approach drawn at an agreed to scale, siting in relationship to the existing environment, relationship to Master Plans, circulation, organization of building functions, functional-aesthetic aspects of the design concepts under study, graphic description of critical details, and visual and functional relationship and compatibility to the surrounding environment.

2-1-15 The Designer shall prepare and submit to the Owner a description of the building systems. Detail of description on all systems should be consistent with the level of detail of the Schematic Design. The Designer shall describe, and give design criteria for the major elements of the following basic building systems with basic economic and energy use considerations of all systems when required:

Built-in Equipment	Interior Walls
Electrical	Partitions
Elevators	Plumbing
Exterior Walls	Roof Systems
Finishes	Sight Lines
Floor on Grade	Site Construction
Floor Systems	Special Items
Foundations	Stairs
H.V.A.C	Structure

2-1-16 The Designer shall prepare and submit to the Owner an estimate of probable total construction cost

based on proposed square footage and/or volume unit costs.

2-1-17 The Designer shall show the progress to date, confirm the remainder of the schedule and obtain written approval of the Owner of the Schematic Design Phase before proceeding with the Design Development Phase.

Design Development Phase

2-1-18 Based on written approval from the Owner of the Schematic Design Phase, the Designer shall develop and submit to the Owner a fully developed design concept. If needed to develop and communicate the design concept, the Designer shall furnish to the Owner exterior perspective drawings and/or working models and/or renderings at a mutually agreed to scale.

2-1-19 The Designer shall prepare and submit to the Owner floor plans showing spaces by name, number, actual net area of each space, structural module, mechanical, electrical and communication spaces, equipment, chases, and circulation area. The Designer shall also prepare and submit site plans (which show utilities), plumbing, electrical, mechanical, and structural plans and preliminary furnishings and equipment layouts to show accommodation for program requirements and engineering systems within the building and for contractor supplied equipment. Drawings shall show overall building dimensions. The Designer shall also prepare preliminary specifications giving basic descriptions of essential components of all systems. The level of detail on the plans and in preliminary specifications shall be at a level of detail for all components sufficient for the development of a preliminary Quantity Cost Estimate.

2-1-20 The Designer shall prepare and submit to the Owner: elevations, building sections, and design details showing use of materials and fenestration, fully developed so that the Designer can proceed with the Contract Document Phase when the Design Development Phase is approved.

2-1-21 The Designer shall prepare and submit to the Owner a Construction Cost Analysis showing allocation of costs for various building systems. The basis for the Cost Estimate shall be a preliminary Quantity take-off, which shall be required of all building systems, described in Paragraph 2-1-15 of this Agreement. The Construction Cost Estimate shall show escalation projected from date of estimate to projected bid date.

2-1-22 The Designer shall show the progress to date, confirm the remainder of the schedule and obtain written approval of the Owner of the Design Development Phase before proceeding with the next phase. In the case of a new building or major addition, the Designer shall also make a presentation of the early design concept to the State Building Commission.

Construction Document Phase

2-1-23 Upon written approval of the Design Development Phase by the Owner, the Designer shall prepare and submit to the Owner Construction Documents, including working drawings and Project Manual setting forth all items necessary for bidding and proper execution of the work including materials; workmanship, finishes, mechanical and electrical systems; special equipment; site work; utility connections and services; bidding information; proposal, bid, contract, and bond forms; general, special and supplementary general conditions of the contract; and any and all other information required for receiving bids on the project and administration of the Construction Phase. Upon completion of the Construction Documents, the Designer shall provide the Owner with a written confirmation of the construction cost estimate. If the Designer cannot confirm the validity of the agreed upon construction cost estimate at the Design Development Phase, then the Designer shall provide an updated construction cost estimate.

2-1-24 Upon receipt of the review comments in writing from the Owner, the Designer shall complete the Construction Documents to conform with the review comments and furnish final copies to the Owner prior to release of plans for bids.

2-1-25 The date for receipt of bids shall be established by the Owner.

2-1-26 The Designer agrees that no approval of the Construction Documents by any person, body or agency shall relieve the Designer of the responsibility for the adequacy, fitness, suitability, and correctness of architectural and engineering design and for designing the work in accordance with sound and accepted engineering and architectural practices.

Bidding or Negotiation Phase

2-1-27 The Designer, following the Owner's written approval of the Construction Documents Phase, shall assist the Owner in obtaining bids or negotiated proposals, and in awarding and preparing construction contracts.

2-1-28 The Designer, following the award of the contract, shall complete and submit to the Owner, project information data on the SBC-25 Form to the extent information is obtainable.

Construction Phase

2-1-29 The Designer's relationships to the General Contractor shall include those set forth in the AIA A201 General Conditions of the Contract between the Owner and Contractor, utilizing such editions as modified and approved by the Owner and included in the Contract Documents.

2-1-30 The Construction Phase begins with the execution of the construction contract(s). The Construction Phase includes the professional

services required to direct the two components of construction: "office" and "field".

2-1-31 The professional services performed during the Office components include the complete administration of all construction contracts; the review of Contractor's payments applications and certifications of the amount due the contractor; the review, approval or the taking of other appropriate action upon the contractor's submittals, such as shop drawings to determine conformance with the design intent, the making of revisions, corrections or clarifications in the contract documents by supplemental instructions or change orders, together with all correspondence, and clerical work in connection therewith and sufficient on-site project observations during construction to substantiate any of the above and substantial completion inspections and accepting the completed project, together with such certificates, manuals, and guarantees as provided in the contract documents. The services of the Designer's Field Representative shall not be utilized for reviewing submittals unless the Field Representative is a design professional of the firm or has a specific approval of the Owner.

2-1-32 The professional services performed during the Field component comprise on-site project observations during construction by the Designer and the Designer's consultants as well as substantial completion inspections to guard against nonconformity of the work with the Contract Documents and to observe and report on compliance with construction schedules. The Designer and its consultants shall make on-site project observations as needed during the critical phases of construction and shall make requisite substantial completion inspections. The Designer shall monitor the Contractor's development of Record Documents. The Designer shall not be responsible for construction means, methods, techniques, sequence of procedures, or for the safety precautions and programs in connection with the work. The Designer may disapprove or reject work as failing to conform to the Contract Documents.

2-1-33 Project observations shall be done by a principal of the Designer's firm and/or of each consultant firm, or a qualified employee of each firm at a minimum of twice a month. For all visits to the site, a written project observation report shall be submitted to the Owner. The Designer with appropriate consultants shall attend all progress meetings and the Designer shall submit promptly a written report to the Owner containing a summary of the substances of each meeting.

2-1-34 The Designer shall be, in the first instance, the interpreter of the requirements of the Contract Documents and the impartial judge of the performance thereunder by both the Owner and

Contractor. The Designer shall make decisions on all claims of the Owner or Contractor relating to the execution and progress of the work and on all other matters or questions related thereto. The Designer shall make recommendations in matters relating to artistic effect that are consistent with the intent of the Contract Documents with the Owner's decision being final.

2-1-35 The Designer will not issue any oral or written orders for changes to the Contract Documents until approved in writing by the Owner, except as provided in the AIA General Conditions as modified by the Owner, or as modified by this Agreement.

2-1-36 Upon request by the Contractor and submission of a list of incomplete items of work by the Contractor, the Designer and its consultants, with a representative of the Owner present, shall make a Substantial Completion inspection and augment the Contractor's list of items necessary to complete the project in accordance with the Contract Documents. Prior to certifying Substantial Completion, the Designer shall verify that all items required by the Project Manual are substantially complete. When the Work is certified substantially complete, the Designer will prepare and issue a Certificate of Substantial Completion.

Close-Out Phase

2-1-37 Upon Substantial Completion of the Work, the Close-out Phase shall begin. When the Work is complete and a request is made by the Contractor, the Designer and its consultants, with a representative of the Owner present, shall conduct a Final Completion inspection to verify, to the best of the Designer's knowledge, information and belief, to the Owner that the completion of the project is in compliance with the Contract Documents. Prior to issuing a Final Certificate for Payment the Designer shall verify that all items required by the Project Manual are complete. When the Work is certified complete, the Designer shall issue a Final Certificate for Payment.

2-1-38 The Designer shall prepare and submit Record Documents to the Owner. These documents shall be drawings on reproducible mylar transparencies suitable for reproduction, and a corrected (marked-up) Project Manual reflecting changes caused by addenda, modifications, and observed changes as recorded by the Contractor. All matters of additional services and reimbursable expenses shall be completed and billed. The Designer shall prepare and submit to the Owner a completed SBC-25 form with the Record Documents and final request for payment to complete the Close Out Phase.

2-1-39 During the one year period after the date of Substantial Completion of the Work, the Designer shall work with a representative of the Owner in securing remedy of any of the Work that is found to be not in accordance with the requirements of the

Contract Documents, and shall make a one year inspection of the project and report observed non-conforming work to the Contractor for correction and to the Owner. The Designer will monitor the Contractor's work to completion.

Professional Consulting Services

2-1-40 All documents and services required under this Agreement shall be prepared or performed by or under the direct supervision of professionals licensed in the State of Tennessee in each discipline required by the scope of services. These licensed professionals in the disciplines of Architecture, Civil Engineering, Structural Engineering, Mechanical Engineering, and Electrical Engineering, shall be members of the Designer's firm, or of the consulting firms listed in this Agreement, and shall affix their seals in accordance with TCA § 62-2-102, et. seq. Professionals in required disciplines not represented in the Designers firm shall be employed by the Designer subject to the objection of and without additional cost to the Owner.

2-1-41 The Designer shall enter into agreements with its Consultants binding them to the Terms and Conditions of this Agreement.

2-2 Additional Services

The services described below in this paragraph are examples of those not included in Basic Services 2.1 and shall be negotiated as a lump sum or paid in accordance with Article 1. No extra compensation shall be payable to the Designer unless prior to the time such additional services are rendered, the State Architect or the State Architect's designee shall have approved by written agreement the payment to the Designer for those additional services.

2-2-1 Making material revisions in Drawings, specifications, and other documents when such revisions are:

- (a) Inconsistent with written approvals or documented instructions previously given by the Owner, for the previously approved phase or concept and which are made necessary by significant adjustments in the Owner's program, schedule or Project budget; or significant changes in the Project including, but not limited to size, quality, or complexity and which are not caused by Designer error or omission.
- (b) Required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents.

2-2-2 Providing services concerning replacement of Work damaged by fire or other cause during construction.

2-2-3 Providing services made necessary by default of the Contractor, or made necessary by major defects in the Work of the Contractor, which defects require significant investigation or redesign.

- 2-2-4** Providing services in connection with a non-state government public hearing, or legal proceeding except where the Designer is party thereto.
- 2-2-5** Providing analysis of the Owner's needs and programming the requirements of the Project above that required in 2-1-8.
- 2-2-6** Assisting the Owner in preparation of application to the U.S. Government and other granting agencies for construction, interest subsidy, and other forms of grants.
- 2-2-7** Providing planning surveys, site evaluations or comparative studies of prospective sites above that required in paragraph 2-1-10.
- 2-2-8** Providing special surveys or environmental studies required for approvals of governmental authorities, or others having jurisdiction over the project, which are not considered a part of basic services.
- 2-2-9** Providing measured drawings of existing facilities where reasonable documentation does not exist.
- 2-2-10** Providing complete Design Development Phase or Construction Document Phase documents in excess of those required in basic services.
- 2-2-11** Providing special services to verify the accuracy of drawings or other information furnished by the Owner.
- 2-2-12** Providing interior design and other similar services limited to and required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.
- 2-2-13** Providing services of special consultants, other than those identified in Basic Services, when such services are reasonably required by the scope of the Project.
- 2-2-14** Providing detailed models or colored renderings over that required in basic services.
- 2-2-15** If more extensive representation at the site than is required by the Owner in the Construction Phase 2-1-29 through 2-1-36, the Designer shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.
- 2-2-16** If the Contractor significantly exceeds the contract time as modified, or the time allowed after Substantial Completion to complete the remaining work items, which causes the Designer and its consultants to make repeated inspections, such services shall be considered as additional services.
- 2-2-17** If excessive evaluations or on-site project visits are required of the Designer after final completion of the work due to improper building operation by the Owner, non-conforming work, or non-responsiveness by the Contractor to make required corrections, such services shall be considered as additional services.
- 2-2-18** Providing Record Documents on special media.
- 2-2-19** Payment by Owner for Additional Services is not a waiver by Owner of later objections and any payment by Owner for Additional Services is under reservation of rights to later object and recover any money paid hereunder.

Article 3

THE OWNER'S RESPONSIBILITY

- 3-1** The Owner shall provide adequate information regarding requirements for the project, including a written program which shall set forth the Owner's objectives, schedule, time and budget constraints and other criteria, including space requirements and relationships, in sufficient detail to allow the Designer to carry out the design.
- 3-2** At the time of execution of this Agreement the Owner shall furnish the Designer the State of Tennessee's Designer's manual that is consistent with this Agreement containing the contract requirements of the Owner and the provisions and requirements of the State of Tennessee.
- 3-3** Under this Agreement, the Owner shall designate a representative authorized to act in its behalf, who shall render decisions in a timely manner to avoid unreasonable delay in the orderly and sequential progress of the Designer's services.
- 3-4** The Owner may make project observations, may consult with the Designer on issues, and may assist the Designer in coordinating the progress of the work. The Owner will not give direct orders to the Contractors or to the Contractor's personnel. The Owner shall have no obligation or responsibility as to safety or enforcement of safety rules.
- 3-5** The Owner shall furnish information required of it under this Agreement as expeditiously as necessary for the orderly progress of the work.
- 3-6** Prompt written notice shall be given by the Owner to the Designer if the authorized representative of the Owner actually becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents. However, failure to do so will not limit the responsibility of the Designer to detect and address any fault or defect.

Article 4

MAXIMUM ALLOWABLE CONSTRUCTION COST

- 4-1** For the purposes of this Agreement and the calculation of fees, The Maximum Allowable Construction Cost, confirmed or adjusted by written agreement at the completion of the Design Development Phase of the project, is defined as the total sum approved by the Owner at the completion of the Design Development Phase for construction purposes including the cost of all work designed and specified by the Designer, including that covered by contingencies, but not including professional fees, or any charges incidental to the project.

Article 5 DIRECT PERSONNEL EXPENSE

5-1 If applicable to this Agreement, Direct Personnel Expense includes that of employees engaged on the project by the Designer, including architects, engineers, designers, drafting technicians, specification writers, field administrators and clerical staff in consultation, research, design, production of drawings, specifications, and other documents pertaining to the project, observations and inspections of construction of the project. Hourly rates shall be subject to prior written approval by the Owner.

5-2 Direct Personnel Expense includes cost of salaries and of mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays and vacations, pensions, and similar benefits and limited to no more than thirty (30) percent of base salary cost.

Article 6 REIMBURSABLE EXPENSES

6-1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and are limited to expenses expressly allowed in this Article and actually incurred by the Designer and the Designer's consultants while performing such services.

6-1-1 Travel expenses, including mileage, meals and lodging, that are incurred in connection with the project for travel in excess of a fifty (50) mile radius of the Designer's or Designer's Consultant's principal place of business, will be considered as reimbursable expenses for the travel that is over and above the travel expense incurred within the fifty (50) mile radius. Travel expenses in connection with preauthorized out-of-town or out-of-state expenses will be considered as reimbursable expenses. Reimbursement for allowable travel, meals, and/or lodging shall be in the amount of actual costs, subject to maximum amounts and limitations specified in the "State Comprehensive Travel Regulations" as they are amended from time to time.

6-1-2 If the Owner elects to have the Designer pay for advertisements for bids, such costs will be considered as reimbursable expenses.

6-1-3 Reimbursable expenses for items described in subparagraph 2.1.7 shall be at actual cost to the Designer.

Article 7 PAYMENTS TO THE DESIGNER FOR BASIC SERVICES

7-1 As a guide for invoicing, payments of the Basic Rate to the Designer shall not exceed the following percentages for the phases described below:

1. Program Phase	3%
2. Schematic Phase	12%
3. Design Development Phase	25%
4. Construction Document Phase	30%
5. Bidding and Negotiation Phase	3%
6. Construction Phase	23%
7. Close-Out Phase	4%

7-2 Fee for Program Phase shall be invoiced and payable upon completion and approval by the Owner of this phase of the Designer's work unless otherwise agreed to by the State Architect, or the State Architect's designee, in writing.

7-3 Fee for Schematic Design, Design Development and Construction Document Phases shall normally be made in two (2) approximately equal payments in proportion to the progress of the Designer's work unless otherwise agreed to by the State Architect, or the State Architect's designee, in writing. The final payment for the Construction Document Phase fee will be invoiced and payable upon furnishing to, and approval by, the Owner of final Construction Documents and any other information required for receiving bids on the project.

7-4 Fee for the Bidding and Negotiation Phase will be invoiced and payable upon execution of the construction contract and submission of SBC-25 as required in subparagraph 2-1-28 of this Agreement. Alternatively, payment for the Bidding and Negotiation Phase will become due and payable should the Owner choose not to award a contract within 45 days following the receipt of a bona fide bid within the MACC.

7-5 Fee of the Construction Phase shall be made monthly in proportion to the gross progress payments to the Contractor. Final payment for the Construction Phase fee will be invoiced and payable upon Substantial Completion of the project acceptable to the Owner.

7-6 Fee of the Close Out Phase will be invoiced and payable upon completion of the Final Certificate for Payment, submission of Record Documents and a corrected (marked up) Project Manual, completion and billing for all matters of additional services and reimbursable expenses, and submission of a completed SBC-25 form.

7-7 In the event that the lowest bona fide bids received exceed the Maximum Allowable Construction Cost, the Designer agrees to revise the drawings, if

requested by the Owner, in order to bring the construction cost within the Maximum Allowable Cost at no additional expense to the Owner. The Owner in this event agrees to cooperate with the Designer and permit reasonable and necessary reductions in the scope of the project.

7-8 No deduction shall be made from the Designer's compensation due to penalties, liquidated damages, or other sums withheld from the contractors through no fault of the Designer.

7-9 The Designer shall complete and sign an "Authorization Agreement for Automatic Deposits" (ACH Credits) Form prior to commencing work or invoicing the Owner. This form shall be provided by the Owner. All payments to the Designer under this Agreement shall be made through the Owner's automated clearing house wire transfer system.

7-10 If the project is suspended in writing by the Owner for more than 90 consecutive days during the Design Development or Construction Documents Phases, the Designer shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Designer's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Designer's services based on documented additional costs incurred, in accordance with the Terms and Conditions of this Agreement.

7-11 The Owner reserves the right to deduct from amounts which are or shall be invoiced and payable to the Designer under this or any contract between the State and the Designer any amounts which are or shall become due and payable to the Owner by the Designer.

7-12 This Agreement is subject to the appropriation by the General Assembly and availability of funds. In the event the General Assembly fails to appropriate funds, reduces an appropriation, or the funds are otherwise unavailable, then this Agreement shall terminate in accordance with Article 9, paragraph 9-2.

7-13 Payment to the Designer shall be made within 45 days after being properly invoiced and payable in accordance with TCA Title 12, Chapter 4, Part 7.

Article 8 DESIGNER'S ACCOUNTING RECORDS

8-1 The Designer shall maintain documentation for all charges against the State under this Agreement. The books, records and documents of the Designer, insofar as they relate to work performed or monies received under this Agreement, shall be maintained for a period of three full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by the State agency or the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be maintained in accordance with generally accepted accounting principles.

Article 9 TERMINATION OF AGREEMENT

9-1 TERMINATION OF AGREEMENT FOR CAUSE

9-1-1a If, through any cause, the Designer shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if the Designer shall violate any of the covenants, agreements, or stipulations of the Agreement, the Owner shall thereupon have the right to terminate this Agreement by giving thirty (30) days written notice to the Designer of such termination and specifying the effective date of termination. The Owner may include in such notice of termination a request for corrective action or other restoration of performance, normally within 15 days, and stipulating that correction by the Designer, which is satisfactory to the Owner, may lead the Owner to rescind the termination. At the option of the Owner, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Designer shall become Owner's property, and the Designer shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

9-1-1b If the Owner fails to make payment to the Designer in accordance with paragraph 7-13 of this Agreement, the Designer may, upon ten (10) days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Designer within ten (10) days of the date of the notice, the suspension shall take effect without further notice. In the event of a proper suspension of services, the Designer shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Failure of the Owner to make payments to the Designer in accordance with this Agreement shall be considered substantial nonperformance and cause for termination. In the event of a good faith dispute between the Owner and Designer regarding whether, and to what extent, an amount is properly due, this subsection (b) shall not be applicable.

9-1-2 Notwithstanding the above, the Designer shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Agreement by the Designer, and the Owner may withhold any reasonable payments to the Designer for the purpose of setoff until such time as the exact amount of damages due the Owner from the Designer is determined.

9-2 TERMINATION FOR CONVENIENCE OF OWNER

9-2-1 The Owner may terminate this Agreement at any time by a notice in writing from the Owner to the Designer. In that event, all finished or unfinished documents and other materials as described in Paragraph 9-1-1 above shall, at the option of the Owner, become its property. If the Agreement is terminated by the Owner as provided herein, the Designer will be paid for the services in an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Designer covered by this Agreement.

Article 10 GRATUITIES AND COMPENSATION FROM CONTRACTORS

10-1 The Designer, who is a party to this Agreement, hereby agrees that it or any of its employees or consultants shall not offer or agree to offer gifts or gratuities to any employee of the State of Tennessee. Evidence of an offer of a gift or gratuity may be cause for termination of this Agreement.

10-2 The Designer, who is a party to this Agreement, agrees that it or any of its employees or consultants shall not accept gratuities or receive any compensation from the Contractor, subcontractors, or material suppliers involved in the construction of the project. The Designer shall notify each of their employees and all consultants of Designer's commitments under this provision of this Agreement. This provision expressly precludes any compensation to the Designer, any employee or consultant of the Designer, by the Contractor, subcontractors, or material suppliers involved in the construction of the project for preparation of detail drawings, shop drawings, or checking shop drawings, or any other service for work performed by the Designer under this Agreement without prior written approval of the State Architect or the State Architect's designee.

10-3 The Designer acknowledges its familiarity and agrees to make its employees and subcontractors familiar with the requirements of Chapter 529 of the Public Acts of 1995, known as the "Lobbying Reform Act of 1995" and any amendments thereto.

Article 11 EMPLOYMENT PRACTICES

11-1 Except to the extent permitted by Federal laws and regulations for a bona fide occupational qualification, the Designer agrees as follows:

11-1-1 No person on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law, shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement, or in the employment practices of the Designer. The Designer shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notices of non-discrimination.

11-1-2 The Designer will, in all solicitations, for employees or job orders for employees placed with any employment agency, union, or other firm or agency, state that all qualified applicants will receive consideration for employment without regard to race, disability, creed, color, national origin, sex, or age. The words "equal opportunity employer" in advertisements shall constitute compliance with this section.

11-1-3 The Designer will include the provisions of the foregoing paragraphs 1, 2, and 3 in every subcontract or purchase order for the goods or services which are subject matter of this contract. In the event of noncompliance by the Designer with any of the nondiscrimination provisions of this Agreement, the Owner shall have the right, at its option, to cancel this Agreement in whole or in part. If this Agreement is canceled after part performance, the Owner shall be obligated to pay the fair market value or this Agreement price, whichever is lower, for goods or services which have been received and accepted.

11-2 Prohibition of Illegal Immigrants

11-2-1 The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

11-2-2 The Designer hereby attests, certifies, warrants, and assures that the Designer shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor or consultant who will utilize the services of any illegal immigrant in the performance of this Contract. The Designer shall reaffirm this attestation, in writing, by submitting to the State a completed and signed attestation document, embodying the language as shown in Exhibit A hereto, no less than semi-annually during the period of this Contract. In addition, a copy of such attestations shall be maintained by the Designer and made available to state officials upon request.

11-2-3 Prior to the use of any subcontractor or consultant in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Designer shall obtain and retain a current, written attestation that the subcontractor or consultant shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor or consultant who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors or consultants shall be maintained by the Designer and made available to state officials upon request.

11-2-4 The Designer shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

11-2-5 The Designer understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law provides for the prohibition of a Designer from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a Designer is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

11-2-6 For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a lawful permanent resident, or a person whose physical presence in the United States is authorized or allowed by the Department of Homeland Security and who, under Federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

Article 12 SUCCESSORS AND ASSIGNS

12-1 With the written consent of the Owner, the Designer may assign a portion of its financial interest to a recognized financial institution for underwriting operations covered by this Agreement. The Owner and the Designer each binds itself, its partners, successors, assigns, and legal representatives to the other party of this Agreement and to the partners, successors, assigns, and such other legal representatives of such other party in respect to all covenants of this Agreement. Neither the Owner nor the Designer shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

Article 13 EXTENT OF AGREEMENT

13-1 This Agreement represents the entire and integrated Agreement between the Owner and Designer and supersedes all prior negotiations, representations or

agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Designer. The Owner is not bound by this Agreement until it is approved by the appropriate State officials as indicated on the signature page of this Agreement. This Agreement may be amended only by obtaining the signature of officials hereto or as may be allowed by State Building Commission Policy & Procedures.

Article 14 OWNERSHIP OF DOCUMENTS

14-1 Upon completion or termination of the Design Contract, the Design and the Contract Documents as instruments of professional services shall be the property of the State of Tennessee, and may be used again by the Designer only for the benefit of the State and on authority of the State Building Commission. Originals of these documents may remain in the files of the Designer.

Article 15 PROFESSIONAL LIABILITY INSURANCE

15-1 The Designer shall furnish to the Owner a certificate of insurance, in a form acceptable to the Owner, that the Designer has Professional Liability Insurance Coverage as required by this Agreement. The amount of coverage shall be a minimum amount of One Hundred Thousand (\$100,000) Dollars. In lieu of the above requirement, the Designer may, in a form acceptable to the Owner, provide proof of financial responsibility. The certificate of insurance required by this paragraph shall contain a provision standard in the industry requiring notice to Owner of cancellation.

15-2 Additional Professional Liability Insurance Coverage may be required and will be as described in Part C of this Agreement.

Article 16 GENERAL TERMS

16-1 The Designer, being an "independent contractor", agrees to carry adequate public liability and other appropriate forms of insurance.

16-2 The Designer agrees to pay all taxes incurred in the performance of this Agreement.

16-3 The Owner shall have no liability except as specifically provided in this Agreement.

16-4 The Designer shall comply with all applicable Federal and State laws and regulations in the performance of this Agreement.

16-5 This Agreement shall be governed by laws of the State of Tennessee.

End of the Terms and Conditions