

## Chapter Two

# DESIGNER AGREEMENT AND PAYMENTS

The Office of the State Architect Designer Selection process can be found at the following website:  
[https://www.tn.gov/content/dam/tn/statearchitect/documents/OSA\\_DesignerProcess.pdf](https://www.tn.gov/content/dam/tn/statearchitect/documents/OSA_DesignerProcess.pdf)

### 2.01 AGREEMENT FORMS

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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 following State Building Commission forms:

- **SBC-6, *Standard Form of Agreement Between Owner and Designer* (Agreement)**  
The Agreement is created using the [SBC-6 Instruction Guide Sheet](#)
- **SBC-6a, *Standard Terms and Conditions of Agreement between Owner and Designer* (Terms and Conditions)**
- **SBC-6s, *Standard Form of Supplement to a Agreement between Owner and Designer* (Supplement)**  
The Agreement is created using the [SBC-6s Instruction Guide Sheet](#)

The current [Agreement](#), [SBC-6 Instruction Guide Sheet](#), [Terms and Conditions](#), [Supplement](#), and [SBC-6s Instruction Guide Sheet](#) are included in Appendix 1 - *Administrative Forms*.

### B. Project Delivery Methods

1. **Design/Bid/Build** is the State's traditional method of procurement and shall in all cases be the standard method used unless specifically approved otherwise. It is characterized by a structured process of design producing a set of bidding documents, an open competitive bidding phase, and award of a contract to the responsive and responsible bidder offering the lowest price for the work.
2. **Alternative Delivery Methods** are as approved by the SBC and defined by the Office of the State Architect policy,  
[https://www.tn.gov/content/dam/tn/statearchitect/documents/OSA%20Policy\\_DeliveryMethods\\_F.pdf](https://www.tn.gov/content/dam/tn/statearchitect/documents/OSA%20Policy_DeliveryMethods_F.pdf)  
Alternative Delivery Method can include:
  - a. **Best Value**
  - b. **Construction Management (Construction Manager/General Contractor)**
  - c. **Design/Build**
  - d. **Indefinite Delivery Indefinite Quantity (IDIQ)**

### C. Designer Fees

1. The Owner shall compensate the Designer as described in Article 2, "Fees and Compensation", of the [Terms and Conditions](#).
  - a. The Designer's Basic Services are defined in the [Terms and Conditions](#), and comprised in those paragraphs specifically cited in the [Agreement](#) or [Supplement](#).
  - b. For the Designer's Additional Services as described in the [Terms and Conditions](#), a fee in addition to the Basic Services Fee may be allowed and computed based upon the term stipulated in the [Agreement](#).
  - c. For the Designer's reimbursable expenses, the Designer shall be reimbursed for actual costs expended as defined in the [Terms and Conditions](#).

## 2.01 AGREEMENT FORMS

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2. Conditions of payment shall be as described in Article 2, Subparagraph 2.3, Payments to Designer for Basic Services of the [Terms and Conditions](#).
3. An attachment showing the fee computation shall be made part of the [Agreement](#).



- A. Owner will fill in the [Agreement](#) from the information as provided on the [SBC-6 Instruction Sheet](#) and send to prospective Designer for Designer signature and Designer attachment of insurance certificates, of the sub-agreement for payment by direct deposit ([the "Authorization Agreement for Supplier Direct Deposit Form"](#)), and of the federal tax reporting [Taxpayer Identification Number and Certification Form](#).
- B. Completion by the Designer
1. **Designer Signature:** The principal(s) legally empowered to bind Designer to [Agreement](#), and listed in B.3.3 on page 2 of the [Agreement](#), shall sign [Agreement](#). If a joint venture, a principle of each firm shall sign [Agreement](#). This instrument may be executed in one or more counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart, even though no one counterpart contains the signatures of all the parties to this instrument. Electronic, scanned, or facsimile signatures shall have the same force and effect as original signatures.
  2. **Designer Certificate(s) of Insurance** shall be provided and attached to the [Agreement](#) by Designer. Refer to C.1 of the *SBC-6 Guide for Completing Contract*, found on page 2.02b, for the certificate's proper content.
    - a. For projects with a MACC less than \$3M the Professional Liability Insurance (PLI) shall be \$1M per claim, \$1M annual aggregate;
    - b. for projects with a MACC equal to or greater than \$3M but less than \$20M, the PLI shall be \$1M per claim, \$2M annual aggregate;
    - c. for projects with a MACC equal to or greater than \$20M but less than \$100M, the PLI shall be \$2M per claim, \$4M annual aggregate;
    - d. all other projects have a PLI of \$3M per claim and \$5M annual aggregate.
  3. [Authorization Agreement for Supplier Direct Deposit Form](#) shall be completed and attached to the [Agreement](#) by Designer as required in accordance with Article 2.6 of the [Terms and Conditions](#). An example of the form can be found on [Section 00 54 00](#) of Appendix 2 – *Procurement / Bidding Documents*. Joint Venture Designers shall complete an [Authorization Agreement for Supplier Direct Deposit Form](#) for a Joint Account. This form can be found at [https://www.tn.gov/content/dam/tn/ecd/documents/resources/grantee-resources/State\\_of\\_TN\\_Supplier\\_Direct\\_Deposit\\_Authorization.pdf](https://www.tn.gov/content/dam/tn/ecd/documents/resources/grantee-resources/State_of_TN_Supplier_Direct_Deposit_Authorization.pdf). Please follow the instructions at the top of the form regarding submission of the form.
  4. [Taxpayer Identification Number and Certification Form](#) shall be completed and attached to the [Agreement](#) by Designer. The Owner will provide original forms for execution. This form can be found at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>. Please submit this form with the Authorization Agreement for Supplier Direct Deposit Form form as indicated at the top of the form regarding submission of the form.
- C. Execution of the Agreement
1. **Review and Approval:** The State Architect or designee shall sign and date the [Agreement](#).
  2. **Required State Signatures:** Signatures shall be as required by the State Building Commission (SBC) and the Contracting State Agency. In accordance with SBC Policy, signatures may include the Comptroller of the Treasury and the Attorney General.
- D. Prospective Designer will use the following guide to verify that the [Agreement](#) is filled in correctly. Should errors be identified please contact Owner immediately.

## SBC-6: GUIDE FOR COMPLETING AGREEMENT

Items as listed below are in conjunction with the [SBC-6 Instruction Guide Sheet](#). They are numbered as they appear on the [Instruction Guide Sheet](#).

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](#).

- 1.1.1 **The Project Scope** corresponds to the project description approved by the State Building Commission, and says: "WITNESS, whereas it is the intention of the Owner to...", followed by the official project description. This information will be completed by Owner on the [SBC-6 Instruction Guide Sheet](#).
- 1.3 **Principals in the firm** are listed who are legally empowered to bind the Designer as shown in the [Agreement](#) to the terms and conditions of this contract, and can receive compensation at the Principal's rate given in paragraph 2.3.1. This information will be completed by Designer on the [SBC-6 Instruction Guide Sheet](#).
- 1.4 **Designers' consultants** are listed. "N/A" filled in if consultant discipline is not required in the project. 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). This information will be completed by Designer on the [SBC-6 Instruction Guide Sheet](#).
- 1.5 **For the Designer's Basic Services**, the Phases to be completed by the Designer. (The Phases are fully defined in Program Verification Phase through Close Out Phase of the [Terms and Conditions](#)). This information will be completed by Owner on the [SBC-6 Instruction Guide Sheet](#).
- The schedule for completion of design phases** shall be set forth in calendar days.
- 1.5.1 **Additional services** may be incorporated into an adjusted Basic Services fee with agreement between the Owner and Designer.
- 2.1 **Maximum Allowable Construction Cost** (MACC), is the construction "Bid Target" plus the construction "Contingency" as approved by the SBC. This information will be completed by Owner on the [SBC-6 Instruction Guide Sheet](#).
- 2.2 **Lump Sum Fee:** See Article 1 of the [Terms and Conditions](#). If construction is planned under multiple contracts or construction types, an attachment is included delineating fee calculation and apportionment to stages of design and construction. The Lump Sum fee will be filled in by Owner on the [SBC-6 Instruction Guide Sheet](#).
- Multiple of Direct Expense:** Rates and premiums used here shall be the same as set forth in paragraph 2.3 for Multiple Direct Expense and Additional Services. A Direct Personnel Expense (DPE) worksheet shall be provided with the original agreement and may be updated, at most, once per year.
- 2.3 These subparagraphs enumerate the Compensation for the Designer.
- 3.1 **Insurance** is the amount as indicated in Article 3 – Insurance of the [Terms and Conditions](#) at the time of Designer Selection announcement and shall be submitted as indicated herein:
- Certificates shall name insured, producer, carrier(s), and the "State of Tennessee" as certificate holder, with the correct address of the Owner.
  - The Certificate shall stipulate ten 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.
  - The State shall be named as an additional insured on all insurance coverages required by Article 3.1.4 of the SBC-6, to be evidenced by the issuance and submittal to the State of policy endorsements.

Insurance requirements will be completed by Owner on the [SBC-6 Instruction Guide Sheet](#).

## 2.03 STANDARD FORM of SUPPLEMENT to AGREEMENT

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- A. The [Supplement](#) is normally executed for revisions in scope and /or funding using State Building Commission form [Supplement](#).
1. Supplements will be issued if the State initiates changes to the scope and funding of a project;
  2. When a designer submits an estimate that exceeds the bid target where no change in scope has occurred, the issuance of the Supplement will be deferred until the designer estimate is validated by the bidding process.
    - a. The revised MACC in the Supplement will be based on the lesser of the designer estimate and accepted bid.
    - b. No Supplement will be issued if accepted bid is under the MACC as stated in the current Designer Agreement or Supplement.
- B. **Owner will fill in the [Supplement](#) 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 ([Authorization Agreement for Supplier Direct Deposit Form](#)), and the federal tax reporting [Taxpayer Identification Number and Certification Form](#).
- C. **Completion by the Designer**
1. **Designer Signature:** The principal(s) legally empowered to bind Designer to [Agreement](#), and listed in B.3.3 on page 2 of the [Agreement](#), shall sign [Agreement](#). If a joint venture, a principle of each firm shall sign [Agreement](#). This instrument may be executed in one or more counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart, even though no one counterpart contains the signatures of all the parties to this instrument. Electronic, scanned, or facsimile signatures shall have the same force and effect as original signatures.
  2. **Designer Certificate(s) of Insurance** may be required if prior certificates have expired. Professional Liability coverage limits may be revised if thresholds in 2.02, B., 2. are crossed.
  3. [Authorization Agreement for Supplier Direct Deposit Form](#) may be required for change in Designer name, bank, or account.
  4. [Taxpayer Identification Number and Certification Form](#) may be required for change in Designer name.
  5. Send all of the above, completed and compiled, to Owner for execution.
- D. **Designer will use the following guide** to verify that the [Supplement](#) is filled in correctly. Immediately contact Owner should errors be identified.

**When Designer requests Additional Services**, Designer shall submit to Owner a letter requesting Additional Services and shall include:

1. Project identification (SBC Project No., project and facility name, project location and agency),
2. Scope of services as defined in the [Terms and Conditions](#),
3. Summary of proposals received (from whom, how much, etc.),
4. Justification for the services to be performed,
5. Services start and end date, and
6. Total cost to the State for the services.

**NOTE:** Additional Services are not done via a [Supplement](#).

## SBC-6s: GUIDE FOR COMPLETING SUPPLEMENT

Items as listed below are in conjunction with the [SBC-6s Instruction Guide Sheet](#). The form will be completed by Owner in coordination with the Designer.

The Date of the [Supplement](#) is to be filled in by the Owner when the [Supplement](#) is fully executed, and shall be the date when the last required signature is affixed to the [Supplement](#).

The Project Title, Location and SBC Number as indicated on the original [Agreement](#).

The Date of the Original Contract as indicated on the [Agreement](#).

The Date or Dates of previous Supplement(s) modifying the [Agreement](#).

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

1.4 Changes to the Design Team shall be revised in 1.4.

1.6 The Revised Phases of the Design Services as has been approved by the SBC.

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. (Phases are fully defined in Program Verification Phase through Close Out Phase of the [Terms and Conditions](#).)

A revised 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 1 of the [Terms and Conditions](#).

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

2.2 The Compensation to the Designer shall be modified and/or confirmed in accordance with the Standard [Terms and Conditions](#). Also, any changes in fee shall be amended via the [Supplement](#) in compliance with Article 2 of the [Terms and Conditions](#))

3.1 Insurance shall be in accordance with the requirements as set forth in 3.1 of the [Agreement](#).

**A. Procedures to follow for submitting invoices**

**1. IMPORTANT - On each invoice, identify:**

- Firm name and address,
- The project name and SBC project number,
- Start and end date of services billed, and
- Itemize invoices as shown in Example B, C, or D below.

**2. Bill reimbursable expenses separately from Basic Services** so that disagreement over one type item will not hinder payment for others.

**3. Attach a copy of Owner's task authorization letter** for services that require prior approval.

**4. Attach a completed Attestation** re: "Personnel Used in Contract Performance" with all invoices for services.

**5. Submit original statement and one copy to OBF** (and not to Owner - [see page 1.03](#) for OBF information.)

**B. Payment For Basic Services:** Subdivide lump sum payments for Basic Services to indicate the extent of services thus far provided, the prior payments, and the 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	PCT	DUE AMT	PREV BILLED	REMIT
Program Verification Phase	3	1,281	100	1,281	1,281	0
Schematic Design Phase	12	5,125	100	5,125	5,125	0
Design Development Phase	25	10,677	100	10,677	10,677	0
Construction Document Phase	30	12,814	50	12,814	6,407	6,407
Bidding and Negotiation Phase	3	1,281	0	0	0	0
Construction Phase	23	9,823	0	0	0	0
Close-out Phase	Greater of 4% or \$1,000	1,708	0	0	0	0
<b>SUB - TOTAL</b>	<b>100</b>	<b>\$42,709</b>		<b>\$29,897</b>	<b>\$23,490</b>	<b>\$6,407</b>

**C. Payment for Additional Services:**

- 1 Surveys, Reports, and Tests:** including, but not limited to, survey work, geotechnical investigation, air monitoring services, require Owner approval before work is started, including approved Designer markup, not to exceed 1.2.

**Example Billing Breakdown:**

(attach direct invoices):

ADDITIONAL SERVICES	COST	MULTIPLIER	AMT DUE	PREV BILLED	REMIT
Air-Monitor Testing	1,200.00	1.20	1,440.00	1,000.00	440.00
Surveys	3,200.00	1.10	3,520.00	1,500.00	2,020.00
Geotechnical	1,500.00	1.10	1,650.00	1,650.00	0.00
<b>SUB - TOTAL</b>			<b>\$6,610.00</b>	<b>\$4,150.00</b>	<b>\$2,460.00</b>



**2.04 PAYMENTS**

2. **Hourly and other direct expenses** require Owner approval before work is started. On invoice, provide description of Additional Services performed. Itemize expenses under an appropriate heading. Attach applicable receipts and Owner's authorization letter. 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. The maximum hourly rate for any individual is the base rate multiplied by the direct personnel expense then by 2.45 not to exceed the maximum hourly rate of \$175 per hour.

**Example Billing Breakdown:**

**Additional Services Invoice**

ABC Design Services  
123 Sesame Street  
Anytown, Tennessee 37111

State Of Tennessee  
Department Of General Services  
312 Rosa L. Parks Ave.  
Nashville, TN 37243  
Attn: Project Manager

September 3, 2012  
SBC#: 529/000-01-2012  
ABC Project #: 2012.0135  
Invoice No: 6200034  
ASR#: 05

Provide a brief description of the services rendered under this invoice.

In House Professional Services	Personnel Rate					Project Billings		
	Hours	Base	DPE	OH	Total (175 Max)	Total Earned	Prev Billed	Current Due
Principal	10	\$ 55.00	1.32	2.45	\$ 175.00	\$ 1,750.00	\$ 1,000.00	\$ 750.00
Project Architect	35	\$ 40.00	1.32	2.45	\$ 129.36	\$ 4,527.60	\$ 2,000.00	\$ 2,527.60
Senior Architect	16	\$ 35.00	1.32	2.45	\$ 113.19	\$ 1,811.04	\$ 1,500.00	\$ 311.04
Drafter	80	\$ 20.00	1.32	2.45	\$ 64.68	\$ 5,174.40	\$ 2,050.00	\$ 3,124.40
Interior Designer	30	\$ 25.00	1.32	2.45	\$ 80.85	\$ 2,425.50	\$ 1,500.00	\$ 925.50
In-House Sub-total						\$ 15,688.54	\$ 8,050.00	\$ 7,638.54
<b>Consultant Services</b>								
Mechanical Engineer	20	\$ 57.00	1.34	2.45	\$ 175.00	\$ 3,500.00	\$ 2,000.00	\$ 1,500.00
Mechanical Drafter	32	\$ 46.00	1.34	2.45	\$ 151.02	\$ 4,832.58	\$ 2,500.00	\$ 2,332.58
Electrical Engineer	18	\$ 48.00	1.29	2.45	\$ 151.70	\$ 2,730.67	\$ 1,500.00	\$ 1,230.67
Electrical Drafter	27	\$ 39.00	1.29	2.45	\$ 123.26	\$ 3,328.01	\$ 2,000.00	\$ 1,328.01
Structural Engineer	25	\$ 51.00	1.22	2.45	\$ 152.44	\$ 3,810.98	\$ 2,200.00	\$ 1,610.98
Structural Drafter	38	\$ 34.00	1.22	2.45	\$ 101.63	\$ 3,861.79	\$ 1,700.00	\$ 2,161.79
Consultants Sub-total						\$ 22,064.02	\$ 11,900.00	\$ 10,164.02
Multiplier						1.20	1.20	1.20
						\$ 26,476.82	\$ 14,280.00	\$ 12,196.82
Total Due to date								\$ 42,165.36
Less Previous Billed to date								\$ 22,330.00
Total Due this invoice								\$ 19,835.36





**E. Payment For Reimbursable Expenses**

1. **Printing Costs:** Pre-approved rates and other instructions for printing Procurement and Bidding Documents are provided on [page 5.01](#).
2. **Travel Expenses** If approved as indicated in the 2.4.2 of the [Terms and Conditions](#)
  - a. **Itemize** all applicable travel expenses. A separate travel expense claim must be submitted per person, per project. 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 [https://www.tn.gov/content/dam/tn/finance/documents/fa\\_policies/policy8.pdf](https://www.tn.gov/content/dam/tn/finance/documents/fa_policies/policy8.pdf) .
3. **Non-reimbursable Costs include:** Postage, delivery, and other handling costs for design submittals, as well as bidding documents, construction documents, and correspondence. Transmittal of bid results via Express Mail is reimbursable. ([See 5.09, A.1](#))
4. 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 for Reimbursable Costs Breakdown:**

(attach direct invoices):

REIMBURSIBLE EXPENSES	COST	MULTIPLIER	AMT DUE	PREV BILLED	REMIT
Subcontractor A printing	655.00	1.00	655.00	450.00	205.00
Travel Costs	524.62	1.00	524.62	0.00	524.62
<b>SUB - TOTAL</b>			<b>\$1,179.62</b>	<b>\$450.00</b>	<b>\$729.62</b>

5. **Contact OBF** ([See page 1.03](#)) to obtain further clarification regarding any of the above items.

**CHAPTER 2 END**

