



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

**REQUEST FOR QUALIFICATIONS (“RFQ”)  
 AMENDMENT ONE**

**FOR THE PROJECT TITLED:  
 Project Manager as Agent (PMaA) for New State  
 Museum**

**SBC Project #529/050-01-2015**

**DATE: June 16, 2015**

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

EVENT	TIME (central time zone)	DATE (all dates are state business days)	Updated / Confirmed
1. RFQ Issued		May 27, 2015	Confirmed
2. Disability Accommodation Request Deadline		June 1, 2015	Confirmed
3. <b>Pre-Response Conference</b>	<b>2:00 p.m.</b>	<b>June 3, 2015</b>	Confirmed
4. Notice of Intent to Respond Deadline		June 4, 2015	Confirmed
5. <b>Written “Questions &amp; Comments” Deadline</b>	<b>2:00 p.m.</b>	<b>June 10, 2015</b>	Confirmed
6. State response to written “Questions & Comments”		June 16, 2015	Confirmed
7. <b>RFQ Technical Response Deadline</b>	<b>2:00 p.m.</b>	<b>June 23, 2015</b>	Confirmed
8. State Completion of Technical Submittal Evaluations		June 30, 2015	Confirmed
9. State Issues Notice of Short-Listed Respondents		July 1, 2015	Confirmed
10. <b>Interviews with Short-Listed Respondents</b>		<b>July 7, 2015 &amp; July 8, 2015</b>	Confirmed
11. <b>Fee Proposal Deadline</b>	<b>2:00 p.m.</b>	<b>July 13, 2015</b>	Confirmed
12. <b>State Issues Notice of Intent to Negotiate and Commences Negotiations</b>		<b>July 14, 2015 – July 16, 2015</b>	Confirmed
13. Executive Subcommittee Approval Sought		July 20, 2015	Confirmed
14. Contract Award		July 31, 2015	Confirmed

2. State responses to questions and comments in the table below amend and clarify this RFQ.

Any restatement of RFQ text in the Question/Comment column shall NOT be construed as a change in the actual wording of the RFQ document.

QUESTION / COMMENT	OWNER'S RESPONSE
<p>1 As it relates to State personnel, who would be the primary contact(s) for the Project Manager related specifically to this project?</p>	<p>State/Owner Project Executive: John Hull, Deputy Commissioner, Department of General Services</p>
<p>2 What form(s) of insurance will be utilized to insure all project risks (liability, excess liability, builder's risk, worker comp, etc.)?</p> <p>Will the project be OCIP (owner controlled insurance program), CCIP (contractor controlled insurance program), or Other?</p> <p>If OCIP or Other, what level of support and administration will the Project Manager be asked to provide for the insurance program?</p>	<p>Section E.6.of the Proforma Contract sets forth the insurance required by the PMaA. The State/Owner does not utilize OCIP or CCIP. Each contractor to the State will be required to provide insurance including but limited to liability insurance for it's work. The PMaA will assist the Owner in confirming the existence of the insurance required by other contracts.</p>
<p>3 Will the construction format be a Construction Manager at risk with an agreed to guaranteed maximum price?</p>	<p>Subject to approval by the State Building Commission, the construction format will be Construction Manager/General Contractor (CM/GC) with an agreed to guaranteed maximum price.</p>
<p>4 Will the Construction Manager organizationally report to the Project Manager? Will the Project Manager review and make payment recommendations for all invoices?</p>	<p>Yes and yes: Please see B.7.d. of the PMaA Performance Specification, Contract Attachment A.</p>
<p>5 What is the typical or planned procedure for approval and payment of project expenditures such as Consultant and contractor invoices, utilities and permit fees, etc.?</p>	<p>The planned procedure is that the PMaA reviews invoices for project related expenses to assure compliance with contract terms and budget plans and makes recommendations to the State for approval and payment.</p>
<p>6 Will the Project Architect (Design, Engineering and consultants) organizationally report to the Project Manager? Will the Project Manager review and make payment recommendations for the Architect and Engineering fees/invoices?</p>	<p>Yes and yes. Please see B.7.d. of the PMaA Performance Specification, Contract Attachment A.</p>
<p>7 Will the Project Manager be able to participate with the selection of the Design Team (architects, engineers, consultants) and the Construction Manager?</p>	<p>Yes. Please refer to B.1.c. of the PMaA Performance Specification, Contract Attachment A.</p>
<p>8 Will the exhibit design services be procured separately?</p>	<p>Yes, that is the expectation per B.1.c. of the PMaA Performance Specification, Contract Attachment A.</p>

QUESTION / COMMENT	OWNER'S RESPONSE
9 What percentage of the budget is for exhibit design, fabrication, and installation?	This percentage has not been established. Refer to B.4.a. of the PMaA Performance Specification, Contract Attachment A, for the process to establish a detailed budget.
10 What level of LEED is the project required to achieve?	There are no LEED levels of certification required in this project. Refer to B.1.f. of the PMaA Performance Specification, Contract Attachment A regarding the design and construction requirements for the project.
11 Does the Project Manager need to provide funds or personnel for Communications (internal or external) and/or media coordination and response?	The PMaA will be responsible for communication with the team, but will not be responsible for public/media communications. Public/media communications will be handled by State employees.
12 What is the level of Diversity Business Participation expected for the overall/total project?	The State seeks to have Diversity Business Participation, but there is no minimum level of participation required.
13 Will the Construction Manager solicitation include language requiring concurrence from the Project Manager before a subcontractor is rewarded (sic) by the Construction Manager?	No, the solicitation will not include that language. The PMaA will assist and advise the State/Owner on the evaluation of subcontractors and material suppliers per B.9.b. of the PMaA Performance Specification, Contract Attachment A.
14 What is the likely timeframe from invoice approval to payment?	Pursuant to Tennessee Code Annotated §12-4-703, payments must be made within 45 days of receipt of an invoice.
15 As it relates to budget contingencies /allowances, will there be Project Manager approval for the use of funds set aside for the benefit of expediting construction or design? If so, will that approval process be modified so that the desired intention of timeliness is maintained?	No, there are no budget contingencies /allowances that the Project Manager will have directly at their disposal; however there are expected to be contingencies within contracts over which the PMaA may have approval authority.
16 Can a respondent submit evidence of availability of required limits of insurance without having to increase their normal limits until executing contract with the State?	No, refer to the PMaA RFQ Attachment A, A.7.
17 Who will be the Owner's representative?	The State/Owner's representative for the PMaA contract will be John Hull, Deputy Commissioner, Department of General Services, and the PMaA will provide Owner's representation per Section A of the PMaA Performance Specification, Contract Attachment A.
18 Will a home office located in Maryland Farms, Brentwood, TN be acceptable in lieu of a Davidson County office location?	Yes, refer to revised E.7.b. of the Proforma Contract, attached to this amendment.
19 Will office space be available at the current museum site or other nearby location?	No; however in addition to the office space required by Section E.7.b. of the Proforma Contract, the expectation is that there will be a space for team members to be co-located in the general proximity

<b>QUESTION / COMMENT</b>		<b>OWNER'S RESPONSE</b>
		of the construction site. The size and specific location of this space has not been established.
20	Will project controls be independent or processed thru the STREAM PMO that is currently in place?	The project controls will be fully independent of the current management assistance contract.
21	Does "on-site representation" mean a project representative to have a work station in the TN Tower and/or on the project site, i.e. one on-site representative or two on-site representatives?	See response to question 19.
22	Do you expect that the PMaA will contract directly with any of the supply chain other than the subcontractors proposed in our RFQ response?	There is no expectation for the PMaA to contract directly for any services in the supply chain outside the specific scope of the PMaA contract.
23	As is evident from the high quality of the issued RFQ, STREAM are a client that is well informed and knowledgeable about delivering complex construction projects. What is the expected level of collaboration with internal resources?	The expected level of collaboration with internal resources is whatever is required to meet the scope of services outlined in Section A of the PMaA Performance Specification, Contract Attachment A.
24	Is there an opportunity for the PMaA team to be co-located with the Owner's team?	See response to question 19. There is not an expectation that this project team or the PMaA will be located with STREAM.
25	What professional registration do you require for specialist PMaA companies?	Refer to RFQ Sections 4.6.1. and 4.6.2. regarding registration requirements.
26	Can you please advise what activities will be carried out by your internal IT teams and what are considered part of the PMaA scope with regards the delivery of the IT systems within the final building?	The PMaA will manage all of the IT system scope; however the IT work will be performed under the state contract.
27	What level of public consultation is expected and do you have a timeline for public consultation?	At this time we do not expect public consultation.
28	We recognize that this is very early in the program lifecycle, but can you share with us the expected scale of stakeholder management? Is a list of potential stakeholders available and is there a sense of frequency of meetings?	It is the State/Owner's role to manage stakeholders. PMaA is managing the project team. The State/Owner and PMaA will confer on the appropriate involvement of stakeholders in project team meetings. There is no list of potential stakeholders available.

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

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 Contractor shall provide all service and deliverables as required, described, and detailed in Contract Attachment A and shall meet all service and delivery timelines as specified by this Contract and Contract Attachment A.

B. CONTRACT PERIOD:

B.1. Contract Period. This Agreement is effective for the period commencing on the date of full and complete execution of this Agreement and shall conclude upon the expiration of the construction contracts managed under this Contract, but not sooner than sixteen months from the date of substantial completion of the construction of the new State museum. 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
- (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:

State Employee

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

State Employee E-Mail Address

Telephone (615) State Employee Phone Number

The Contractor:

Contractor 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):

Workers Compensation: according to statute

Employer's Liability: \$100,000

- b. Commercial General Liability, including:

Premises / Operations; Underground, Explosion, Collapse Hazard; Products / Completed Operations; Contractual; Independent Contractors; Broad Form Property Damage; Personal Injury (Employment Exclusion deleted)

Combined single limits for bodily injury and property damage:

Each Occurrence: \$3,000,000

Aggregate: \$5,000,000

Products and Completed Operations to be maintained for one year after final payment due under this Contract.

- c. Business Automobile Liability:

Including owned, hired, and non-owned vehicles; or, if there are no owned vehicles, Contractor may provide written certification of such and provide coverage limited to hired and non-owned vehicles.

Bodily injury and property damage combined single limits:

Each Occurrence: \$500,000

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

Each Claim: \$3,000,000

Aggregate: \$5,000,000

E.7. Contractor Additional Requirement. The following are additional requirements of this Contract:

- a. The Contractor shall not be permitted to perform architectural, engineering or construction services or engage in any other activity, except any employment, or provide any services that would, in the reasonable opinion of the Owner, appear to compromise the Contractor's judgment or services provided under the Contract;
- b. The Contractor shall maintain a local office within Davidson County or within a thirty (30) mile radius of the Project site, whichever is further, for the duration of this Contract; and,
- c. The Contractor, as soon as practicable after execution of this Contract shall confirm in writing to the Owner the names and qualifications of its proposed key staff members. Within 14 days of receipt of the names and qualifications of the Contractor's proposed key staff members, the Owner may reply to the Contractor in writing stating (a) whether the Owner has reasonable objection to a proposed key staff member or (b) that the Owner requires additional time to review. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection. The Contractor shall not staff any employees on the Project to whom the Owner has made reasonable and timely objection. The Contractor shall not change its key staff members without the Owner's consent, which shall not unreasonably be withheld or delayed. One of the key

staff members shall be a representative authorized to act on behalf of the Contractor with respect to the Project.

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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
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)</b>	

**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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