

## Chapter Two

# DESIGNER AGREEMENT AND PAYMENTS

The Office of the State Architect Designer Selection process can be found at the following website:  
[http://www.tn.gov/assets/entities/finance/osa/attachments/20130422\\_OSA\\_Plcy\\_DsgnrSlctnPrcls\\_V1.0.pdf](http://www.tn.gov/assets/entities/finance/osa/attachments/20130422_OSA_Plcy_DsgnrSlctnPrcls_V1.0.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](#)  
The Agreement is created using the [SBC-6 Instruction Guide Sheet](#)
- [SBC-6a, Terms and Conditions of Agreement between Owner and Designer](#)
- [SBC-6s, Standard Form of Supplement to a Agreement between Owner and Designer](#)  
The Agreement is created using the [SBC-6s Instruction Guide Sheet](#)

The current [SBC-6](#), [SBC-6 Instruction Guide Sheet](#), [SBC-6a](#), [SBC-6s](#), 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 listed below. Each delivery method is defined by the Office of the State Architect policy, [http://www.tn.gov/assets/entities/finance/osa/attachments/OSA\\_Plcy\\_DeliveryMethods.pdf](http://www.tn.gov/assets/entities/finance/osa/attachments/OSA_Plcy_DeliveryMethods.pdf) . When using an Alternative Delivery Method, it is required to be approved by the State Building Commission.
  - a. **Best Value**
  - b. **Construction Management**
  - c. **Design/Build One**

#### C. Designer Fees

1. The Owner shall compensate the Designer as described in Article 2, "Fees and Compensation", of the [Terms and Conditions for Agreement between Owner and Designer](#).
  - a. For the Designer's Basic Services, as defined in the [Terms and Conditions](#), and comprising those paragraphs specifically cited in the [Agreement](#) or [Supplement](#), the fee shall be either:
    - i. A lump sum amount computed in accordance with the Standard State Fee Schedule as described in the [Terms and Conditions](#); or,
    - ii. A Multiple of Direct Expense with a Maximum Fee not to exceed, and based upon the unit prices stipulated in the [Agreement](#).
  - 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 unit prices stipulated in the [Agreement](#).
  - c. For the Designer's reimbursable expenses, the Designer shall be reimbursed an amount expended at actual cost as defined in the [Terms and Conditions](#).



2. Conditions of payment shall be as described in Article 2, Payments to Designer for Basic Services of the [Terms and Conditions for Agreement between Owner and Designer](#).
3. An attachment showing the fee computation shall be made part of the [Agreement](#).
4. If the [Agreement](#) provides for the payment of a Lump Sum Fee, it shall have been computed as indicated in Article 2, Fees and Compensation, of the [Terms and Conditions for Agreement between Owner and Designer](#).



A. Owner will fill in the [SBC-6](#) form from the information as provided on the [SBC-6 Instruction Sheet](#) and send to prospective Designer for Designer signature and Designer attachment of insurance certificate. For payment by direct deposit ([the "ACH Credits" form](#)), and of the federal tax reporting [form W-9](#) please submit forms in accordance with the instructions as indicated on the [ACH Credits form](#).

**B. Completion by the Designer**

1. **Designer Signature:** The principal(s) legally empowered to bind Designer to [Agreement](#), and listed in 1.3 on page 1 of the [SBC-6](#), 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 (1) counterpart, even though no one (1) 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 Professional Liability Certificate of Insurance** shall be provided and attached to the Agreement by Designer. Refer to 3.1.4 of the *SBC-6 Guide for Completing Contract*, found on page 2.02b, for the certificate's proper content.
3. **Automatic Clearinghouse Credits ("ACH Credits") Form** shall be completed and submitted in accordance with the instructions as indicated on the [ACH Credits form](#). Joint Venture Designers shall complete an [ACH Credits Form](#) for a Joint Account.
  - a. Payments to Designer shall be made through Owner's automated clearinghouse system.
  - b. Debit entries to correct errors authorized by the [ACH Credits Form](#) shall be limited to those errors detected prior to the effective date of the credit entry. The remittance advice shall note that a correcting entry was made. Corrections shall be made within two banking days of the effective date of the original transaction. Other errors detected at a later date shall take the form of a refund, or in some instances, a credit memo if additional payments are to be made.
  - c. The Owner reserves the right to deduct from amounts which are or shall become due and payable to Designer under this or any contract between the parties any amounts which are or shall become due and payable to the State by the Designer.
4. [W-9 Form](#) shall be completed and submitted in accordance with the instructions as indicated on the [ACH Credits form](#).
5. Send all of the above, completed and compiled, to Owner for execution.

**C. Execution of the Agreement**

1. **Review and Approval:** The State Architect or his 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 [SBC-6](#) is filled in correctly. Contact Owner immediately should errors be identified.



## 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](#).

- A.2**      **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](#).
- A.2**      **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](#).
- B.3.1**     **For the Designer's Basic Services**, the Phases to be completed from paragraph Program Verification Phase through the paragraph indicated in Article 1 correspond to those authorized by the SBC for this project. (The Phases are fully defined in Program Verification Phase through Close Out Phase of the [SBC-6a](#)). This information will be completed by Owner on the [SBC-6 Instruction Guide Sheet](#).
- B.3.1**     **Lump Sum Fee:** (See Article 1 and Article 7 of the [SBC-6a](#)) Basic services normally are Lump Sum. 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](#).
- B.3.1**     **Multiple of Direct Expense:** Rates and premiums used here shall be the same as set forth below in Paragraph B.3.1 for Multiple Direct Expense and Additional Services.
- B.3.1**     These Subparagraphs enumerate the Compensation for the Designer.
- B.3.3**     **Principals in the firm** are listed who are legally empowered to bind the Designer as shown in the [SBC-6](#) to the terms and conditions of this contract, and can receive compensation at the Principal's rate given in clause 2.3.1. This information will be completed by Designer on the [SBC-6 Instruction Guide Sheet](#).
- B.3.4**     **Designers' consultants** are listed. "N/A" filled in if consultant discipline is considered not a factor in project. "IN-HOUSE" filled in if Designer to provide service. This subparagraph may require some discussion of the project between Owner and prospective Designer. List the Consultant Firm, the Consultant and the Consultant 'Professional Registration Number' (when applicable). This information will be completed by Designer on the [SBC-6 Instruction Guide Sheet](#).
- C.1**      **Professional Liability Insurance (PLI)** a minimum of One Million Dollars (\$1,000,000) or the amount stated by the Department of General Services 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 (10) days prior written notice to certificate holder in the event coverage is changed or renewed.
  - When the Designer is a Joint Venture, the certificate shall recognize the Joint Venture relationship, and the limit of liability for each member of the Joint Venture shall be not less than the required total limit divided by the number of members (firms).
  - Values of all limits and deductibles need to be given in like units.
- Insurance requirements will be completed by Owner on the [SBC-6 Instruction Guide Sheet](#).
- D.2**      **The schedule for completion of design phases** shall be set forth in calendar days.



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

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- A. The [Standard Form of Agreement between the Owner and Designer \(SBC-6\)](#) is normally supplemented for revisions in scope and /or funding using State Building Commission form [SBC-6s - Standard Form of Supplement to Agreement between Owner and Designer](#).
- B. **Owner will fill in the [SBC-6s](#) form and send to Designer** for Designer signature and, when appropriate, Designer attachment of updated insurance certificates, the sub-agreement for payment by direct deposit ([ACH Credits form](#)), and the federal tax reporting [form W-9](#).
- C. **Completion by the Designer**
1. **Designer Signature:** The principal(s) legally empowered to bind Designer to Agreement, and listed in 1.3 on page 2 of the [SBC-6](#), 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 (1) counterpart, even though no one (1) 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 Professional Liability Certificate of Insurance** may be required if prior certificates have expired.
  3. [ACH Credits Form](#) may be required for change in Designer name, bank, or account.
  4. [W-9 Form](#) may be required for change in Designer name.
  5. Send all of the above, completed and compiled, to Owner for execution.
- D. **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. What the request is for (surveying, geotechnical investigation, additional design proposal, etc.),
  3. Summary of proposals received (from whom, how much, etc.),
  4. Why the services are necessary,
  5. When the services will begin and end, and
  6. Total cost to the State for the services.
- E. **Designer will use the following guide** to verify that the [SBC-6s](#) is filled in correctly. Immediately contact Owner should errors be identified.



## 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 shall be indicated as identifying the Original Project.

The Date of the Original Contract as indicated on the [SBC-6](#).

The Date or Dates of previous Supplement(s) ([SBC-6s](#)) modifying the original [Agreement](#).

- B.2.1 The Scope of Services shall be renewed, revised, and/or confirmed in this paragraph.
- B.2.2 The Maximum Allowable Construction Cost, MACC, shall be renewed, revised and/or confirmed in this Paragraph.
- B.3.1 The Revised Phases of the Design Services as has been approved by the SBC.
- B.3.1 The Designer's Basic Services, shall be renewed, revised and confirmed in accordance with the new Scope and/or Budget and the Design Services required. (Phases are fully defined in Program Verification Phase through Close Out Phase of the [SBC-6a](#).)
- B.3.3 The Compensation to the Designer shall be modified and/or confirmed in accordance with the Standard Terms and Conditions for Agreements between Owner and Designer ([SBC-6a](#)). Also, any changes in fee shall be amended via the [SBC-6s](#) in compliance with Article 2 and Article 4 of the [SBC6a](#))
- B.3.4 Changes to the Design Team shall be revised in B.3.4.
- C.1 The Limits of the Professional Liability Insurance (PLI) shall be in accordance with the requirements as set forth in Part D.1 of the [SBC-6](#).
- D.1 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 [SBC-6a](#).



**A. Procedures to follow for submitting pay requests**

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

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

**2. Bill reimbursable expenses separately from additional 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 the Owner** - [see page 1.03](#) for State of Tennessee Real Estate Asset Management 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	DUE		PREV BILLED	REMIT
			PCT	AMT		
Program Phase	3	1,281	3	1,281	1,281	0
Schematic Phase	18	5,125	18	5,125	5,125	0
Design Development Phase	20	10,677	20	10,677	10,677	0
Construction Document Phase	30	12,813	30	12,813	6,406	6,407
Bidding Phase	2	1,281	0	0	0	0
Construction Phase	23	9,823	0	0	0	0
Close-out Phase	4%	1,708	0	0	0	0
<b>SUB - TOTAL</b>	<b>100</b>	<b>\$42,708</b>	<b>70</b>	<b>\$29,896</b>	<b>\$23,489</b>	<b>\$6,407</b>

**C. Payment For Additional Services**

**1.** 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 actual rate multiplied by 2.45 unless it exceeds the maximum hourly rate. In which case, it is shown as 175x1.00.

**Example Billing Breakdown:**

(Attach timesheets & synopsis):

ADDITIONAL SERVICES	RATE	HOURS	DUE	PREV BILLED	REMIT
Principal Dave	175 x 1.00	15.0	2,325.00	500.00	1,825.00
Principal Jane	60 x 2.45	22.5	3,307.50	1,250.00	2,057.50
Employee Susan	30 x 2.45	10.0	735.00	0	735.00
Employee Darth	20 x 2.45	8.0	392.00	150.00	242.00
Consultant Jim	90 x 1.20	4.0	432.00	0	432.00
<b>SUB - TOTAL</b>			<b>\$7,191.50</b>	<b>\$1,900.00</b>	<b>\$5,291.50</b>



2. **Surveys, Reports, and Tests:** including, but not limited to, survey work, geotechnical investigation, air monitoring services, require Owner approval before work is started.

**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	1.20	3,840.00	1,500.00	2,340.00
Geotechnical	1,500.00	1.20	1,800.00	1,800.00	0.00
<b>SUB - TOTAL</b>			<b>\$7,080.00</b>	<b>\$4,300.00</b>	<b>\$2,780.00</b>

**D. 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](#) and documents as indicated in 1.1.8.2 and 1.1.10 of the [Terms and Conditions for Agreement between Owner and Designer](#).
2. Transmittal of bid results via Express Mail is reimbursable. ([See 5.09, A.1](#))
3. **Travel Expenses – If approved as indicated in the 2.4.2 of the [Terms and Conditions for Agreement between Owner and Designer](#)**
  - 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 <http://www.tn.gov/finance/topic/fa-travel>.
4. **Costs not reimbursable include:** Postage, delivery, documents that cannot be approved, and electronic copies of documents
5. Attach statements and summarize reimbursable expenses within the invoice under the heading of "Reimbursable Expenses". If statements are not itemized, include itemization in summary

**Example Billing Breakdown:**

(attach direct invoices):					
REIMBURSIBLE EXPENSES	COST	MULTIPLIER	AMT DUE	PREV BILLED	REMIT
Subcontractor A printing	655.00	1.00	655.00	450.00	205.00
Travel Costs (If approved)	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 Owner** ([See page 1.03](#)) to obtain further clarification regarding any of the above items.

**CHAPTER 2 END**

