

STATE OF TENNESSEE



SAMPLE CM/GC CONTRACT

THE CONTRACT IS BETWEEN:

DEPARTMENT: The State of Tennessee, acting by and through the Tennessee Department of Transportation ("Department")

And

**CONSTRUCTION MANAGER/
GENERAL CONTRACTOR
("CM/GC"):** []

THE PROJECT: SR-14/ US-61 (Third Street) Bridges over ICRR and Nonconnah Creek (L.M. 7.13); Shelby County, TENNESSEE
Project Identification Number (PIN): 108883.00
State Project Number: 79022-1227-94
Federal Project Number: BR-NH-14(46)

Interstate 55 Exit Ramp Bridge to State Route 14 (L.M. 7.44); State Route 14 (South 3rd Street) Bridge over Interstate 55 (L.M. 7.46); Shelby County, TENNESSEE
Project Identification Number (PIN): 128674.00
State Project Number: 79005-1175-14
Federal Project Number: BR-I-55-1(135)

Contract Number: CMGC07

The Design Consultant: Kimley-Horn

The Department's Project Manager ("TDOT/PM"): Steve Sellers, P.E.
Blue Oval City Program Manager
TDOT Alternative Contracting
Suite 500, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243
Phone: (615) 557-4502

The Department's Budget Limit is: \$120,000,000.00

Class of Project: This is a Federal-Aid Project

STATE OF TENNESSEE

CM/GC CONTRACT

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CM/GC CONTRACT

THIS CM/GC CONTRACT (the “**CM/GC Contract**”) is made and entered into by and between the State of Tennessee, acting by and through the Tennessee Department of Transportation (the “**Department**” or “**TDOT**”) and [enter successful Proposer’s Name], Federal Tax Identification Number [_____] (the “**CM/GC**” or “**Contractor**”) (collectively, the “**Parties**”), as of the Effective Date of the Contract.

RECITALS

WHEREAS, the Department will use the Construction Manager/General Contractor Contract delivery approach for construction of this Project and requires the services of a CM/GC for the Project. The Department will enter into this CM/GC Contract with the CM/GC firm to provide Pre-Construction Phase Services only, with provisions for potentially adding Construction Phase Services through one or more Early Work Amendments, and through later acceptance of a Guaranteed Maximum Price (“GMP”) by subsequent GMP Amendment. Alternatively, the Department may choose not to continue the CM/GC Contract beyond the completion of Pre-Construction Phase Services, or any Early Work Amendments, and instead solicit bids from qualified contractors for the construction of the Project, and otherwise reserve all rights to terminate the Contract for convenience.

WHEREAS, the Department may require additional related work within the general vicinity of the Project which, if required, shall be included in the Project and added to the Contract by Change Order; and

WHEREAS, the Designer for the project is Kimley-Horn; and

WHEREAS, the Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract and to bind the Contractor to its terms. The person(s) executing this Contract on behalf of the Contractor warrant(s) that such person(s) has(have) full authorization to execute this Contract; and

WHEREAS, the Contractor was selected after a determination that its proposal was the most advantageous to the Department pursuant to a request for proposal issued and awarded on **<date>**; and

WHEREAS, the Contractor and the Department have negotiated the terms of this Agreement pursuant to Tennessee Code Annotated, Sections 54-1-501 to 54-1-507; and

WHEREAS, the Department requires a contractor competent to perform all work necessary to complete the Project in accordance with the terms and conditions of the Contract, and able to do so within the Contract Time allocated herein; and

WHEREAS, the CM/GC asserts that it is competent and prepared to perform all work necessary to complete the Project in accordance with the terms and conditions of the Contract, and that it is able to do so within the Contract Time allotted herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration identified herein, the Department and the CM/GC agree as follows:

ARTICLE 1 - GENERAL CONTRACT PROVISIONS; DEFINITIONS

1.1 Incorporation of Recitals - The foregoing Recitals incorporated herein and made a part hereof for all purposes as if fully set forth, constitute additional promises, representations and warranties of the Parties.

1.2 Headings - The headings used in this CM/GC Contract are solely for convenience of reference, are not part of the Contract and are not to be considered in construing or interpreting the Contract.

1.3 Exemption from Competitive Bidding - The parties acknowledge that this CM/GC Contract has been awarded as authorized under the Tennessee Department of Transportation Contracts for Construction Manager/General Contractor Services, Tennessee Code Annotated §§ 54-1-501 – 507, and is therefore exempt from competitive bidding requirements under Tennessee Code Annotated §§ 54-5-114 – 116.

1.4 Joint Ventures and Partnerships - If the CM/GC is a joint venture or a partnership, each joint venture member or partner is executing this CM/GC Contract on behalf of and thereby binds both itself and the CM/GC, and each joint venture member or partner and the CM/GC shall be jointly and severally liable under this CM/GC Contract.

1.5 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 agreement 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.

1.6 Employment of Department Employees - The Contractor shall not engage, on a full, part-time, or other basis during the period of the agreement, any professional or technical personnel who are or have been at any time during the period of the agreement in the employ of the Department except regularly retired employees, without the written consent of the Department.

1.7 Disclosure of Tax Identification Number -The Contractor shall provide its federal Tax ID number to the Department. The Tax Identification Number provided pursuant to this authority will be used for the administration of applicable Federal, State, and local tax laws.

1.8 Tennessee Department of Revenue Registration - The Contractor shall be registered with the State of Tennessee Department of Revenue for the collection of Tennessee sales and use tax or provide confirmation from the Department of Revenue that the Contractor is not required to register for the Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

1.9 Conflict of Interest - The CM/GC shall not engage in any activity that would create or constitute a conflict of interest within the meaning of applicable State or Federal law, including without limitation Tennessee Code Annotated § 54-1-504(b)(2)(B)(xiii), which prohibits any person or firm that has received compensation for assisting the Department in preparing the Request for Proposals for this Project from submitting a proposal to the RFP or participating as a CM/GC team member.

1.10 General Compliance With Laws - The Contractor is assumed to be familiar with and observe and comply with those Federal, State, and (if applicable) local laws, ordinances, and regulations in any manner affecting the conduct of the Work. The Contractor shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this agreement. The Contractor shall assume full responsibility for the quality of the Contractor's work and its conformance with all applicable laws, rules, regulations and orders governing said work.

1.11 Ownership and Use of Work Product - All Work Products of the CM/GC arising from performance of the Contract shall be the exclusive property of Department.

1.12 Records; Access to Records - The Contractor shall maintain documentation for all charges against the Department under this Contract. The books, records, and documents of the Contract, insofar as they relate to the 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 Department, the Comptroller of the Treasury, the Federal Highway Administration, or their duly appointed representatives. The Contractor and its subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and make such materials available at their offices at all reasonable times during the Contract period and for five (5) years from the date of the final payment under the Contract for inspection by the Department, the Comptroller of the Treasury, the Federal Highway Administration, or their duly appointed representatives; copies shall be furnished if requested.

1.13 Notices - Notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to the CM/GC or the Department at the addresses or numbers set forth in Articles 4.6 and 4.8, or as either party may hereafter indicate pursuant to this Section. Any notice so addressed and mailed shall be deemed to be received five (5) calendar days after the date of mailing. Any notice delivered by facsimile shall be deemed to be received when confirmation of successful transmission is generated by the transmitting machine. To be effective against the Department, such facsimile transmission must be confirmed by telephone notice to the Department. Any notice by personal delivery shall be effective as to the CM/GC upon delivery into the possession of one of the CM/GC's designated personnel, and as to the Department, upon delivery to the Department's designated Project Manager. Regular, day-to-day communications may be transmitted through one of the methods set forth above, in person, by e-mail, or by other similar electronic transmission.

1.14 Media Contacts; Confidentiality - Unless otherwise specifically authorized in writing, the CM/GC shall provide no news release, press release, or any other statement to a member of the news media regarding this Project without the Department's prior written authorization. Furthermore, except in the case where the Department specifically authorizes disclosure of Department's confidential information in writing, the CM/GC shall maintain the confidentiality of the Department's information pertaining to the Project, unless withholding such information would violate

the law, create the risk of significant harm to the public, or prevent the CM/GC from establishing a claim or defense in an adjudicatory proceeding. The CM/GC shall require of its subcontractors similar agreements to maintain the confidentiality of Department's information.

1.15 Severability - The parties agree that if any term or provision of this CM/GC Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

1.16 No Waiver - The failure of the Department to enforce any provision of the Contract shall not constitute a waiver by the Department of that provision or any other provision of the Contract.

1.17 Merger - The Contract Documents constitute the entire Contract between the parties. No waiver, consent, modification or change of terms of the Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Contract. The CM/GC, by signature of its representative, hereby acknowledges that it has read the Contract, understands it and agrees to be bound by its terms and conditions. This CM/GC Contract may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

1.18 Definitions - The following are definitions of words and phrases used in this CM/GC Contract. For other definitions applicable to the Contract, refer to the Request for Proposals (RFP), Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction, and in other Contract Documents.

1.18.1 Affiliate - Any subsidiary of a Proposer or the Contractor, and any other Entity in which a Proposer or the Contractor has a financial interest, or which has a financial interest in the Proposer or the Contractor (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls the Proposer or the Contractor).

1.18.2 Amendment - A written modification of the Contract, including, without limitation, any agreed change to the Guaranteed Maximum Price, identified as an Amendment, and executed by the Contractor and the Department, or their authorized agents, issued after the effective date of this CM/GC Contract, authorizing an adjustment in the Cost of the Work, GMP, the Contractor's CM/GC pre-construction fee, or the Contract Completion Date.

1.18.3 Authorized Contingency - An amount budgeted in the GMP to cover costs that may result from incomplete design, unforeseen and unpredictable conditions, quantity overruns in certain items of work, or uncertainties within the defined project scope.

1.18.4 Bid Package - A substantially complete plans, specifications, and estimate package from which a GMP proposal could be prepared by the CM/GC for Early Work or any Construction Phase Services of the Project, or which may be completed as a Bid Package to be advertised through the Department's low bid procurement process.

1.18.5 Change Order(s) - A written change signed by the Contractor and the Department issued after the execution of this CM/GC Contract, authorizing a change in the work or the method or manner of performance of the work as described in an Early Work Amendment or GMP Amendment. Change Orders may be executed and approved by the Contractor and Department in accordance with the Department's Standard Specifications. Change Orders shall not be used to change the Cost of the Work, GMP, Contactor's CM/GC pre-construction fee, or Contract Completion Date, which may only be changed by an Amendment.

1,18.6 CM/GC Contract – This Contract Document, the initial agreement between the Department and the CM/GC for the provision of Pre-construction Phase Services, which may be amended to add Construction Phase Services.

1.18.7 CM/GC Team - The CM/GC Team consists of three (3) key members, the Department, the Design Consultant and the CM/GC, who will collaborate to execute the Project.

1.18.8 Construction Phase Services – All work, other than Pre-construction Phase Services, consisting of construction related activities of the Contractor, and including, without limitation, construction of the Project, oversight of subcontractors, schedule refinement, advance materials procurement, advance construction (if approved by an Early Work Amendment), and Project budget management.

1.18.9 Contract – The entire agreement between the Department and the GM/GC Contractor, including the Contract Documents.

1.18.10 Contract Amount – The Contract Amount is identified as the sum of the pre-construction costs, actual reimbursable bonds and insurance costs, and the Cost of the Work (including any Early Work), but not exceeding the GMP.

1.18.11 Contract Completion Date – The Contract Completion Date is defined as the date identified in the CM/GC Contract, by which all work under the Contract, with the exception of plant establishment and punch-list items, must be completed.

1.18.12 Contract Documents – This CM/GC Contract, the RFP, Special Provisions, Standard and Supplemental Specifications, Amendments, Change Orders, those portions of the accepted Proposal that meet or exceed minimum Contract requirements, Standard Drawings, Working Drawings, Supplemental Drawings, force account work orders, pay documents issued by the Department, materials certifications, Project work schedules, final estimate, written orders and authorizations issued by the Department, approved plans, and permits, orders and authorizations obtained by the Contractor or Department applicable to the Project, as well as all other plans or documents required to be submitted to the Department pursuant to the terms of the CM/GC Contract, Special Provisions, Standard Specifications or other Contract Documents.

1.18.13 Contract Time – The amount of time allowed under the CM/GC Contract, Early Work Amendment, or GMP Amendment to complete all work, calculated from the date on-site work commences, except for plant establishment and punch-list items, to the Contract Completion Date specified in the CM/GC Contract, Early Work Amendment, or GMP Amendment. Multiple Interim Completion Dates within the Contract Time may be stipulated in the Contract or Amendment, including Early Work Amendments and the GMP Amendment.

1.18.14 Cost of the Work – The Cost of the Work is the total cost of completing all items of work necessary to construct the Project as determined in the GMP Amendment and any Early

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Work Amendment. The Cost of the Work shall exclude the pre-construction costs, any Authorized Contingency, costs of bonds and insurance, and any other cost or charge excluded from the Cost of the Work in the CM/GC Contract.

1.18.15 Critical Path – The sequence of activities, events, and dependencies that determine the longest overall duration and the shortest time possible, to complete the Project. Any delay of an activity on the Critical Path directly impacts the planned Project completion date (i.e., there is no float on the Critical Path).

1.18.16 Design Consultant – The engineering consulting firm under contract with the Department that is providing the services of licensed professionals for the purposes of developing plans and construction documents in the support of the Project.

1.18.17 Early Work – Construction Phase Services authorized by Amendment that the parties agree should be performed in advance of establishment of the GMP. Permissible Early Work shall be limited to early procurement of materials and supplies, early construction for site development and related activities, and any other advance work related to critical components of the Project for which performance prior to establishment of the GMP will materially affect the Critical Path schedule of the Project.

1.18.18 Early Work Amendment - An Amendment to the CM/GC Contract executed to authorize work under an Early Work Package.

1.18.19 Early Work Price - The sum of the Cost of the Work for the Early Work (lump sum) and the cost of any applicable bonds and insurance.

1.18.20 Early Work Package – Work packages authorized by the Department by an Early Work Amendment consisting of work to be performed in advance of establishment of the GMP.

1.18.21 Entity – A natural person capable of being legally bound, sole proprietorship, limited liability company, corporation, partnership, limited liability partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.

1.18.22 Extra Work – Work not included in the Contract but deemed by the Department to be necessary to complete the Project.

1.18.23 Functional Design Review (FDR) - The functional design review, which is the early plan review where the plans and specifications are complete to the level specified in the Footprint Established Phase of the PDN network.

1.18.24 Guaranteed Maximum Price (GMP) – GMP shall mean the Guaranteed Maximum Price, as stated in dollars within the GMP Amendment, and inclusive of any Early Work Amendments, as determined in accordance with the CM/GC Contract, and as it may be adjusted from time to time pursuant to an Amendment.

1.18.25 GMP Amendment – An amendment to the CM/GC Contract, executed by and between the parties, to describe the work required for construction of the Project and any related Construction Phase Services, and to establish the GMP and GMP Supporting Documents.

1.18.26 GMP Supporting Documents – The documents referenced in the GMP Amendment

as the basis for establishing the GMP. The GMP Supporting Documents shall expressly identify the plans and specifications, assumptions, qualifications, exclusions, conditions, allowances, bid items, estimated quantities, unit prices, and alternates that form the basis for the GMP.

1.18.27 Independent Cost Estimate - An estimate of the Cost of the Work prepared by the Independent Cost Estimator independently of the Department, Design Consultant, and the CM/GC, based on the available Project design and construction information.

1.18.28 Independent Cost Estimator (ICE) - the Entity under contract with the Department tasked to perform the Independent Cost Estimate.

1.18.29 Interim Completion Date(s) - The date(s) established in the Early Work Amendment and GMP Amendment, if applicable, or other Contract Documents, as the deadline by which certain specified components of the work must be completed, with the exception of plant establishment and punch-list items. There may be one or more Interim Completion Dates established for the Project.

1.18.30 Innovation Tracking and Performance Report - A report that tracks all innovations offered by Contractor, Department, and Design Consultant team members. It also tracks the performance of these innovations during any Construction Phase of the Project.

1.18.31 Material Sourcing Plan - The plan details how the Contractor will handle bids from material vendors for any Construction Phase GMP proposals. This plan is part of the open cost model required as part of any Bid Package development.

1.18.32 Notice to Proceed (NTP) – Written notice authorizing the Contractor to begin performance of the work, including Pre-construction Phase Services under the CM/GC Contract and Construction Phase Services performed under an Early Work Amendment or GMP Amendment.

1.18.33 Opinion of Probable Construction Cost (OPCC) – An opinion of the cost for completing the work for a Construction Phase. This cost includes all labor, materials, equipment, bond premiums, and actual costs of procurement or construction that the Contractor will use for the duration of such Construction Phase to complete the work. Each Opinion of Probable Construction Cost shall be produced in an open book process throughout the Pre-construction Phase of the Project so that the Department, the Design Consultant, and the Independent Cost Estimator can make accurate assumptions, calculate prices, and determine the amount of risk in the Project.

1.18.34 Plan-In-Hand Review Meeting – The plan-in-hand field review where the plans and specifications are complete to the level specified in the Plan-In-Hand stage of the PDN.

1.18.35 Pre-construction Phase – The period commencing on the date of execution of the CM/GC Contract and ending upon commencement of the Construction Phase; provided, that if the Department and the Contractor agree, the Construction Phase may commence before the Pre-construction Phase is completed, in which case both phases shall proceed concurrently, subject to the terms and conditions of the Contract Documents.

1.18.36 Pre-construction Phase Services – All services described in the CM/GC Contract, Article 3.1, including any similar services as are described in the CM/GC's Proposal to the extent they are accepted by the Department, but excluding any Early Work. Early Work shall be considered part of the Construction Phase Services.

1.18.37 Project – The Project described on page 1 of this CM/GC Contract, and as further described in the Request for Proposals for this CM/GC Contract.

1.18.38 Project Manager – The Engineer’s representative who directly supervises the engineering and administration of the Contract.

1.18.39 Project Principal - The key personnel position that is designated by the Proposer as having the lead responsibility for managing the Contractor’s organization.

1.18.40 Proposer – The Entity submitting a Proposal in response to the Request for Proposals.

1.18.41 PS&E Review – The final plan review where the plans and specifications are complete to the level specified in the PS&E stage of the PDN network.

1.18.42 Reference Data – Data provided by the Department for the Project that should not be relied on by Proposers without additional determination of its validity or applicability to the current Project.

1.18.43 Risk Management Plan – The plan that includes risk identification, assessment, and completion of a Risk Register detailing risks, mitigation, and the assigned responsibility for each risk.

1.18.44 Risk Register – A listing of risks and opportunities, risk assessments, and an evaluation of mitigation and responsibility for those risks.

1.18.45 Samples – Physical examples which illustrate materials, equipment, or reasonable workmanship, and establish standards by which the work shall be judged.

1.18.46 Schedule of Bid Items – Part of the Contract Documents for any Construction GMP proposals, which includes an itemized description of the work by division and section of the specifications. The format will be an electronic bid system (EBS) file submitted to the Department by flash drive or electronic submittal.

1.18.47 Shop Drawings - Drawings, diagrams, schedules, and other data specifically prepared for the work by the Contractor or any subcontractor of any tier, or by any manufacturer, supplier, or distributor, to illustrate some portion of the work.

1.18.47 Work Product – contract plans and specifications, drawings, and all other documents, analyses, computations, models, computer programs, and information obtained or developed for the Project or in performance of the Contract, in or capable of being reduced to tangible paper-based, electronic, audio, or video format, whether or not designated as a deliverable under the Contract.

ARTICLE 2 -CONTRACT DOCUMENTS

2.1 Contract Documents - For valuable consideration as stated below, the Department and the CM/GC agree to the terms of this CM/GC Contract, and including all exhibits attached to this CM/GC Contract, and the Request for Proposals for this Project, which are by this reference incorporated herein.

2.2 Effective Date - The Contract shall become effective on the first date on which every party has signed this CM/GC Contract.

2.3 The Contract; Order of Precedence - This CM/GC Contract and any Amendments, together with the other Contract Documents, form the entire agreement between the parties. The Contract Documents are intended to be complementary and to describe and provide for a complete work. If there are inconsistent or conflicting terms among the Contract Documents, discrepancies shall be resolved in the following order of precedence:

1. Contract Amendments (including the GMP Amendment and any Early Work Amendment) and Change Orders, and provisions within the GMP Amendment or an Early Work Amendment will have the following order of precedence:
 - a. Special Provisions;
 - b. Contract Plans;
 - i. Design Consultant prepared drawings specifically for the Project;
 - ii. Supplemental Drawings (if any) (Notes on a drawing shall take precedence over drawing details. Dimensions shown on the drawings, or that can be computed, shall take precedence over scaled dimensions);
 - iii. Standard Drawings (Notes on a drawing shall take precedence over drawing details. Dimensions shown on the drawings, or that can be computed, shall take precedence over scaled dimensions);
 - c. Supplemental Specifications; and
 - d. Standard Specifications;
2. This CM/GC Contract;
3. Those portions of the accepted Proposal that meet or exceed minimum Contract requirements established by the Department; and
4. All other Contract Documents.

ARTICLE 3 - WORK OF THE CONTRACT

3.1 Pre-construction Phase Services - The CM/GC agrees to provide all of the Pre- construction Phase Services described in the following Section and will function as one of the three key team members of the CM/GC Team, including the Department, the Design Consultant, and the Contractor. The Department will provide the primary lead role on the CM/GC Team.

Upon the Department's issuance of a Notice to Proceed, the Contractor agrees to provide the Pre-construction Phase Services described below in the support of, and in conformance with, the time frames identified in Article 5 of the CM/GC Contract. The commencement of the Construction Phase shall not excuse the Contractor from completion of the Pre-construction Phase Services, if such services have not been completed at commencement of the Construction Phase.

The Contractor is expected to be engaged in the Project development process working with the CM/GC Team in a collaborative Project team environment. The Pre-construction Phase Services to be provided include but are not limited to the following:

1. Collaboration with the Department and Design Consultant to develop the Project;
2. Collaboration with local government agencies, and other stakeholders in the Project;
3. Identifying and mitigating risk through analysis and assessment;
4. Developing and updating Project schedules throughout the Pre-construction Phase;
5. Development of detailed cost estimates;
6. Collaboration with the Department and Design Consultant in development of Early Work Packages;
7. Performance of constructability review services; and
8. Performance of other Pre-construction Phase Services related to development of the Project as requested by the Department.

The Work performed by the Contractor shall comply with all applicable Federal and State laws, rules and codes. Work performed on the Project will support the goals developed by the CM/GC Team and incorporate Project requirements set forth in the Environmental Assessment for the Project.

The Contractor shall collaborate, advise, assist, estimate, schedule, and provide recommendations to members of CM/GC Team on the construction aspects of the Project. This task includes input into the Project permitting process, design development, and Bid Packages, including Early Work Packages. The Contractor shall provide review of plans, specifications, reports, and other information for the purposes of optimizing schedule, cost, and design options chosen by Department.

3.2 Construction Phase Services – Notwithstanding any other references to Construction Phase Services in this CM/GC Contract, the Contract shall include Pre-construction Phase Services only unless (1) the parties execute an Early Work Amendment, or (2) the parties execute a GMP Amendment. Upon execution of an Early Work Amendment or GMP Amendment, the CM/GC agrees to provide the Construction Phase Services described in this Section 3.2.

The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of the GMP Amendment. If one or more Early Work Amendments are executed, the CM/GC shall diligently continue to work towards development of a GMP Amendment acceptable to the Department, which shall incorporate the Early Work Amendments.

Construction Phase Services shall include, but are not limited to, the following:

1. Collaboration with the Department and Design Consultant to execute the Project;
2. Performance of all required construction work utilizing the CM/GC's own forces and subcontractors;
3. Developing and updating Project schedules throughout the Construction Phase;
4. Providing reporting and Project management of CM/GC forces; and
5. Performing all other acts and supplying all other things necessary to perform and complete the work fully and properly as required by the Contract Documents, to furnish to the Department a complete, fully functional Project, capable of being fully used for its intended purposes upon completion of the Contract (or, as to an Early Work Amendment, to furnish such Work as is described in the Early Work Amendment).

ARTICLE 4 - RELATIONSHIP AND ROLES OF THE PARTIES

A basic description of the main roles and responsibilities of all parties is provided below. This Project is to be developed in an interactive, team-oriented approach together with the Department and the Design Consultant.

4.1 Independent Contractor - The CM/GC is an independent contractor and not an officer, employee, or agent of the Department.

4.2 Performance of Work - The CM/CG covenants with Department to cooperate with the Design Consultant and the Department and to utilize the CM/GC's professional skill, efforts and judgment in furthering the Project in the interests of the Department; to furnish efficient business administration and supervision of all Pre-construction and Construction Phase Services for which the CM/GC is responsible under the Contract; to furnish at all times an adequate supply of workers and materials; and to perform the work in conformance with the terms and conditions of the Contract Documents, and in an expeditious and economical manner consistent with the interests of the Department.

4.3 Design Consultant – The Department has a separate contract with the Design Consultant related to the Project. Both the CM/GC and the Design Consultant shall be given direction by the Department through the Department’s Project Manager.

The CM/GC agrees to support the Department’s efforts to create a collaborative and cooperative relationship among the CM/GC, Design Consultant, any other Project consultants, and the Department.

4.4 Forms and Procedures - The Department has developed or may develop procedures and forms for the administration and tracking of the Contract. The CM/GC agrees to abide by those procedures and use those forms.

4.5 CM/GC's Key Personnel - The CM/GC's Key Personnel shall consist of the following:

4.5.1 Project Principal – The Project Principal designated as having the lead responsibility for managing the CM/GC’s organization for this Project is:

Name: _____

Address: _____

E-mail Address: _____

Phone / Fax Numbers: _____

The Project Principal will support the CM/GC’s Project Manager and Construction Manager during all phases to ensure the success of the Project and will be available to the Department to assist in resolution of any Project issues.

4.5.2 Project Manager - The CM/GC's representative for this Project is the CM/GC's Project Manager ("CM/GC PM"):

Name: ___

Address: __

E-mail Address: __

Phone / Fax Numbers: ___

The CM/GC PM will supervise and coordinate all Pre-construction Phase and Construction Phase Services of the CM/GC and participate in all meetings during the Project unless otherwise directed by the Department. The CM/GC represents that the CM/GC PM shall have the authority to execute Change Orders and Contract Amendments on behalf of the CM/GC.

4.5.3 Construction Manager - The CM/GC's Construction Manager (CM/GC CM) during the Project is:

Name: ___

Address: __

E-mail Address: __

Phone / Fax Numbers: ___

The CM/GC CM will supervise and coordinate all Construction Phase Services of the CM/GC on the Project site.

4.5.4 Construction Estimator – The CM/GC's Cost Estimator during the Project is:

Name: ___

Address: __

E-mail Address: __

Phone / Fax Numbers: ___

The CM/GC's Cost Estimator will participate in meetings and prepare cost estimate deliverables under the supervision of the CM/GC's Principal and Project Manager during Pre-construction Phase services, as is necessary to establish an acceptable and timely GMP with the Department.

4.5.5 ABC Specialist – The CM/GC's ABC Specialist during the Project is:

Name: _____

Address: __

E-mail Address:___

Phone / Fax Numbers:___

The CM/GC's ABC specialist will present the recommendations made for the Project and provide The Department with a set of best practices with respect to the Plans.

The CM/GC's ABC specialist will create and execute an effective and efficient design management process for fast-track transportation construction projects.

4.5.6 RR Specialist – The CM/GC's Railroad (RR) Specialist during the Project is:

Name: _____

Address: _____

E-mail Address: _____

Phone/Fax Numbers: _____

The CM/GC's RR Specialist will provide recommendations related to railroad involvement for the Project and provide the Department with a set of best practices with respect to the plans. The RR Specialist will create and execute an effective and efficient design management process for smooth construction of the Project over a railroad.

4.6 Additional Requirements for Key Personnel –

4.6.1 Full-Time Commitment – The CM/GC's Key Personnel identified in Article 4.5, and any other personnel identified by name in the CM/GC's Proposal shall be considered Key Personnel. The Contractor commits to undertake all reasonable efforts to provide the Key Personnel on a full-time basis (other than the Project Principal) for all periods necessary to fulfill the Contractor's Contract obligations.

4.6.2 Substitution of Key Personnel – The CM/GC shall not replace any Key Personnel during the Project without the written permission of the Department, which shall not be unreasonably withheld. If the CM/GC intends to substitute any Key Personnel, a request must be given to the Department at least 30 Calendar Days (or such shorter period as permitted by the Department) prior to the intended time of substitution. When replacements have been approved by the Department, the CM/GC shall provide a transition period of at least 10 Business Days (or such shorter period as permitted by the Department) during which the original and replacement personnel shall be working on the Project concurrently. Once a replacement for any Key Personnel is authorized, further replacement shall not occur without the written permission of the Agency.

Required Information - The Contractor shall submit with any request for substitution: (a) the name and qualifications of the proposed replacement Key Personnel; (b) the same selection evaluation information as was specified for inclusion in the Proposal; and (c) the reason for the proposed change. If the Department elects to consider the request, the Department, in its sole discretion, will determine whether the proposed substitute is appropriately qualified or otherwise acceptable, and will notify the Contractor of its determination whether or not to allow the substitution within 14

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Calendar Days of the original request. Failure of the Department to respond within the response period shall indicate the Department's decision not to consider the request.

4.7 Department Representative and Contact Information – The Department's representative and Project manager for this Project ("TDOT PM") is:

Name: Steve Sellers

Title: Blue Oval City Program Manager

Address: Suite 500, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243

E-mail Address: Steve.Sellers@tn.gov

Phone Number: (731) 234-9652

ARTICLE 5 - DATE OF COMMENCEMENT; INTERIM AND CONTRACT COMPLETION DATES

5.1 Commencement of Services – The CM/GC is authorized to commence the work contemplated by this CM/GC Contract, or any Amendment, upon the issuance of a Notice to Proceed.

When Construction Phase Services are added to the Contract as set forth in Article 3.2, and after the Department has fully completed any NEPA process related to the identified work, a Notice to Proceed will be issued by the Department to begin the identified or full Construction Phase Services. A separate NTP shall be issued for any and every Early Work Amendment and the GMP Amendment.

5.2 Completion Dates - Each Early Work Amendment shall establish a completion date for the work covered by the Early Work Amendment and may establish Interim Completion Dates for that work. The GMP Amendment shall establish a Contract Completion Date and may establish Interim Completion Date(s) for the work as agreed to by the Department and CM/GC. As described in Article 5.5, liquidated damages shall be applied to each of the established completion dates and shall be determined by the Department based on the value of the Early Work Amendment and the GMP Amendment.

The Department has established the following Contract Completion Date for this Project:

- Complete all Work to be done under the Contract, except for plant establishment and punch list items, shall be no later than: **December 31, 2028.**

5.3 Time is of the Essence - All time limits stated in the Contract Documents are of the essence.

5.4 Time Extensions - Notwithstanding provisions for Contract time extensions in Section 108 of the Department's Standard Specifications for Road and Bridge Construction, the Department and the CM/GC agree that timely completion of the work is essential to the success of the Project, and that approval for time extension shall be granted only as a last resort. The CM/GC agrees to make every effort to proceed with the work so as to meet the Contract Completion Date and all Interim Completion Dates.

5.5 Liquidated Damages - The CM/GC acknowledges that the Department will sustain damages as a result of the CM/GC's failure to complete work by the Contract Completion Date or any Interim Completion Dates in accordance with the Contract Documents. These damages may include, but are not limited to, delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities. The CM/GC and the Department acknowledge that the actual amount of damages would be difficult to determine precisely and agree that the liquidated damages established herein represent a reasonable estimate of such damages and is not a penalty.

The CM/GC agrees to pay to the Department the liquidated damage sums established for each Calendar Day of delay or any fraction thereof and further agrees that the Department may deduct such sums from payments the Department otherwise owes to the CM/GC under the Contract. If

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such deduction does not result in payment to the Department of the assessed liquidated damages in full, the CM/GC shall promptly pay any and all remaining sums due to the Department upon demand.

The daily amount of liquidated damages applicable to the Contract Completion Date defined in Article 5.2 is:

- Liquidated damages for failure to complete all work to be done under the Contract, except for plant establishment and punch list items, by the Contract Completion Date specified in Section 5.2 shall equal \$ **TBD** per calendar day, and \$ **TBD** per additional day beyond the number of the weeks of the full closure provided in 1.9. Section of the RFP. Any liquidated damages shall be addressed, not as a penalty, and computed as they occur with a separate item number subtracting from monies due the CM/GC.
- In addition, it is anticipated that the GMP Amendment will provide for liquidated damages in the amount of **TBD** (\$) for each hour of portion thereof in which any traffic lane remains closed beyond the allowable time periods.

ARTICLE 6 - FEES, CONTRACT AMOUNT AND GMP

6.1 Fees, Pre-construction Costs, Contract Amount, and GMP – The Department shall pay the CM/GC for the Pre-construction Costs described in Article 6.2.

In addition, for each Early Work Amendment executed by the CM/GC and Department, the Department shall pay the CM/GC, as payment for satisfactory completion of the Early Work, an Early Work Price equal to the sum of the Cost of the Work (lump sum) for the Early Work, and the cost of any bonds and insurance applicable to the Early Work. Any changes to the lump sum Cost of the Work shall be executed as an Amendment. Any applicable bond and insurance costs shall be included in all executed Amendments.

If a GMP Amendment is executed, the Department shall pay the CM/GC, as payment for the satisfactory completion of the work, the Contract Amount, which shall equal the sum of the Pre-construction Costs, the Cost of the Work under the GMP Amendment (lump sum), including any Early Work, the cost of any bonds and insurance applicable to the work, and any payment under any Authorized Contingency, but not exceeding the GMP.

The GMP shall be determined in accordance with the formula set forth below and as described in Article 6.3. Costs in excess of the GMP shall be paid by the CM/GC without reimbursement by the Department. Changes to the GMP shall only be authorized by Amendment.

Pre-construction Costs (Subject to NTE amount)
+ **Cost of the Construction Work (including any Early Work) (Becomes lump sum)**
+ **Authorized Contingency (Subject to shared cost savings)**
+ **Bonds and Insurance (Actual, reimbursable costs)**
= **GMP**

6.2 Pre-construction Costs - The Pre-construction Costs shall be payable to the CM/GC based on fixed hourly rates for the CM/GC PM and additional resource personnel on an actual- hours-worked basis up to a maximum, Not-to-Exceed (NTE) sum all of which are identified in Article 17.0. The hourly rates shall cover constructability review services, cost estimating, development of GMP, and all other Pre-construction Phase Services, as described in Article 3.1 of this CM/GC Contract and as further described in the RFP.

The NTE Pre-construction Costs are based on the fixed hourly rates for the Pre-construction Phase Services and reported as hourly rates for the CM/GC PM and additional resource personnel and identified in Article 17.0.

If the CM/GC's costs for provision of Pre-construction Phase Services exceed the maximum Pre-construction Costs, the CM/GC shall pay such additional cost without further compensation.

The Department shall pay the Pre-construction Costs on fixed hourly rates, on an actual-hours-worked basis with each application for payment during the Pre-construction Phase. If the total actual Pre-construction Costs are less than the maximum Pre-construction Costs used for initial calculation of the GMP as provided above, the GMP shall be reduced by the difference. Except to the extent the parties may expressly agree to the contrary in the GMP Amendment, no additional Pre-construction Costs or other fee or compensation shall be payable to the CM/GC with respect to Pre-construction Services performed after execution of the GMP Amendment.

6.3 Determination of Early Work Amendments

6.3.1 The CM/GC shall collaborate with the Department and the Design Consultant in the development of any Early Work Package to be completed prior to determination of the GMP, which shall be incorporated into an Early Work Amendment. Scope of work and value of each Early Work Package shall be determined through collaboration with the Department and Design Consultant and agreed to by the Department prior to execution of an Early Work Amendment. Notice to Proceed will not be issued for any Early Work Amendment until the Department has fully completed the NEPA process related to the Work identified in the Amendment.

6.3.2 The CM/GC shall collaborate with the Design Consultant on the establishment of appropriate bid items and corresponding estimated quantities for all Work items included in any Early Work Package. Once all parties have agreed to the bid items and estimated quantities for all items of Work, the CM/GC shall propose unit costs for all bid items as provided in Appendix B of the Request for Proposals (RFP) for this Project, which is incorporated herein by reference. After opening the CM/GC's proposal, the Department and the CM/GC shall meet to review all proposed unit costs along with the following supporting data to be supplied by the CM/GC:

1. All open-book cost build-ups, including subcontractor quotes;
2. A list of clarifications and assumptions made by the CM/GC in the establishment of the proposed unit costs, including site conditions, construction means and methods, and identification of work to be subcontracted or self-performed by the CM/GC; and
3. Any proposed Interim Completion Date(s) and the final completion date applicable to the Early Work Package.

6.3.3 If the proposed prices are not acceptable to the Department, the Department and CM/GC shall enter into a process of risk identification and risk resolution focused on differences between the CM/GC's proposed prices and the Department's estimate and the Independent Cost Estimate (if any). The parties may re-negotiate the estimated quantities and other components of the Early Work Package and shall establish a set of assumptions upon which all Work and unit prices are based. The Department may then direct the CM/GC to resubmit its proposed costs for the Early Work Package and/or proceed as provided in Appendix B to the RFP.

6.3.4 Once all components of the Early Work Package are agreed upon by the Department and CM/GC, all bid item total costs (bid item estimated quantity multiplied by unit cost) shall be rolled into one total lump sum, which becomes the Cost of the Work for the Early Work Package. The agreed-to, actual reimbursable costs for any applicable bonds and insurance shall then be applied as a separate line item. The sum of the Cost of the Work (lump sum), the CM/GC Fee, and the costs of the bonds and insurance shall then be rolled into one total lump sum which becomes the total Early Work Price for the Early Work Amendment.

Cost of the Construction Work (LS) + Bonds & Insurance = Early Work Price (LS)

Any change in Work means, methods, or Materials proposed by the CM/GC and accepted by the Department, shall be applied to the Project through a Change Order.

Reductions in the lump sum cost of an Early Work Amendment shall not affect the fixed CM/GC Fee.

6.4 Determination of GMP

6.4.1 The CM/GC shall deliver to the Department a proposed GMP and GMP Supporting Documents at any of the milestones identified in Section 4 of the RFP for this Project. If any subcontracts are in effect at the time the GMP is being established, the CM/GC shall use those subcontracts in establishing the GMP. The proposed GMP shall be submitted as provided in Appendix B of the Request for Proposals (RFP) for this Project.

6.4.2 As the Plans and Specifications may not be developed to completion at the time the GMP proposal is prepared, the CM/GC shall include in the GMP all remaining Pre- construction Phase Services Work and associated costs required for final development of the Plans and Specifications by the Design Consultant that is consistent with the Contract Documents and reasonably inferable therefrom. Such final development does not include such things as changes in work scope, kinds and quality of materials or equipment, all of which, if required, shall be incorporated by Change Order or Amendment with a corresponding GMP adjustment.

6.4.3 The CM/GC shall include with its GMP proposal a written statement of its basis in the GMP Supporting Documents, which shall include:

1. A list of the plans and specifications, including all addenda thereto, and the conditions of the Contract, which were used in preparation of the GMP proposal;
2. A list of the clarifications and assumptions made by the CM/GC in the preparation of the GMP proposal to supplement the information contained in the plans and specifications;
3. The proposed Cost of the Work, including a statement of all costs organized by bid items, estimated quantities, and unit prices, rolled into a total lump sum value;
4. The proposed GMP shall then be established using the formula set forth in Article 6.1, and shall include the Cost of the Work (lump sum), the reimbursable bond and insurance costs; and
5. The Contract Completion Date and any Interim Completion Dates upon which the proposed GMP is based, and a schedule of the construction documents issuance dates upon which the Interim Completion Date(s) are based.

6.4.4 After opening the CM/GC's proposed GMP, the Department shall meet with the CM/GC to review the GMP proposal, including all proposed unit costs and the written statement of its basis. If the Department discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CM/GC, who shall make appropriate adjustments to the GMP proposal, its basis or both.

6.4.5 If the proposed prices are not acceptable to the Department, the Department and CM/GC shall enter into a process of risk identification and risk resolution focused on differences between the GM/GC's proposed prices and the Department's estimate and the Independent Cost Estimate (if any). The parties may re-negotiate the estimated quantities and other components of the GMP proposal and shall establish a set of assumptions upon which all work and unit prices are based. The Department may then direct the CM/GC to resubmit its proposed costs for the GMP proposal and/or proceed as provided in Appendix B to the RFP.

6.4.6 Prior to the Department's acceptance of the CM/GC's GMP proposal and issuance of

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a Notice to Proceed, the CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work, except as specifically provided in an Early Work Amendment.

6.4.7 The Department shall authorize and cause the Design Consultant to revise the plans and specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. Such revised plans and specifications shall be furnished to the CM/GC in accordance with schedules agreed to by the Department, Design Consultant and CM/GC. The CM/GC shall promptly notify the Design Consultant and Department if such revised plans and specifications are inconsistent with the agreed-upon assumptions and clarifications.

6.4.8 The GMP shall include in the Cost of the Work only those taxes which are enacted and applicable at the time the GMP is established.

6.4.9 The CM/GC shall work with the Design Consultant and Department to identify and confirm any work not specifically shown but required for a complete, fully functional Project. The Department will direct the Design Consultant to complete the final construction documents in accordance with the Project scope agreed upon by all parties at the time the GMP is established.

6.5 Failure to Furnish an Acceptable GMP - If the CM/GC does not furnish a GMP acceptable to the Department, or if the Department determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to the Department, the Department may terminate the Contract without liability, and the CM/GC shall not receive additional compensation beyond the Pre-construction Costs under the Contract, payable to the date of termination, together with amounts payable for Work completed and accepted by the Department under an Early Work Amendment, if an Early Work Amendment has been executed, plus any applicable costs of bonds and insurance. Termination under this provision shall proceed under Article 13.1 as a termination for the Department's convenience. The CM/GC further agrees that the Department shall not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision. The Department may elect to complete the construction Work for this Project utilizing any alternative procurement method available.

6.6 Acceptance of GMP - Upon acceptance of the GMP Proposal by the Department, the parties shall execute a GMP Amendment.

6.7 Department Savings - If the Contract Amount, as defined in Article 6.1, is less than the GMP, the savings shall accrue to the Department, subject to any provisions in the Authorized Contingency (if any) for sharing cost savings between the Department and the Contractor.

ARTICLE 7 - CHANGES IN THE WORK

7.1 Adjustments to the GMP - Adjustments to the GMP after execution of the GMP Amendment may be made only (a) in the event of changes to the scope of work, or (b) as otherwise expressly provided in this CM/GC Contract, and then only in accordance with the following procedure:

7.1.1 The CM/GC shall review subsequent iterations of the plans and specifications as they are prepared to determine whether, in the opinion of the CM/GC, they result in a change in the scope of the work so that it can be determined if an adjustment to the GMP is warranted.

7.1.2 Changes to the GMP shall be initiated by written notice by one party to the other ("GMP Change Request"). The CM/GC shall deliver any such GMP Change Request to the Design Consultant and the Department promptly after becoming aware of any scope or assumption change if, in the CM/GC's opinion, it constitutes grounds for adjustment of the GMP. Any GMP Change Request shall include a proposal as to the appropriate GMP adjustment with respect to the scope change at issue.

7.1.3 The CM/GC shall submit its GMP Change Request as soon as possible after discovering the condition upon which the request is based, and the CM/GC shall not be entitled to claim a GMP increase unless the CM/GC submitted a GMP Change Request to the Department and Design Consultant within the earlier of (a) 30 Calendar Days after the CM/GC has received the information constituting the basis for the claim, or (b) as to work components which are part of an Early Work Package not yet awarded, prior to submission of subcontracts for such work, and as to work already subcontracted, prior to commencement of the portion of the work for which the CM/GC intends to claim a scope change; and (c) in any event, prior to the CM/GC's signing of a Change Order for the scope change.

7.1.4 The Department may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which shall include the Department's basis for such request.

7.1.5 The CM/GC shall work with the Design Consultant to reconcile all differences in its GMP Change Request within seven (7) Calendar Days from the date of submission of the GMP Change Request. "Reconciled" means that the CM/GC and Design Consultant have verified that their assumptions about the various categories are the same, and that they have identified the reason for differences in the GMP Change Request and the Design Consultant's position. The CM/GC shall submit the Reconciled GMP Change Request to the Department, which submission shall be a condition to any CM/GC claim for a GMP increase.

7.1.6 If the Reconciled GMP Change Request is not acceptable to the Department, the CM/GC agrees to work with the Department and the Design Consultant to provide a GMP Change Request that is acceptable to the Department.

7.1.7 The CM/GC agrees to make all Project records, including but not limited to calculations, drawings and similar items relating to the GMP Change Request, available to the Department and to allow both the Design Consultant and Department access and opportunity to view such documents at the CM/GC's offices. Upon the Department's reasonable notice, the CM/GC shall deliver two (2) copies of such documents to both the Department and the Design Consultant at any regular meeting or at the Project site.

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7.1.8 GMP increases, if any, shall not exceed the increased Cost of the Work arising from the scope change reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, adjusted in the same manner as described in Article 6.4.4.

7.2 Execution by the Department - Notwithstanding any provision in the Contract to the contrary, the Design Consultant has no authority to execute Change Orders or Amendments on behalf of the Department, and only duly authorized personnel of the Department may do so.

ARTICLE 8 - DISCOUNTS, REBATES AND REFUNDS

8.1 Discounts, Rebates and Refunds – Assumptions regarding any cash discounts obtained on payments made by the CM/GC shall be included in the pricing development for any Early Work Amendments and the GMP Amendment.

ARTICLE 9 - SUBCONTRACTS AND OTHER CONTRACTS

9.1 General Subcontracting Requirements:

The following specific minimum requirements apply to selection of subcontractors performing Construction Phase Services for this Project:

1. The CM/GC must self-perform a minimum of 30% of the Construction Phase Services Work, excluding specialty items; and
2. The CM/GC may select subcontractors to perform Construction Phase Services utilizing either a competitive bidding process or through negotiation, at CM/GC's discretion.

The CM/GC shall comply with all Contract requirements defined in the applicable Special Provision(s) of the GMP Amendment, or any Early Work Amendment, in all respects for the solicitation of subcontractors' demonstrations of good faith efforts for all subcontracted work.

9.2 CM/GC's Obligations under Subcontracts:

9.2.1 No use of a subcontractor or supplier shall relieve the CM/GC of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in the Contract, the CM/GC shall be fully responsible and liable for the acts or omissions of all subcontractors and suppliers, including persons directly or indirectly employed by them. The CM/GC shall have sole responsibility for managing and coordinating the operations of its subcontractors and suppliers, including the settlement of disputes with or between the CM/GC and any such subcontractor or supplier.

9.2.2 The CM/GC shall include in each subcontract and require each subcontractor to include in any lower tier subcontract, all provisions necessary to make all of the provisions of the Contract Documents, fully effective as applied to subcontractors. The CM/GC shall indemnify the Department for any additional cost based on a subcontractor claim which results from the failure of the CM/GC to incorporate the provisions of this CM/GC Contract in each subcontract. The CM/GC shall provide all necessary plans, specifications, and instructions to its suppliers and subcontractors to enable them to properly perform their work.

9.3 Subcontractor Selection:

9.3.1 The following minimum requirements apply to the Subcontractor selection process:

1. Subcontractors must be prequalified with the Department's Construction Division as provided in TDOT Rule 1680-05-03, Prequalification of Contractors;
2. The CM/GC shall comply, and require subcontractor compliance with, the "General Wage Determination issued Under the Davis-Bacon and Related Acts" from the U.S. Secretary of Labor and, the "Prevailing Wage Act for State Highway Projects" from the Tennessee Department of Labor. The CM/GC and Subcontractors are required to pay the greater of the two rates for each classification. Special attention is called to section 105-Control of Work;

3. The CM/GC shall review all bids and shall work with bidders to clarify submitted bids, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process; and
4. The CM/GC's subcontracting records shall not be considered public records; provided, however, that the Department and other agencies of the State of Tennessee shall retain the right to audit and monitor the subcontracting process in order to protect the Department's and the State's interests.

ARTICLE 10 - ACCOUNTING RECORDS

10.1 Accounting; Audit Access - The CM/GC shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract. The accounting and control systems shall be satisfactory to the Department. The Department, the State of Tennessee Comptroller of the Treasury, and the Federal Highway Administration (FHWA), shall be afforded reasonable and regular access to the CM/GC's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and all other Project Records relating to the Contract, and the CM/GC shall preserve these for a period of five (5) years after Final Acceptance, or until all disputes, if any, concerning the Contract or the Project have been resolved, whichever occurs later, or for such longer period as may be required by law.

The CM/GC shall require each subcontractor to retain its Project records for a period of five (5) years and to provide equivalent access to all Project Records to the Department, the State of Tennessee Comptroller of the Treasury, and the Federal Highway Administration (FHWA). The CM/GC shall require each subcontractor to include in lower-tier subcontracts the same Project Record retention and access requirements.

10.2 Periodic and Final Audits – The Department may, at its discretion, perform periodic audits of the Project records associated with the Project. The Department intends to conduct a final audit of the Project Records prior to the Contract closeout. The CM/GC shall cooperate fully with the Department in the performance of such audits. Disputes over audit findings or conclusions shall be subject to the process set forth in Article 12.3.

ARTICLE 11 - HOURLY RATES FOR PRE-CONSTRUCTION COSTS; PROGRESS PAYMENTS

11.1 Hourly Rates – The Department agrees to compensate the CM/GC for all Pre-construction Phase Services subject to the not-to-exceed (“NTE”) price identified in Article 17.0. The Pre-construction Costs include the entire cost of completing the Pre-construction Phase Services in accordance with all Contract requirements and legal requirements, as contemplated by the Parties under the Contract, and further includes all CM/GC overhead and profit. The Pre-construction Costs shall be payable in accordance with Article 11.3.

The Pre-construction Costs for Pre-construction Phase Services performed during the Pre-construction Phase are based on fixed hourly rates for the CM/GC PM and additional resource personnel identified in Article 17.0.

11.2 Progress Payments - The Department shall make progress payments to the CM/GC as provided below and elsewhere in the Contract Documents. A progress payment shall not be considered as acceptance or approval of any part of the Work and shall not relieve the CM/GC of responsibility for defective materials or workmanship.

11.3 Calculation of Pre-construction Phase Services Work Completed:

11.3.1 Hourly Rates – Applications for payment for Pre-construction Phase Services shall show the total hours worked for the CM/GC PM and additional resource personnel identified in Article 17. The cost shall be the total of the hours worked multiplied by the hourly rates identified in Article 17.

11.3.2 Calculation of Monthly Payment:

1. Multiply the total, actual hours worked for the Key Personnel and additional resource personnel by the fixed hourly rate.
2. Subtract the aggregate of previous payments made by the Department.
3. Subtract the shortfall, if any, indicated by the documentation required substantiating prior applications for payment, or resulting from errors subsequently discovered by the Department in such documentation.
4. Subtract any amounts for which the Agency has withheld or denied payment as provided in the Contract Documents.

The CM/GC shall also provide an expenditure evaluation progress report with its application for payment summarizing the Pre-construction Phase Services accomplished during the month in which the invoiced services were performed, the Pre-construction Phase Services planned for the following month, and progress percentage complete of Work Products in progress.

11.4 Calculation of Construction Phase Services Work Completed:

11.4.1 Lump Sum Work - Applications for payment for lump sum unit priced Work shall show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage of completion shall be the share of the Early Work Price (for Early Work) or GMP allocated to that portion of the Work in the Department-approved schedule of activities derived from the Critical Path schedule. The amounts to be allowed for lump sum Pay Items in progress payments shall not exceed the reasonable value of the Work, as determined by the Department.

11.4.2 Unit Priced Work – Item quantities paid on engineer’s estimates shall be supported by field documentation as directed in the Item Documentation instructions. Each item’s current estimate quantity documented in the Field Book shall be referenced to the respective engineer’s estimate number where payment was made. The reference shall be placed in the remarks field on the Field Book sheet.

Material Certifications covering each item’s current estimate quantity shall be on file before payment may be processed. (Circular Letter 109-02.02)

11.4.3 Calculation of Monthly Payment –The Department shall make monthly partial progress payments to the contractor in general accordance with Section 109.06 of the TDOT Standard Specifications, 23 CFR 635.122, and Circular Letter 109.02-02. The amount of each progress payment for Construction Phase Services Work shall be computed by the Department as follows:

1. Take that portion of the Early Work Price or GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work under the Schedule of Values by the share of the Early Work Amendment or GMP allocated to that portion of the Work in the Schedule of Values. Pending final determination of cost to the Department of changes in the Work, amounts not in dispute shall be included.
2. Add that portion of the Early Work Amendment or GMP properly allocable to Materials and Equipment delivered and suitably stored.
3. Add that portion of the actual, reimbursable bonds and insurance costs.
4. Subtract the aggregate of previous payments made by the Department.
5. Subtract the shortfall, if any, indicated by the documentation required substantiating prior applications for payment, or resulting from errors subsequently discovered by the Department in such documentation.
6. Subtract any amounts for which the Department has withheld or denied payment as provided in the Contract Documents.

11.5 Adjustments to the Contract Amount - The Contract Amount shall only be adjusted through issuance of properly authorized Change Orders or other authorized payments for Extra Work.

11.6 Payments for Extra Work – The Department will make payments for Extra Work in accordance with subsections 104.02 and 104.03 of the TDOT Standard Specifications and as outlined in 23 CFR 635.120. Any changes to the original contract proposal or plans must be documented by a Change Order.

11.7 Deductions from Monies Due – The Department may deduct from monies due or to become due the CM/GC for: (a) amounts representing price adjustments authorized under the commodity escalation/de-escalation provisions of any Special Provision(s) of the GMP Amendment or any Early Work Amendment; (b) amounts representing recoupment of damages, including but not limited to liquidated damages; (c) amounts assessed by other governmental agencies (e.g., fines and penalties) for which the CM/GC is responsible under the terms or the Contract or by law; (d) amounts the Department is compelled by court order or other legal mandate to withhold and/or tender to other governmental agencies or third parties; (e) amounts as reimbursement for Department payments made on behalf of the CM/GC or to meet the CM/GC's obligations, as authorized under terms of the Contract; and (f) any other amounts authorized under the Contract or by law to be deducted or withheld.

11.8 Materials and Tests - The quality of materials on the project and tests performed must conform to all applicable ASTM and AASHTO Standard Specifications for Transportation Materials and Methods of Sampling and Testing, most current edition. Asphalt and concrete mix designs shall meet TDOT specifications. Asphalt and concrete mix designs shall be approved by Headquarters Materials and Tests as outlined in the TDOT Standard Specifications 501 Portland Cement Concrete Pavement and SOP 3-4 (Asphalt). All materials used on the project must have test reports, material certifications and/or field testing by certified personnel to document that the material meets appropriate specifications. Testing shall be in accordance with a FHWA approved testing program which includes procedures for the sampling, testing and acceptance of materials and products. The source for each type of material must be on TDOT's Qualified Product List or Producer Supply List.

ARTICLE 12 - FINAL PAYMENT

12.1 Final Payment Accounting – The CM/GC shall submit to the Department a final detailed accounting of the Cost of the Work together with the CM/GC's final application for payment. Final costs shall include a reconciliation of all reimbursable bond and insurance costs.

12.2 Calculation of Final Payment – The final payment shall be calculated as follows:

1. Take the sum of the Pre-construction Costs, plus the costs of bonds and insurance, plus the Cost of the Work substantiated by the CM/GC's final accounting. Said sum shall not exceed the GMP.
2. Subtract amounts, if any, for which the Department withholds, in whole or in part, approval of payment.
3. Subtract the aggregate of previous payments made by the Department to the CM/GC. If the aggregate of previous payments made by the Department exceeds the amount due the CM/GC, the CM/GC shall reimburse the difference to the Department within 30 Calendar Days.

12.3 Effect of Payment - Neither approval of an application for payment, a progress payment final payment, or partial or entire use or occupancy of the Project by the Department shall constitute acceptance of work not conforming to the Contract Documents, or waiver of the right to assert overpayment.

ARTICLE 13 - TERMINATION OR SUSPENSION

13.1 Right to Terminate Prior to Execution of GMP Amendment - Prior to execution by both parties of the GMP Amendment, the Department may terminate the Contract at any time without cause. Upon such termination, the amount to be paid to the CM/GC shall not exceed the Pre-construction Costs payable to the date of termination, together with amounts payable for Early Work if an Early Work Amendment has been executed, plus any applicable costs of bonds and insurance. If the Department terminates under this Article 13.1 during the Pre-construction Phase, the Department shall be entitled to copies of, and shall have the right to use, all Work Products of the CM/GC and its subcontractors performed to the date of termination, and the CM/GC shall deliver copies of the same to the Department on request.

13.2 Termination for Convenience after GMP Amendment - After the GMP Amendment is executed by both parties, and upon notice as provided in Section 108.08 of TDOT's Standard Specifications for Road and Bridge Construction (including Supplemental Specifications), the Contract may be terminated by the Department without penalty for convenience, in which case the CM/GC shall be entitled to payment of any earned but unpaid amounts provided for in Article 13.1, together with the Cost of the Work satisfactorily completed under the GMP Amendment, plus the costs of bonds and insurance, but in any event not in excess of the GMP. 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.

13.3 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 violates any terms of this Contract, the State 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 Department for damages sustained by virtue of any breach of this Contract by the Contractor. Any termination for cause after the GMP Amendment is executed shall be governed by section 108.08 of the Department's Standard Specifications for Road and Bridge Construction (including any Supplemental Specifications). 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.

13.4 Additional Defaults - In addition to the acts listed in section 108.08 of the Department's Standard Specifications for Road and Bridge Construction, the following shall also be considered defaults for which the Contract may be terminated:

13.4.1 The CM/GC no longer holds the licenses or certificates required to perform the Work or any portion thereof.

13.4.2 The CM/GC made knowing or reckless misrepresentations, concealed facts, or failed to disclose information in the CM/GC's Proposal. Such shall constitute fraudulent inducements, and shall entitle the Department to recover reliance damages, in addition to any other available remedies to which it may show itself entitled.

13.5 Department's Termination of Contract / Non-availability of Funds

13.5.1 The Department may terminate the Contract, in whole or in part, immediately upon notice to the CM/GC, or at such later date as the Department may establish in such notice, upon the occurrence of any of the following events:

1. The Department fails to receive funding, or appropriations, allotments, limitations or other expenditure authority at levels sufficient to pay for the CM/GC's Work; or
2. Federal or State Laws are modified or interpreted in such a way that either the Pre-construction Phase Services or Construction Phase Services are prohibited, or the Department is prohibited from paying for such services from the planned funding source.

13.5.2 The Department reasonably believes that sufficient funds are anticipated to pay all amounts due hereunder, and hereby covenants and agrees that it will use its best efforts to obtain and properly request and pursue funds from which payments hereunder may be made, including making provisions for such payments to the extent necessary in the budget submitted for the purpose of obtaining funds, and will use its best efforts to have such budget approved. It is the Department's intention to make all payments due hereunder if funds are legally available for such purpose.

13.5.3 If, despite the above, the Department is not allotted sufficient funds for the next succeeding fiscal period by appropriation, limitation, grant, or other funds source lawfully available to it for such purposes to continue the Project and make payments hereunder, the Department may terminate the Contract, by notice to the CM/GC, without penalty, effective upon exhaustion of allocated funds, and such termination shall not constitute an event of default under any provision of the Contract. The Department will give the CM/GC notice of such non-availability of funds within 30 Calendar Days after it receives notice.

13.6 Quality of the Work - In the event of the Department's termination of the Contract, regardless of reason, the CM/GC shall remain responsible for the quality of the work performed through the date of termination.

13.7 Dispute Resolution - Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the Contractor and the Department shall be referred to the Commissioner of the Tennessee Department of Transportation, or the Commissioner's duly authorized representative, whose decision regarding same shall be final.

13.8 Litigation - The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407. In the event of litigation instigated by the CM/GC, or by the Department for breach of Contract, in addition to its other available remedies the Department may pursue both recoupment and set-off.

ARTICLE 14 - REPRESENTATIONS AND WARRANTIES

Representations and Warranties – The CM/GC represents and warrants to the Department as of the effective date of the Contract:

It is qualified to do business as a licensed general contractor under the laws of the State of Tennessee and has all requisite corporate power and corporate authority to carry on its business as now being conducted.

It has full corporate power and corporate authority to enter into and perform the Contract and to consummate the transactions contemplated hereby; the CM/GC has duly and validly executed and delivered this CM/GC Contract to the Department and that the Contract constitutes the legal, valid and binding obligation of the CM/GC, enforceable against the CM/GC in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

The CM/GC's execution and delivery of this CM/GC Contract and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under, (a) CM/GC's Articles of Incorporation or Bylaws; (b) any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement or other instrument or obligation to which the CM/GC is a party or by which the CM/GC may be bound; or (c) any statute, order, writ, injunction, decree, rule or regulation applicable to the CM/GC.

No material consent, approval, authorization, declaration or other order of, or registration or filing with, any court or regulatory authority or any third person is required for the valid execution, delivery and performance of the Contract by the CM/GC or its consummation of the transactions contemplated hereby.

There is no action, proceeding, suit, investigation or inquiry pending that questions the validity of the Contract or that would prevent or hinder the consummation of the transactions contemplated hereby.

The CM/GC's Project Principal, Project Manager and Construction Manager identified in Article 4 are duly appointed representatives and each has the authority to bind the CM/GC to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto.

ARTICLE 15 - SPECIAL PROVISIONS AND CERTIFICATIONS

15.1 Title VI, Civil Rights Act of 1964 – During the performance of this Contract, the Contractor agrees as follows:

15.1.1 Compliance with Regulations: The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation, Title 49, Code of Federal Regulations, Part 21 through Appendix H and 23 CFR 230.405(b), as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

15.1.2 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, both with regard to the work performed by itself during the Contract and in the selection and retention of subcontractors, including procurements of materials and leases of equipment. 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. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

15.1.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination 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.

15.1.4 Information and Reports: The Contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or other parties participating in the funding of this agreement to be pertinent to ascertain compliance with such regulations or directives. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Department and shall set forth what efforts it has made to obtain the information.

15.1.5 Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it may determine to be appropriate, including, but not necessarily limited to:

1. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
2. Cancellation, termination, or suspension of the contract in whole or in part.

15.1.6 Incorporation of Provisions: The Contractor shall include the provisions of sections 15.1.1 through 15.1.5 in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Department or other parties participating in the funding of this agreement may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such directions, the Contractor may request the Department to enter into such litigation to protect the interests of the Department, and, in addition and as appropriate, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

15.2 Equal Employment Opportunity - During the performance of work under this Contract the Contractor agrees to comply with the policies set forth in Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

15.3 Additional Employment Regulations - The Contractor shall comply with the Vocational Rehabilitation Act of 1973 as approved by Congress on September 26, 1973, herein incorporated by reference, which prohibits employment discriminations against physically handicapped persons. Further, the ENGINEER shall comply with Section 2012 of the Vietnam Era Veterans Readjustment Act of 1974 which requires the ENGINEER to take affirmative action to employ and advance in employment qualified veterans of the Vietnam Era.

15.4 DBE Compliance –

15.4.1 The Contractor certifies that: The Contractor shall abide by the provisions of 49 CFR 26, as it may be amended from time to time, for the duration of the Contract, and shall take all necessary and reasonable steps to ensure that Disadvantaged Business Enterprises ("DBEs"), as defined in 49 CFR 26, have the opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with federal funds provided by Federal Highway Administration (the "FHWA"), Federal Transit Administration (the "FTA") or Federal Aviation Administration (the "FAA") under this agreement. The Department and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither the Department nor its contractors shall discriminate on the basis of race, color, sex and/or national origin in the award and performance of Federal-Aid contracts. The Contractor shall require that all Subcontractors so certify.

15.4.2 DBE Goals – The following DBE goals will apply to the construction Work for this Project:

- **DBE Goal TBD% of the Contract Amount**

15.5 Environmental Protection Regulations - Under this Contract the Contractor shall give due consideration to and, as applicable, comply with the standards, orders, or requirements set forth under Section 306 of the Clean Air Act (42 U.S.C. 1857 h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

15.6 Energy Policy and Conservation Act - Under this Contract the Contractor shall give due consideration to and, as applicable, comply with the standards, orders, and requirements relating to energy efficiency contained in the Department energy conservation plans issued in compliance with the Energy Policy and Conservation Act (P.L. 94-165).

15.7 Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions

15.7.1 Instructions for Certification. By signing and submitting this CM/GC Contract, the Contractor is providing the certification set out below. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this agreement. However, failure of the Contractor to furnish a certification or an explanation shall disqualify it from entering into this agreement.

The certification is a material representation of fact upon which reliance was placed when the Department determined to enter into this Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this Contract for cause or default.

The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that the certification is erroneous or has become erroneous by reason of changed circumstances.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this provision, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.

The Contractor agrees by entering into this CM/GC Contract that, should this Contract be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this agreement, unless authorized by the Department.

The Contractor further agrees by signing this CM/GC Contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

The Contractor may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from this agreement, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

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Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this provision. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under this provision, if a participant in this Contract knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this Contract for cause or default.

15.7.2 Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions. By signing this CM/GC Contract, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency.
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract 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.
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in the preceding paragraph of this certification; and
4. Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this CM/GC Contract.

(Exceptions to the above are to be submitted on a separate sheet attached to this CM/GC Contract.)

For any exception noted, indicate to whom it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

15.8 Certification for Grants, Loans, and Cooperative Agreements.

15.8.1 By signing this CM/GC Contract, the Contractor certifies to the best of its knowledge and belief that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of this CM/GC Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this CM/GC Contract, or any Federal contract, grant, loan, or cooperative

agreement.

15.8.2 The Contractor agrees that if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

15.8.3 The Contractor understands that this certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code.

15.8.4 The Contractor also agrees that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

15.8.5 The Contractor agrees that during the period of performance of this Contract it and its subrecipients must file a disclosure form at the end of each calendar year quarter in which there occurs any event that requires disclosure or materially affects the accuracy of the information contained in any previously filed disclosure form. Events that are considered to materially affect the accuracy of information reported are described in Subpart A, Section 1230.110(c) of the Office of Management and Budget interim final guidance pertaining to Federal government-wide restrictions on lobbying established by Section 319 of Public Law 101-121.

15.9 Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the State of Tennessee, 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.

15.9.1 The Contractor attests, certifies, warrants, and assures 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 Department a completed and signed copy of the document as ATTACHMENT 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

15.9.2 Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, 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 relative to this Contractor and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

15.9.3 The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the Department.

15.9.4 The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit the Contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after the Contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

15.9.5 For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

15.10 Certification Regarding Collusion

By signing this CM/GC Contract, the Contractor certifies that it has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with its Proposal or this CM/GC Contract. A person who makes a false statement in this certification is subject to the penalties of perjury.

The Contractor further certifies that it is not under the control of any person, firm, partnership, or corporation, which has or exercises any control of any other person, firm, partnership, or corporation, which submitted a Proposal for this CM/GC Contract.

15.11 Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, et seq., addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

15.12 Boycott of Israel. The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.

ARTICLE 16 - BONDING AND INSURANCE

16.1 Insurance Requirements – During the term of the Contract, the CM/GC shall maintain in full force adequate and appropriate general liability insurance providing liability coverage in an amount not less than \$1,000,000 dollars per occurrence and \$300,000 per claimant, naming the State of Tennessee as an additional insured. The insurance shall be provided by an insurer that holding a current certificate of authority to transact the business of insurance in the State of Tennessee.

16.2 Bonding Requirements – Prior to commencement of Construction Phase Services, and in any event not later than mutual execution of the GMP Amendment, the CM/GC shall provide to the Department full Performance and Payment Bonds in the amount of the GMP Amendment. The surety providing the bond(s) must be a surety company or companies licensed by the State of Tennessee and listed in the current United States Department of the Treasury Circular 570 financial management service list of approved bonding companies, which is published annually in the Federal Register, and the surety must be listed or approved to write a bond in the amount indicated in the bond provided.

If an Early Work Amendment is executed, the CM/GC shall provide Performance and Payment Bonds in the amount of the Early Work Price. The CM/GC shall provide to the Department additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of labor or Materials for the prosecution of the Work covered by the Amendment, and in each case a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a scope change that increased the GMP, the CM/GC shall provide to the Department an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

The CM/GC shall maintain the Performance and Payment Bonds in full force from Sureties licensed to do business in Tennessee. The Parties understand and agree that the obligation of the CM/GC's Surety for the faithful performance of the Contract pursuant to the requirements of Tennessee are statutory in nature and are governed by provisions contained in Title 54, chapter 5, of the Tennessee Code Annotated relating to bonds required of contractors and that those provisions constitute a part of this bond.

ARTICLE 17 - PAYMENT FOR PRE-CONSTRUCTION PHASE SERVICES

17.1 Hours and Hourly Rates. The following negotiated, fixed hourly rates shall be used for payment to the CM/GC for all Pre-construction Phase Services Work. The estimated level of services, shown as estimated hours, will remain flexible within the maximum NTE and are subject to reallocation upon approval by the Department; however, the hourly rates and the maximum NTE shall remain fixed.

Key Personnel or Position	Estimated Hours	x	Hourly Rate	=	Cost
CM/GC Project Manager	_____	x	\$ _____	=	\$ _____
Construction Scheduler	_____	x	\$ _____	=	\$ _____
Construction Manager	_____	x	\$ _____	=	\$ _____
Estimator	_____	x	\$ _____	=	\$ _____
ABC Specialist	_____	x	\$ _____	=	\$ _____
Constructability Services	_____	x	\$ _____	=	\$ _____
Administrative Staff	_____	x	\$ _____	=	\$ _____
[Enter resource positions]	_____	x	\$ _____	=	\$ _____

Total Maximum NTE: \$ 750,000.00

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THIS CM/GC CONTRACT is executed in two (2) original copies of which one is to be delivered to the CM/GC, and the other to the Department.

CM/GC:

Name of Firm: _____

Address: _____

CM/GC's Federal Tax I.D. #: _____

Construction Contractor's Board Registration No.: _____

Signature of Authorized Representative of CM/GC Title _____

Date _____

If the CM/GC is a joint venture or a partnership, each joint venture member or partner of the CM/GC shall sign, and by doing so is signing on behalf of and is therefore binding both itself and the CM/GC, and each joint venture member or partner and CM/GC shall be jointly and severally liable under the Contract.

Joint Venture/Partner #1 By:

Signature

Printed Name (On behalf of itself and Proposer)

Title

Joint Venture/Partner FEIN ID# or SSN# (Required)

Tennessee Department of Transportation

Joint Venture/Partner #2 By: _____

Signature _____

Printed Name (On behalf of itself and Proposer) _____

Title _____

Joint Venture/Partner FEIN ID# or SSN# (Required) _____

DEPARTMENT:

STATE OF TENNESSEE, acting by and through the Tennessee Department of Transportation.

By _____ Date: _____
Butch Eley, Commissioner

Approved as to Legal Sufficiency:

By: _____ Date: _____
John H. Reinbold, General Counsel

ATTACHMENT 1

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (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.

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.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION