

# AGREEMENT

between

THE STATE OF TENNESSEE

(SPA/Owner Name)

and

(Designer Name)

SBC Project No. 166/000-XX-20XXAS

This Agreement, by and between the State of Tennessee, (SPA/Owner Name), hereinafter referred to as the STATE and (Designer Name), hereinafter referred to as the CONSULTANT, is for the provision of analysis, design, and related services, as further defined in the "SCOPE OF SERVICES", below.

The STATE and the CONSULTANT, having agreed to the conditions outlined in Articles A through D below; hereby enter into the following Agreement:

## A. SCOPE OF SERVICES: Architect Consultant for (SPA / Owner)

1. The CONSULTANT shall provide such professional advice and assistance as the STATE may request regarding alterations, improvements, planning, repairs, and maintenance; including, but not limited to site visitation and investigation, analysis, architectural design, specification development, cost estimating, and construction and/or repair observation for various State projects. Such work done by the CONSULTANT shall be approved in writing by the STATE prior to the start of the work. For the purposes of this Agreement, the CONSULTANT's Principal is (name).

## B. PAYMENT TERMS AND CONDITIONS:

1. For the Work performed under this Agreement, as defined in Section A, the CONSULTANT shall be compensated an amount not to exceed XXX HUNDRED THOUSAND and NO/100ths dollars (\$XXX,XXX.00). This amount shall be the maximum amount for the work performed and the total compensation due the CONSULTANT for the Service and all of the CONSULTANT's obligations hereunder regardless of the difficulty, hours worked, or materials or equipment required. The Agreement price includes, but is not limited to, all applicable taxes, fees, site visitation and investigation, analysis, design, specification development, cost estimating, and overheads, profit, and all other direct and indirect costs incurred or to be incurred, by the CONSULTANT, except as noted in this Agreement.
2. The CONSULTANT shall furnish a quarterly summary sheet of all projects under this Agreement, identifying each project expenditure, the total expenditures to date, and the balance of funds remaining in this Agreement. The CONSULTANT's compensation for services is based on a multiple of Direct Personnel Expense (DPE), determined as follows
3. Time for all individuals providing services under this Agreement shall be billed at the individual's typical or standard rate, in dollars per hour, calculated as set forth below and not to exceed one hundred seventy-five and no/100 dollars (\$175.00) per hour.
  - a. The typical or standard hourly rate for any employees (not principals or owners) of CONSULTANT shall not exceed a multiple of two and forty-five one hundredths (2.45) times the individual's DPE. The term "Direct Personnel Expense" means the actual cost of the individual to the company, which may not exceed one hundred thirty nine percent (139%) of the individual's base salary. "Direct Personnel Expense" includes the cost of the individual's base salary and of mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays and vacations, pensions, and similar benefits.
  - b. The typical or standard hourly rate for any principals and owners of CONSULTANT shall not exceed the greater of (A) a multiple of two and forty-five one hundredths (2.45) times the individual's DPE or (B) the average of the highest typical or standard hourly rate charged by an employee under the employ of said principal or owner for services provided under this Agreement, and the maximum hourly rate permissible in Section B.3 above.
4. Invoices to the CONSULTANT for surveys, tests, reports or other outside professional services for work authorized under this Agreement, shall be paid to the CONSULTANT with a fee, where the total payment does not to exceed one and twenty-one hundredths (1.20) times the amount invoiced to

the CONSULTANT.

5. The STATE shall reimburse the CONSULTANT the actual verified cost of reproduction of drawings and specifications, computer services, renderings and models, and special supplies authorized by the STATE.
6. The CONSULTANT shall not be reimbursed for any traveling or living expenses in connection with this Agreement, unless approved in writing in advance by the STATE. If approved, compensation to the CONSULTANT for travel, meals, and/or lodging shall be in the amount of actual costs, subject to maximum amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time.
7. The Agreement Price and maximum liability of the STATE under this Agreement is firm for the duration of the Agreement and are not subject to escalation for any reason, unless amended.
8. The CONSULTANT shall submit all invoices, in a form acceptable to the STATE with all of the necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices will be submitted monthly and shall include any reimbursement for travel expenses as defined under Paragraph 6 of this Section.
9. The Payment of an invoice by the STATE shall not prejudice the STATE's right to object to or to question any invoice or matter in relation thereto. Such payment by the STATE shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the costs invoiced therein. CONSULTANT's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the STATE, on the basis of audits conducted in accordance with the terms of this Agreement, not to constitute allowable costs. Any payment shall be reduced for over-payments or increased for under-payments on subsequent invoices.
10. The STATE reserves the right to deduct from amounts which are or shall become due and payable to the CONSULTANT under this or any Agreement between the parties, any amounts which are or shall become due and payable to the STATE by the CONSULTANT.
11. In no event shall the maximum liability of the STATE under this Agreement exceed **XXX HUNDRED THOUSAND and NO/100ths Dollars (\$XXX,XXX.00)**.
12. The CONSULTANT shall complete and sign an "Authorization Agreement for Automatic Deposits (ACH Credits) Form." This form shall be provided to the CONSULTANT by the STATE. Once this form has been completed and submitted to the STATE by the CONSULTANT, all payments to the CONSULTANT, under this or any other Agreement the CONSULTANT has with the STATE, shall be made through the STATE's Automatic Clearing House wire transfer system. The CONSULTANT shall not commence work or invoice the STATE for services until he has completed this form and submitted it to the STATE. The debit entries to correct errors authorized by the "Authorization Agreement for Automatic Deposits Form" shall be limited to those errors detected prior to the effective date of the credit entry. The remittance advice shall note that a correcting entry was made. All corrections shall be made within two banking days of the effective date of the original transaction. All other errors detected at a later date shall take the form of a refund, or in some instances, a credit memo if additional payments are to be made.

**C. TERM:**

1. This Agreement shall be effective for the period commencing **on (month and day), 20XX** and shall end on **(month and day), 20XX**. The STATE shall have no obligation for services rendered by the CONSULTANT which are not performed within the specified period.

**D. STANDARD TERMS AND CONDITIONS:**

1. The STATE is not bound by this Agreement until it is approved by the appropriate State officials as indicated on the signature page of this Agreement.
2. This Agreement may be modified only by a written amendment which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement, upon submission of a thirty (30) day written notice.

3. The STATE may terminate this Agreement by giving the CONSULTANT at least thirty (30) days written notice before the effective termination date. The CONSULTANT shall be entitled to receive equitable compensation for satisfactory authorized services completed as of termination date.
4. If the CONSULTANT fails to properly perform its obligations under this Agreement or violates any terms of this Agreement, the STATE shall have the right to immediately terminate this Agreement and withhold payments in excess of fair compensation for completed services. The CONSULTANT shall not be relieved of liability to the STATE for damages sustained by virtue of any breach of this Agreement by the CONSULTANT.
5. The CONSULTANT shall not assign this Agreement or enter into a sub-Agreement for any of the services performed under this Agreement without obtaining the prior written approval of the STATE. If such sub-Agreements are approved by the STATE, they shall contain, at a minimum, Paragraphs D.6 and D.8 of this Agreement.
6. The CONSULTANT warrants that no part of the total Agreement Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, sub-Agreement, or consultant to the CONSULTANT in connection with any work contemplated or performed relative to this Agreement.
7. The CONSULTANT shall maintain documentation for all charges against the STATE under this Agreement. The books, records, and documents of the CONSULTANT, insofar as they relate this Agreement, shall be maintained for a period of three (3) years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State agency or the Comptroller of the Treasury, or their duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.
8. No person on the grounds of handicap, race, color, religion, sex, or national origin will be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement, or in the employment practices of the CONSULTANT. The CONSULTANT shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notices on non-discrimination.
9. Prohibition of Illegal Immigrants
  - a. 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 Agreement to supply goods or services to the State of Tennessee, shall be a material provision of this Agreement, a breach of which shall be grounds for monetary and other penalties, including termination of this Agreement.
  - b. The Consultant hereby attests, certifies, warrants, and assures that the Consultant shall not knowingly utilize the services of an illegal immigrant in the performance of this Agreement and shall not knowingly utilize the services of any sub-Agreement or consultant who will utilize the services of any illegal immigrant in the performance of this Agreement. The Consultant shall affirm this attestation, in writing, by his signature on this Agreement.
  - c. The Consultant 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 provides for the prohibition of a Consultant from any sub-Agreement with, or submitting an offer, proposal, or bid to Agreement with the State of Tennessee to supply goods or services for a period of one year after a Consultant is discovered to have knowingly used the services of illegal immigrants during the performance of this Agreement.
  - d. For purposes of this Agreement, "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 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 Agreement.
10. The CONSULTANT shall maintain insurance coverage with the limits set forth below. CONSULTANT's certificates of insurance, in a form acceptable to the STATE, shall be provided to the STATE before the date of this Agreement and thereafter upon written request. The certificate of insurance required by this paragraph shall contain a provision requiring notice of cancellation to the STATE.
  - a. Commercial General Liability

Each Occurrence \$1,000,000  
Aggregate \$1,000,000

- b. Commercial Automobile Liability  
Any Auto – Each Accident, Combined Single Limit \$1,000,000
- c. Workers' Compensation as required by statute, including employer's liability with limits of:  
Each Accident \$ 100,000  
Disease, each employee \$ 100,000  
Disease, policy limits \$ 500,000
- d. Professional Liability Insurance  
Each Claim \$1,000,000  
Annual Aggregate \$1,000,000

- 11. The CONSULTANT agrees to pay all taxes incurred in performance of this Agreement.
- 12. The STATE shall have no liability except as specifically provided in this Agreement.
- 13. The CONSULTANT shall comply with all applicable Federal and State laws and regulations in the performance of this Agreement.
- 14. This Agreement shall be governed by laws of the State of Tennessee.

This Agreement is entered into on this the \_\_\_\_ day of \_\_\_\_\_, 2018.

**CONSULTANT: (Designer Firm Name)**

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
(Name), Principal

**(LGI/Owner Name):**

BY: \_\_\_\_\_  
(Name), President  
Date: \_\_\_\_\_

APPROVED: \_\_\_\_\_  
(Name)  
General Counsel

APPROVED: \_\_\_\_\_  
(Name), (Title)  
(Finance Division Name)

APPROVED: \_\_\_\_\_  
(Head of SPA Name), (Title)  
(Department)

**STATE ARCHITECT:**

APPROVED: \_\_\_\_\_  
Ann McGauran, State Architect