

STATE OF TENNESSEE  
DEPARTMENT OF GENERAL SERVICES, STATE OF TENNESSEE REAL ESTATE ASSET  
MANAGEMENT



**DESIGNER  
REQUEST FOR QUALIFICATIONS (“DRFQ”)  
AMENDMENT FOUR**

**FOR THE PROJECT TITLED:  
Exhibit Designer - New Tennessee State Museum  
SBC #529/050-01-2015**

**DATE: September 11, 2015**

**1. This RFQ Schedule of Events updates and confirms scheduled RFQ dates.**

<b>EVENT</b>	<b>TIME (central time zone)</b>	<b>DATE (all dates are state business days)</b>	<b>Updated/Confirmed</b>
1. DRFQ Issued		August 25, 2015	Confirmed
2. Disability Accommodation Request Deadline		August 26, 2015	Confirmed
3. <b>Pre-Response Conference</b>	<b>2:00 p.m.</b>	September 2, 2015	Confirmed
4. State response to 1 <sup>st</sup> set of written “Questions & Comments”		September 3, 2015	Confirmed
5. Notice of Intent to Respond Deadline		September 3, 2015	Confirmed
6. State response to 2 <sup>nd</sup> set of written “Questions & Comments”		September 8, 2015	Confirmed
7. <b>Written “Questions &amp; Comments” Deadline</b>	<b>2:00 p.m.</b>	September 8, 2015	Confirmed
8. State response to 3 <sup>rd</sup> set of written “Questions & Comments”		September 11, 2015	Confirmed
9. <b>RFQ Technical Response Deadline</b>	<b>2:00 p.m.</b>	September 17, 2015	Confirmed
10. State Completion of Technical Submittal Evaluations		September 24, 2015	Confirmed
11. State Issues Notice of Short-Listed Respondents		September 25, 2015	Confirmed
12. <b>Interviews with Short-Listed Respondents</b>		October 5 & October 6, 2015	Confirmed
13. <b>Fee Proposal Deadline</b>	<b>2:00 p.m.</b>	October 9, 2015	Confirmed
14. <b>State Issues Notice of Intent to Negotiate and Commences Negotiations</b>		October 12, 2015	Confirmed
15. Executive Subcommittee Approval Sought		October 19, 2015	Confirmed
16. Contract Award		October 30, 2015	Confirmed

- 2. DRFQ Attachment H (Pro Forma Contract) has been updated. Revised version is attached to this Amendment.**

**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**DEPARTMENT OF GENERAL SERVICES**  
**AND**  
**CONTRACTOR NAME**  
**TO**  
**SBC PROJECT NUMBER 529/050-01-2015-02 (the "Project")**

This Contract (the "Contract"), by and between the State of Tennessee, Department of General Services, hereinafter referred to as the "Owner" and **Contractor Legal Entity Name**, hereinafter referred to as the "Contractor," is for the provision of project manager as agent services, as further defined in the "SCOPE OF SERVICES." Owner and Contractor are hereinafter collectively referred to as the "Parties".

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

**A. SCOPE OF SERVICES:**

- A.1. The specific duties and responsibilities of the Contractor shall include those outlined in the Scope of Services and Deliverables (Contract Attachment A).
- A.2. The Contractor 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 services in the preceding phase. The Owner is not obligated to proceed with any phase beyond the last phase specifically approved in writing.
- A.3. Notwithstanding any other provision in this Contract to the contrary, in providing services under the Contractor, the Contractor shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. The Contractor shall perform its services and prepare its instruments of service in compliance with applicable laws and codes. The Contractor agrees that approval of the construction documents by any person, body or agency shall not relieve the Contractor of the responsibility for providing services in accordance with the applicable standard of care. Any conflicts shall be promptly reported in writing to the Owner with proposed strategies for resolution.
- A.4. All Project meetings, site visits, progress meetings, and inspections shall be attended by representatives of the Contractor, including registration, if necessary, to make decisions appropriate to the phase of service. Failure to provide the required representatives by any party for a scheduled Project meeting, site visit, progress meeting, or inspection of which the party had proper notice shall cause the cancellation and rescheduling at the expense of the responsible party.

**B. CONTRACT PERIOD:**

- B.1. Contract Period. This Contract is effective for the period commencing on the date of full and complete execution of this Contract and shall conclude upon the expiration of the exhibit fabrication contract, but not sooner than twelve months from the date of substantial completion of the exhibit fabrication. The Contractor acknowledges and affirms that the Owner shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
- B.2. Term Extension. The Owner reserves the right to extend this Contract for an additional period or periods of time. An extension of the term of this Contract will be affected through an amendment to the Contract. If the extension of the Contract necessitates additional funding

beyond that which was included in the original Contract, the increase in the Owner's maximum liability will also be affected through an amendment to the Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the Owner under this Contract exceed **Amount in words** and No/100ths Dollars (**\$Amount in Numbers**). The payment rates, in Section C.3, shall constitute the maximum amount due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, hours worked, materials or equipment required. The Contract Amount includes, but is not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the Owner. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the Owner requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with Section C.3. The Owner is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The lump sum fee liability of the Owner for services under this Contract is firm for the duration of the Contract and is not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the Owner in a total amount as set forth in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- b. The Contractor shall be compensated based upon the following payment methodology:

**TO BE INSERTED UPON LUMP SUM FEE NEGOTIATION AND CORRESPONDING  
PAYMENT SCHEDULE IN ACCORDANCE WITH RFQ SECTIONS 5.3 AND 5.4.**

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

- C.5. Invoice Requirements. The Contractor shall invoice the Owner only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Original: Ron Maupin  
Department of Finance and Administration  
Office of Business and Finance  
312 Rosa L. Parks Avenue  
W. R. Snodgrass Tennessee Tower, 20<sup>th</sup> Floor  
Nashville, Tennessee 37243

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

- (1) Invoice Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Contract Number SBC Project No. 529/050-01-2015-02
- (4) Customer Account Name: Department of General Services, Real Estate Asset Management;
- (5) Customer Account Number (assigned by the Contractor to the above-referenced State Agency);

- (6) Contractor Name;
  - (7) Contractor Federal Employer Identification, Social Security, or Tennessee Edison Registration ID Number Referenced in Preamble of this Contract;
  - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax);
  - (9) Contractor Remittance Address;
  - (10) Description of Delivered Service;
  - (11) Total Amount Due for delivered service (as stipulated in Section C.3. above);
  - (12) Further, the monthly invoices will include the name of each individual, the individual's job title, the number of hours worked during the period, the hourly rate, the total compensation requested for the individual, the total amount due the Contractor for the period involved, each project expenditure to-date, total expenditures to date and balance of funds remaining in the contract.
- b. The Contractor understands and agrees that an invoice under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
  - (2) only be submitted for completed service and shall not include any charge for future work;
  - (3) not include sales tax or shipping charges; and
  - (4) initiate the timeframe for payment (and any discounts) only when the Owner is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.5.
- C.6. Payment of Invoice. A payment by the Owner shall not prejudice the Owner's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the Owner shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Owner, on the basis of audits conducted in accordance with the terms of the Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The Owner reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the Owner under this Contract until the Owner has received the following documentation properly completed.
- a. The Contractor shall complete, sign, and present to the Owner an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the Owner. By doing so, the Contractor acknowledges and agrees that, once said form is received by the Owner, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
  - b. The Contractor shall complete, sign, and present to the Owner a "Substitute W-9 Form" provided by the Owner. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The Owner is not bound by this Contract until it is signed by the contract parties and approved by the appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to the Office of the State Architect, the Commissioner of General Services, the Comptroller of the Treasury, and the Office of the Attorney General). Approvals shall be evidenced by a signature or electronic approval.

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Office of the State Architect, the Commissioner of General Services, the Comptroller of the Treasury, and the Office of the Attorney General).
- D.3. Termination for Convenience. The Owner may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the Owner. The Owner shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the Owner be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount. In no event shall the Owner's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Owner for any damages or claims arising under this Contract.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the Owner shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by virtue of any Breach Condition and the Owner may seek other remedies allowed at law or in equity for breach of this Contract.
- D.5. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services provided under this Contract without obtaining the prior written approval of the Owner. If such subcontracts are approved by the Owner, each shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest", "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

The Contractor acknowledges, understands, and agrees that it and its performance under this Contract are subject to State Building Commission Policy and Procedure 12.02, "Organizational Conflicts of Interest," (the "SBC Conflict Policy"), and that Contractor has read and understands all of the provisions and requirements of same.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 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.

- a. The Contractor agrees that the Contractor 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 who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the Owner a completed and signed copy of the document at Exhibit A, hereto, semi-annually and at the beginning of each phase, as described in C.3, during the period of this Contract. If the Contractor is a party to more than one contract with the Owner, the Contractor may submit one attestation that applies to all contracts with the Owner. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the Owner.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.9. Licensure. The Contractor and its employees and all sub-contractors shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.10. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) 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, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Owner, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other

transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

- D.14. Limitation of Owner's Liability. The Owner shall have no liability except as specifically provided in this Contract. In no event will the Owner be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The Owner's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.15. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the Owner of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the Owner within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. Contractor will not increase its charges under this Contract or charge the Owner any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.20. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the Owner and hold it harmless for any costs to the Owner arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

- D.21. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the Owner to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the Owner to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the Owner in any legal matter, as the right to represent the Owner is governed by Tenn. Code Ann. § 8-6-106.

- D.22. HIPAA Compliance. The Owner and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the Owner that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the Owner, including cooperation and coordination with Owner privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The Owner and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the Owner and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
  - d. The Contractor will indemnify the Owner and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the Owner because of the violation.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and,

- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the Owner if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- D.24. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or email address set forth below or to that of such party of address, as may be hereafter specified by written notice.

The Owner:

John Hull, Deputy Commissioner  
Department of General Services  
Real Estate Asset Management  
312 Rosa L. Parks Avenue  
W. R. Snodgrass Tennessee Tower, 24<sup>th</sup> Floor  
Nashville, Tennessee 37243  
John.Hull@tn.gov  
Telephone (615) 741-1265

The Contractor:

**Contact Name & Title Firm Name**  
**Address**  
**City, State Zip**  
**Email Address**  
**Telephone # Number**  
**FAX # Number**

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Owner reserves the right to terminate this Contract upon written notice to the Contractor. The Owner's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the Owner. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the Owner terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the Owner and for all satisfactory and authorized services completed as of the termination date. Should the Owner exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the Owner any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- E.4. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated

Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the Owner under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

E.5. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.

E.6. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance including without limitation, the coverages set forth in this Section E.6. Such insurance shall provide for policy limits equal or greater to the amounts set forth herein and shall list the Owner as additional insured.

A copy of the appropriate policy or a Certificate of Coverage fully listing all limits of liability shall verify all required insurance. Such insurance shall be maintained through the life of the Contract. Renewal policies or certificates of coverage must be forwarded to the Owner within thirty (30) days upon issuance. Failure to maintain required insurance could be cause for cancellation of the Contract.

a. Workers Compensation and Employer's Liability, (without restriction as to whether covered by Workmen's Compensation law):

1. For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:

- i. Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or
- ii. In an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.

2. If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

- i. The Contractor employees fewer than five (5) employees;
- ii. The Contractor is a sole proprietor;
- iii. The Contractor is in the construction business or trades with no employees;
- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or

The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

b. Commercial General Liability, including:

1. The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising

injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2. The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

c. Business Automobile Liability:

1. The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
2. The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

d. Professional Liability Insurance: Employed Architects and Engineers Professional liability shall be covered with a limit of not less than:

Each Claim:	\$2,000,000
Aggregate:	\$4,000,000

E.7. Ownership of Documents. Upon completion or termination of the Contract, the documents provided by the Contractor to the Owner as instruments of professional services shall be the property of the State of Tennessee, and may be used again by the Contractor 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 Contractor. The Contractor and the Contractor's consultants may reuse any portion of the work prepared for this Project for other projects. Except as set forth in the Contract or any subsequent agreements between Contractor and the Owner, Contractor shall have no liability for any future use by the Owner of the instruments of professional service provided by the Contractor under the Contract where Contractor is not engaged to provide services for such future use.

E.8. Building Information Modeling (BIM) Requirements. Additionally, the Contractor and the Owner agree that Building information Modeling ("BIM"), shall be utilized on this Project and that all obligations of the Parties, and all processes, policies and procedures relating to said BIM utilization, shall be governed by, and shall be in accordance with, Sections 6.0 through 8.0 of the most recent version of the "State of Tennessee Office of the State Architect (TN OSA) Building Information Modeling (BIM) Requirements," which can be found at [http://www.tn.gov/finance/OSA/documents/OSA\\_BIMr\\_V1.0\\_F.pdf](http://www.tn.gov/finance/OSA/documents/OSA_BIMr_V1.0_F.pdf) and are hereby incorporated by reference as if set forth herein in full, and the terms of which control in the event they are in conflict with any terms of any other Contract Documents.

E.9. Museum Working Group. The Owner will provide a group with knowledge of State collections, history and museum audiences. This group will interact, guide and provide that knowledge regarding the museum collections and displays in order to provide direction to assist and guide the Contractor in their role. The group will provide guidance on selection of artifacts and images, accuracy and authenticity of text, and feedback on the composition. Additionally, they will assist in coordination of the movement and installation of the collection and exhibits and the training of staff.

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 (1) counterpart, even though no one (1) counterpart contains the signatures of all parties to this instrument. Electronic, scanned or facsimile signatures shall have the same force and effect as original signatures.

**IN WITNESS WHEREOF:**

**CONTRACTOR LEGAL ENTITY NAME:**

\_\_\_\_\_  
Contractor Signatory, Contractor Title

DATE: \_\_\_\_\_

**STATE OF TENNESSEE,**

**OFFICE OF THE STATE ARCHITECT:**

\_\_\_\_\_  
Peter L. Heimbach, Jr., State Architect

DATE: \_\_\_\_\_

**DEPARTMENT OF GENERAL SERVICES:**

\_\_\_\_\_  
Robert E. Oglesby, Commissioner

DATE: \_\_\_\_\_

**APPROVED AS TO COMPLIANCE WITH POLICY AND STATUTE:**

\_\_\_\_\_  
Justin P. Wilson, Comptroller of the Treasury

DATE: \_\_\_\_\_

**APPROVED AS TO COMPLIANCE WITH FORM AND LEGALITY:**

\_\_\_\_\_  
Herbert H. Slatery III, Attorney General and Reporter

DATE: \_\_\_\_\_

**EXHIBIT A**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	529/050-01-2015-02
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security Number)	

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor 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 who will utilize the services of an illegal immigrant in the performance of this Contract.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation **MUST** be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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