

Chapter Two DESIGNER AGREEMENTS AND PAYMENTS

2.01 AGREEMENT FORMS

A. The standard forms of agreement between Owner and Designer used by the State of Tennessee under authority of the State Building Commission are the State Building Commission forms:

- **SBC-6**, *Standard Form of Agreement Between Owner and Designer*
- **SBC-6a**, *Standard Terms and Conditions of Agreement between Owner and Designer*
- **SBC-6s**, *Standard Form of Supplement to an Agreement between Owner and Designer*

The current SBC-6, SBC-6a, and SBC-6s are included in Appendix 1 - *Administrative Forms*.

NOTE: The Designer Agreement forms were revised in January 2007. These latest versions are included in this manual. However, for some ongoing projects the form and provisions of the February 1999 version may still apply.

B. Example Fee Calculation for Basic Services (See Article 1 and Article 7 of SBC-6a):

1. Example Project is split into two sub-projects (subscripts): Subscript A involves renovation work with MACC of \$200,000. Subscript B involves both new construction and renovation, with an MACC of \$800,000 split between the two.

<u>Subscript A:</u>	\$ 200,000.00 Renovate Maintenance Building		
	$35 / (\log (\$200,000) - 1.15) = 8.431642\%$		
Renovation	$(\$200,000 \times 8.431642\% \times 1.25)$	= \$ 21,079	
		+ \$ 21,079	
 <u>Subscript B:</u>	 \$ 500,000.00 Construct New Offices		
	\$ 300,000.00 Renovate Offices		
	$35 / (\log (\$800,000.00) - 1.15) = 7.363631\%$		
New Construction	$(\$500,000 \times 7.363631\% \times 1.00)$	= \$ 36,818	
Renovation	$(\$300,000 \times 7.363631\% \times 1.25)$	= \$ 27,614	
		+ \$ 64,432	
 <u>Total Fee:</u>			= \$ 85,511

2. In this example, separate fee percentages are derived for subscripts A and B because the design efforts are discontinuous or the building types are different. However, these factors do not apply to the elements within subscript B; which therefore use a combined base fee percentage and a split renovation multiplier.
3. For projects having prototype or repetitive buildings, designer fees will likely be negotiated or reduced by some method.



2.02 STANDARD FORM of AGREEMENT (SBC-6)

- A. Owner will fill in the SBC-6 form and send to prospective Designer** for Designer signature and Designer attachment of insurance certificates, the sub-agreement for payment by direct deposit (ACH form), and the federal tax reporting form W-9.
- B. Completion by the Designer:**
1. **Designer Signature:** Seven (7) counterparts will be signed by a principal legally empowered to bind Designer to Contract, and listed in B.3.3 on page 2 of the SBC-6. If a joint venture, a principle of each firm shall sign, and additional counterparts should be included to allow for providing an executed counterpart to each joint venture firm.
 2. **Designer Professional Liability Certificate of Insurance** shall be provided and attached to each Agreement counterpart by Designer. Refer to Part C of the SBC-6 *Guide for Completing Form*, found on page 2.02c, for the certificate's proper content.
 3. **Automatic Clearinghouse (ACH) Credits Form** shall be completed and attached to the Agreement by Designer as required in accordance with Article 7-9 of the SBC-6a. An example of the form can be found on Section **00 54 33-2** of Appendix 3 - *Bidding Documents*. Original forms for execution will be provided. Complete the Form and attach an original Bank Deposit Slip for the account to be used. Joint Venture Designers shall complete an ACH Credits Form for a Joint Account.
 - a) Payments to Designer shall be made through Owner's automated clearinghouse wire transfer system.
 - b) Debit entries to correct errors authorized by the ACH Credits Form shall be limited to those errors detected prior to the effective date of the credit entry. The remittance advice shall note that a correcting entry was made. Corrections shall be made within two banking days of the effective date of the original transaction. Other errors detected at a later date shall take the form of a refund, or in some instances, a credit memo if additional payments are to be made.
 - c) The Owner reserves the right to deduct from amounts which are or shall become due and payable to Designer under this or any contract between the parties any amounts which are or shall become due and payable to the State by the Designer.
 4. **W-9 Form** shall be completed and attached to the Agreement by Designer. The Owner will provide original forms for execution.
 5. Send all of the above, completed and compiled, to RPA for execution.
- C. Execution of the Agreement:**
1. **Review and Approval:** The State Architect or his designee shall sign and date the contract.
 2. **Required State Signatures:** Signatures as required by the State Building Commission (SBC) and the Contracting State Agency.
- D. Prospective Designer will use the following guide** to verify that the SBC-6 is filled in correctly. Contact Owner immediately should errors be identified.



SBC-6: GUIDE FOR COMPLETING FORM

A.1 The prospective Designer shall NOT fill in the Date of the Agreement. The Owner will fill it in when the agreement is fully executed, and shall be the date when the last required signature is affixed to the agreement.

The Designer firm or joint venture name is filled in as Designer. The working address of the Designer is filled in normally.

A.2 The Project Scope corresponds to the program statement approved by the State Building Commission, and says: " WITNESS, whereas it is the intention of the Owner to...", followed by the official program statement.

Maximum Allowable Construction Cost (MACC), is the construction "Bid Target" plus the construction "Contingency" as approved by the SBC.

B.3.1 For the Designer's Basic Services, the Phases to be completed from paragraph 2-1-1 through the paragraph indicated in Paragraph B.3.1 correspond to those authorized by the SBC for this project. (The Phases are fully defined in Paragraphs 2-1-1 through 2-1-41 of the SBC-6a).

Lump Sum Fee: (See Article 1 and Article 7 of the SBC-6a) Basic services normally are a Lump Sum. If construction is planned under multiple contracts or construction types, an attachment exhibit is included delineating fee calculation and apportionment to stages of design and construction.

Multiple of Direct Expense: Rates and premiums used here shall be the same as set forth below in Paragraph B.3.2 for Multiple Direct Expense and Additional Services.

B.3.2 These Subparagraphs enumerates the Compensation for the Designer.

B.3.3 Principals in the firm are listed who are legally empowered to bind the Designer as shown in paragraph Part A.1 of the SBC-6 to the terms and conditions of this contract, and can receive compensation at the Principal's rate given in clause B.3.2.1.

B.3.4 Designers' consultants are listed. "N/A" filled in if consultant discipline is considered not a factor in project. "IN-HOUSE" filled in if Designer to provide service. This subparagraph may require some discussion of the project between Owner and prospective Designer. List the Consultant Firm, the Consultant and the Consultant 'Professional Registration Number' (when applicable).

C.1 Professional Liability Insurance (PLI) basic minimum coverage is normally \$100,000.00, as set forth in Article 15 of the SBC-6a *Terms and Conditions*. Additional insurance requirements are necessarily considered on a per-project basis; however, it is customary to scale the limit of liability according to the project MACC, accordingly:

if MACC > or =	\$00	\$2,500,000	\$5,000,000	\$10,000,000	\$20,000,000
and <	\$2,500,000	\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000+
then PLI min =	\$100,000	\$250,000	\$500,000	\$750,000	\$1,000,000

- Certificates shall name insured, producer, carrier(s), and the "State of Tennessee" as certificate holder, with the correct address of the Contracting Agency.
- The Certificate shall stipulate ten (10) days prior written notice to certificate holder in the event coverage is changed or renewed.
- When the Designer is a JOINT VENTURE, the certificate shall recognize the Joint Venture relationship, and the limit of liability for each member of the Joint Venture shall be not less than the required total limit divided by the number of members (firms).
- Values of all limits and deductibles need to be given in like units.

D.2 The schedule for completion of design phases shall be set forth in calendar days. This part normally requires some discussion of the project between Owner and proposed Designer prior to contract.

NOTE: Time indicated to complete **Design Development Phase (DDP)** shall begin with written Notice To Proceed for the Project (SBC-6a Paragraph 2-1-1 through 2-1-21.)
 And, time indicated to complete **Contract Document Phase (CDP)** shall begin following approval of DDP and written Notice to Proceed (SBC-6a Paragraph 2-1-22 through 2-1-26.)



2.03 STANDARD FORM of SUPPLEMENT to AGREEMENT (SBC-6s)

- A. The *Standard Form of Agreement between the Owner and Designer* (SBC-6) is normally supplemented for revisions in scope and funding using State Building Commission form SBC-6s - *Standard Form of Supplement to an Agreement between Owner and Designer*.
- B. **Owner will fill in the SBC-6s form and send to Designer** for Designer signature and, when appropriate, Designer attachment of updated insurance certificates, the sub-agreement for payment by direct deposit (ACH form), and the federal tax reporting form W-9.
- C. **Completion by the Designer:**
 - 1. **Designer Signature:** Seven (7) counterparts will be signed by a principal legally empowered to bind Designer to Contract, and, included in the list of principals applicable both before and after the Supplement. . If a joint venture, a principle of each firm should sign, and additional counterparts should be included to allow for providing an executed counterpart to each joint venture firm.
 - 2. **Designer Professional Liability Certificate of Insurance** may be required if prior certificates have expired.
 - 3. **ACH Credits Form** may be required for change in Designer name, bank, or account.
 - 4. **W-9 Form** may be required for change in Designer name.
 - 5. Send all of the above, completed and compiled, to RPA for execution.
- D. **Designer will use the following guide** to verify that the SBC-6s is filled in correctly. Contact Owner immediately should errors be identified.



SBC-6s: GUIDE FOR COMPLETING FORM

A.1 The Date of the Agreement is to be filled in by the Owner when the agreement is fully executed, and shall be the date when the last required signature is affixed to the agreement.

The Designer Firm or joint venture name shall be indicated as the Designer on this Contract.

A.2 The Project Title, Location and SBC Number shall be indicated as identifying the Original Project.

A.3 The Date of the Original Contract as indicated in Part A.1 of the SBC-6.

A.4 The Date or Dates of previous Supplement(s) (SBC-6s) modifying the original Agreement.

A.5 The Phases of the Design Services as defined under Article 2 of the SBC-6a which applied to the original Agreement or subsequent Supplements.

The Maximum Allowable Construction Cost, MACC, as indicated in the original SBC-6 or subsequent Supplements.

B.2.1 The Scope of Services shall be renewed, revised, and/or confirmed in this paragraph.

B.2.2 The Maximum Allowable Construction Cost, MACC, shall be renewed, revised and/or confirmed in this Paragraph.

B.3.1 The Designer's Basic Services, shall be renewed, revised and confirmed in accordance with the new Scope and/or Budget and the Design Services required. (Paragraphs 2-1-1 through 2-1-41 are fully defined in Article 2 of the SBC-6a.)

B.3.3 The Compensation to the Designer shall be modified and/or confirmed in accordance with the Standard Terms and Conditions for Agreements between Owner and Designer (SBC-6a).

C.1 The Limits of the Professional Liability Insurance (PLI) shall be in accordance with the requirements as set forth in Part C.1 of the SBC-6.

D.1 A schedule for completion of design phases shall be set forth. This subparagraph will require some discussion of the project between Owner and proposed Designer. Time durations should be revised and/or confirmed for changes in scope, time and/or budget as impacting the project as defined in Article 2 of the SBC-6a.

The Time indicated to complete the Contract Document Phase (CDP) shall begin following approval of the DDP and upon written Notice to Proceed. (Paragraph 2-1-22 through paragraph 2-1-26 of the SBC-6a)



2.04 PAYMENTS

A. Procedures to follow for submitting pay requests:

1. **IMPORTANT - On each invoice, identify:**
 - Firm name and address;
 - the project and SBC project number;
 - ending date of services billed.
2. **Bill separately reimbursable expenses from additional services** so that disagreement over one type item will not hinder payment for others.
3. **Attach a copy of Owner's authorization letter** for services that require prior-approval.
4. **Attach a completed Attestation** re: "Personnel Used in Contract Performance" with all invoices for Basic Services.
5. **Submit original statement and one copy to OBF** (and not to RPA - see page 1.03 for OBF information.)
NOTE: Do not submit invoice to OBF for 100% completion of CDP until you have received the bid approval letter from the RPA Bidding Administrator, if applicable.

- B. Payment For Basic Services:** Subdivide lump sum payments for Basic Services to indicate extent of services thus far provided, prior payments, and balance due. Differentiate between portions of project that are progressing on different timetables or subject to separate approvals.

Example Billing Breakdown:

BASIC SERVICES	PCT	FEE	DUE		PREV BILLED	REMIT
			PCT	AMT		
Program Phase	3	1,281	3	1,281	1,281	0
Schematic Phase	12	5,125	12	5,125	5,125	0
Des Dev Phase	25	10,677	25	10,677	10,677	0
Const Doc Phase	30	12,813	30	12,813	6,406	6,407
Bidding Phase	3	1,281	0	0	0	0
Constr Phase	23	9,823	0	0	0	0
Close-out Phase	4	1,708	0	0	0	0
SUB - TOTAL	100	\$42,708	70	\$29,896	\$23,489	\$6,407

- C. Payment For Additional Services:** Hourly and other direct expenses require RPA approval before work is started. On invoice, provide description of Additional Services performed. Itemize expenses under an appropriate heading. Attach applicable receipts. The hourly rate for principals' time is a maximum hourly rate; the rate for employee's time, including allowable multipliers, cannot exceed the rate for a principal.

Example Billing Breakdown:

(Attach timesheets & synopsis):

ADDITIONAL SERVICES	RATE	HOURS	DUE	PREV BILLED	REMIT
Principal Dave	155 x 1.00	15.0	2,325.00	500.00	1,825.00
Principal Jane	155 x 1.00	22.5	3,487.50	1,250.00	2,237.50
Employee Susan	30 x 2.45	10.0	735.00	0	392.00
Employee Darth	20 x 2.45	8.0	392.00	150.00	291.00
Consultant Jim	90 x 1.20	4.0	432.00	0	192.00
SUB - TOTAL			\$7,371.50	\$1,900.00	\$5,471.50



D. Payment For Reimbursable Expenses:

1. **Surveys, Reports, and Tests:** (i.e. survey work, geotechnical investigations, air monitoring services) require RPA approval before work is started.
2. **Printing Costs:** Pre-approved rates and other instructions for printing Bidding Documents are provided on page 5.01.
3. **Travel Expenses:**
 - a) **Itemize** all applicable travel expenses using the form titled “*State of Tennessee Claim for Travel Expenses*”, provided in Appendix 1 - *Administrative Forms*. **A separate travel expense claim must be submitted per person, per project.** Under “Additional Explanation” area, input name of applicable project and SBC Project No.
 - b) **Maximum amounts** that may be claimed will be stipulated by Owner’s current “State Comprehensive Travel Regulations”, as they may be revised from time to time. For applicable projects, the Owner should provide a copy of these regulations to the Designer **or the Designer may obtain them at www.state.tn.us/finance/contacts.html.**

NOTE: Travel expenses come into effect only if travel is required outside a fifty (50) mile radius of the Designer’s or Designer’s Consultant’s principal place of business. Therefore, travel within the 50-mile radius cannot be reimbursed. **EXAMPLE:** A trip is taken outside 50-mile radius, and the mileage total (out-and-back) comes to 170 miles. The actual number of miles that is reimbursable equals 70 miles (170-50-50 = 70).

4. **Costs not reimbursable include:** Postage, delivery, and other handling costs for design submittals, bidding documents, construction documents, and correspondence. Transmittal of bid results via Express Mail is reimbursable. (See 5.09.A.1)
5. Attach statements and summarize reimbursable expenses within the invoice under the heading of "Reimbursable Expenses". If statements are not itemized, include itemization in summary.

Example Billing Breakdown:

(attach direct invoices):			
REIMBURSIBLE EXPENSES	COST	MULTI	AMT DUE
Sub A printing	655.00	1.00	655.00
Travel Costs	524.62	1.00	124.62
Sub A Air-Monitor	1,200.00	1.20	1,440.00
Surveys	3,200.00	1.20	3,840.00
GeoTechnical	1,500.00	1.20	1,800.00
SUB - TOTAL			\$7,859.62

6. **Contact OBF** (See page 1.03) to obtain further clarification regarding any of the above items.

CHAPTER 2 END

