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DESIGN-BUILD

**RFP CONTRACT BOOK 2
CONTRACT**

TENNESSEE DEPARTMENT OF TRANSPORTATION

I-40

Widening from Central Pike to East of SR-109

Wilson County- TENNESSEE

PROJECT IDENTIFICATION NUMBER (PIN 114169.00)

PROJECT NUMBER IM-40-5(140); 95100-0105-44

DB CONTRACT NO. DB1101



September 16, 2011

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DESIGN-BUILD CONTRACT

THIS Design-Build Contract is entered into by and between the State of Tennessee, acting by and through the Department of Transportation (the “Department”) and _____ (the “Design Builder”), (collectively, the “Parties”) as of the Effective Date of the Contract.

RECITALS

WHEREAS, the Department requires the widening for the project known as the I-40 Widening from West of SR-171 to East of SR-109, Wilson County- TENNESSEE Design Build Project (the “Project”) more particularly described in **Contract Book 1 (ITDB - Instructions to Design Builders)** and **Contract Book 3 (Project Specific Information)**. The Project will be funded with state and federal dollars, thereby requiring that the Design-Builders adhere to all pertinent state, federal, and local requirements.

and

WHEREAS, the parties intend for the Contract to be a lump-sum Design-Build contract obligating the Design-Builder to perform all work necessary to complete the Project by the deadlines specified herein, for the Contract Amount, subject only to certain specified limited exceptions. To allow the Department to budget for the Project and to reduce the risk of cost overruns, the Contract includes restrictions affecting Contractor’s ability to make claims for an increase to the Contract Amount or an extension of the Completion Deadlines. 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 Department requires a Design-Builder 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. If the Design Builder fails to complete the Project within the time limitations set forth in the Contract, then the Department will suffer substantial losses and damages. The Contract therefore provides that a deduction shall be made from monies due the Design Builder, not as a penalty, but as Liquidated Damages, as stated in **Contract Book 3 (Project Specific Information)**, if such completion is delayed;

and

WHEREAS, Design-Builder 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;

WHEREAS, the Department is authorized under Section 54-1-119 of the Tennessee Code Annotated to enter into this Contract;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the Department and the Design Builder agree as follows:

AGREEMENT

A. GENERAL CONTRACT PROVISIONS, DEFINED TERMS AND GENERAL SCOPE OF WORK

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 or representations and warranties of the Parties.

2. *CONTRACT DOCUMENTS*

The Contract Documents, made a part hereof for all purposes as if fully set forth, are intended to reflect the complete understanding of the Parties concerning their respective rights and responsibilities under the Contract.

3. *EFFECTIVE DATE*

The Contract shall become effective on the date on which each Party has signed this Contract and all approvals have been obtained (the “Effective Date”).

4. *THE CONTRACT*

The Contract, which includes this **Contract Book 2 (Design-Build Contract)** and all other Contract Documents, forms the entire agreement between the Parties.

5. *DEFINED TERMS AND ACRONYMS*

Defined terms and acronyms utilized in **Contract Book 1 (ITDB - Instructions to Design Builders)**, this **Contract Book 2 (Design-Build Contract)**, **Contract Book 3 (Project Specific Information)** and in the other Contract Documents are either set forth in **DB Standard Guidance**, or defined in the text accompanying the term.

6. *APPLICABLE VERSION OF LAW OR STANDARD*

All work shall be performed pursuant to the applicable law and in accordance with the standards in effect at the time of the RFP issuance, including addenda, unless otherwise specified in the Contract or by amendment.

7. MINIMUM CONTRACT REQUIREMENTS

a. DEPARTMENT -SUPPLIED

Among the Contract, the Department has mandated certain Contract requirements from which the Design-Builder may not deviate in the scope of the work, except as instructed by the Department. The Department has also established certain minimum Contract requirements that set a minimum standard of performance or quality that the Design Builder must meet or exceed in performance of the Contract.

b. DESIGN-BUILDER-SUPPLIED

Design-Builder has established certain minimum Contract requirements located in *Exhibit A* (Design Builder's Technical Proposal), consisting of those provisions of its Proposal that meet or exceed minimum Contract requirements established by the Department and upon which the Department has relied in awarding the Contract to the Design Builder.

Any non-standard Department specification or provision shall be considered the Design Builder-supplied Contract provisions and requires Department Review and Approval which will obligate the Design Builder within this the Contract.

c. MANAGEMENT PLANS

A Transportation Management Plan is required, pursuant to the **DB Standard Guidance**, Chapter 1. However, a Quality Plan, Safety Plan, Environmental Plan or other management plans, pursuant to the **DB Standard Guidance**, Chapter 1, will not have to be submitted under this Contract. This should not prevent the Design Builder from creating these plans for his own use, if desired.

8. RIGHT- OF-WAY/UTILITY COORDINATION SERVICES

Right-of Way (ROW) and Utility Coordination and acquiring services are expected under this Contract. See **Contract Book 3 (Project Specific Information)** for information on ROW services, ROW acquisition and ROW acquisition cost and/or Utility Coordination services required for the Design Builder's Technical Proposal.

9. DESIGN SERVICES

The design services required under the Contract shall include, at a minimum, each of the following:

- Performance of all design services, including but not limited to roadway design, pavement design, geotechnical design, environmental design, drainage design, structural design, hydraulic/hydrologic design, traffic control and survey;

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- Performance of all other engineering design services required under the Contract and/or otherwise necessary to complete the work in accordance with all Contract requirements; and
- All Design Documents and Design Reviews shall be provided by the Design Builder and performed in accordance with the Design Review schedule established in the Critical Path Method (CPM) Schedule, and in accordance with all Contract requirements.

All design services to be performed under the Contract are appurtenant to construction services being provided by the Design Builder.

a. LICENSE REQUIREMENTS; STANDARD OF CARE

Whether the Design Builder is a design professional, has a design professional as a member or on staff, or will otherwise provide an outside source to perform the services of a design professional, all design services (whether constituting the practice of architecture, the practice of engineering, the practice of surveying, or the practice of other design services) referred to in this Contract shall be provided by duly-licensed and competent design professionals employed or otherwise retained by the Design Builder. The design professionals currently designated to provide such design services are listed in Subsection 3.4. All design services shall be performed by a design professional of the appropriate professional discipline in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional discipline under similar circumstances, taking into consideration the contemporary state of the practice and the project conditions.

b. DESIGN DOCUMENTS

The Design Builder shall generate and provide to the Department all Design Documents. The Design Builder shall make a comprehensive design check and Design Review at the following five (5) stages of design development, stated in more detail within **DB Standard Guidance**, Chapter 5:

- Definitive Design;
- Interim designs;
- Readiness-for-Construction Plans, Specification and quantity estimates;
- Working Plans;
- As Built Plans.

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1) READINESS-FOR-CONSTRUCTION SPECIFICATIONS

PLANS AND

Upon completion of the Definitive Design Reviews, Working Plan Design Reviews, Interim Design Reviews (if any), and Readiness-for-Construction Design Reviews, as specified in the **DB Standard Guidance**, Chapter 5, the Design Builder shall finalize the Readiness-for-Construction Plans and Specifications. In performing these services, the Design Builder shall meet the following requirements:

- Readiness-for-Construction Plans and Specifications shall comply with all applicable Laws and all Contract requirements.
- Readiness-for-Construction Plans and Specifications shall be a complete, fully coordinated, integrated package, without any significant modifications or further clarifications required.
- The Design Builder shall file all documents required for the approval of Authorities having jurisdiction over the Project, shall obtain all necessary permits not obtained by the Department, and shall pay for all associated fees, including application, filing, plan review, and appeal fees.
- The Design Builder shall provide the Department with written certification and all Design Documents required for the Readiness-for-Construction certification, in accordance with **DB Standard Guidance**, Chapter 5.
- The Design Builder shall submit to the Department all documentation and Design Quality Records required under **DB Standard Guidance**, Chapter 5.
- The Design Builder shall submit to the Department As-Built Plans and the Design Builder Specifications, compiled and organized in accordance with all Contract requirements that incorporate all changes in the design and construction of the Project.
- The Design Builder shall prepare and deliver to the Department all As-Built Plans, the Design Builder Specifications, and other Design Documents, information, and data required under the Contract to be provided to the Department.

2) VALUE ENGINEERING COST PROPOSALS

During development of the Design Documents, the Design Builder and the Department may collaborate on identifying, evaluating and implementing value engineering cost proposal (VECP) options in accordance with **DB Standard Guidance** Chapter 2. The Design Builder's development of the Design Documents and completion of the Readiness-for-Construction

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Plans and Specifications shall not preclude further identification and implementation by the Design Builder and the Department of additional cost-reduction options during construction. VECPs adopted by the Department will be implemented through Change Orders pursuant to **DB Standard Guidance**, Chapter 2.

10. CONSTRUCTION SERVICES

The construction services required under the Contract shall include, at a minimum, each of the following:

- Performance of all construction services, including but not limited to construction and removal, if required, of temporary and/or permanent roadway, structures, and erosion prevention and sediment control, materials testing, signing, traffic control, paving and pavement markings;
- Protection of environmental resources, including plant and animal life and associated habitats; and
- Performance of all other construction services required under the Contract and/or otherwise necessary to complete the work in accordance with all Contract requirements

The Design Builder shall provide all necessary work to furnish to the Department complete, fully-functional road improvements specified in **DB Standard Guidance**, capable of being fully utilized for the purposes described in the Contract, and constructed in compliance with all Contract requirements. The Design Builder shall perform the construction services as follows:

- The Design Builder shall supervise and administer all construction activities in accordance with Contract requirements.
- In the event of the existence of any dispute between the Parties under the Contract, the Design Builder shall continue to perform in accordance with the Contract terms and seek resolution in accordance with **DB Standard Guidance**, Chapter 2.
- The construction work shall be of good quality, free from faults and defects, and in conformance with all Contract requirements. At its own expense, the Design Builder shall correct construction work that does not conform to these requirements.
- The Design Builder shall utilize new materials and equipment in the work, unless otherwise specified in the Contract.
- The Design Builder shall pay all taxes, fees, and costs associated with the acquisition of tools, equipment, materials, and the performance of the work, in accordance with **DB Standard Guidance**.
- The Design Builder shall comply with all applicable laws.

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- The Design Builder shall keep the work location and its vicinity free from accumulation of waste materials and rubbish caused by the Design Builder's operations.
- The Design Builder shall notify the Department when the work or an agreed upon portion thereof has been completed, in accordance with **DB Standard Guidance**, Chapter 7.
- The Design Builder shall maintain, on the work location, a copy of all approved Management Plans, environmental permits, approved design documents, project records and the entire Contract and any other document required in accordance with **DB Standard Guidance**, Chapter 7.
- As the Project constitutes "Highway construction" utilizing Federal funds, the Design-Builder shall comply with any Federal requirements and appropriate Department Special Provisions as provided by **DB Standard Guidance** and **Contract Book 3 (Project Specific Information)**, respectively. Consistent with **DB Standard Guidance**, Chapter 2 the Design Builder shall be fully responsible for initiating, maintaining, and supervising safety precautions and programs in connection with the work, including but not limited to, taking reasonable precautions to ensure the safety of, and prevention of damage, injury, or loss to:
 - Employees of the Department present on or in the vicinity of a work location, employees of the Design Builder and other persons performing work on or in the vicinity of a work location, and other persons, including the traveling public, who may be affected;
 - Materials and equipment to be incorporated into the Project;
 - Portions of the Project under construction or completed; and
 - Other property within or adjacent to a work location.
- The Design Builder shall be liable for damage to or loss of property at work locations and on private property affected by the Design Builder's activities, pursuant to **DB Standard Guidance**, Chapter 2. This subparagraph shall in no way affect the applicability or coverage of the bonds and insurance required under Section 7.0 of this Contract.
- The Design Builder shall deliver to the Department all notices regarding completion of the work pursuant to **DB Standard Guidance**, Chapter 7.
- The Design Builder shall perform all other construction work required to complete the Project in conformance with all Contract requirements, including Legal Requirements.

11. QUALITY MANAGEMENT SERVICES

Quality Management services will include performance, at a minimum, of all activities and obligations, including preparation of all documentation, described in

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DB Standard Guidance, Chapter 2, and as otherwise necessary to ensure that the work is performed in accordance with all Contract requirements.

12. **PROJECT MANAGEMENT SERVICES**

Project management services shall be integrated with the design services and construction services described herein and in the Contract, and shall include, at a minimum, the following:

- Construction management;
- Contract management;
- Safety management; and
- Traffic management.

B. **GENERAL STANDARDS FOR PERFORMANCE OF THE WORK**

1. **GOOD FAITH**

The Design Builder shall provide and perform all design services and construction services in good faith and as expeditiously as is consistent with the applicable standards of skill and care ordinarily exercised by members of the profession under similar conditions and circumstances, and the orderly prosecution of the work.

2. **PERFORMANCE STANDARDS**

Where specific performance standards for any aspect of the work have been established in the Department Special Provisions, pursuant to **Contract Book 3 (Project Specific Information)**, the work shall be performed so as to meet or exceed such standards.

3. **CRITICAL PATH METHOD (CPM) SCHEDULE**

The CPM Schedule establishes the schedule and deadlines for Contract performance, with which the Design Builder must comply. The CPM Schedule, as it may be modified during the course of the Project pursuant to the **DB Standard Guidance**, shall anticipate and accommodate such periods of time shown in **Contract Book 1 (ITDB - Instructions to Design Builders)** as may be required for the Department's review of Design Documents, and for approval by Authorities having jurisdiction over the Project of any required submissions, including but not limited to, applications for permits and environmental impact evaluations. Since time is of the essence in the Design Builder's successful completion of its assignment, the Design Builder agrees to begin work on each work location

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immediately after receiving authorization from the Department to proceed with its work efforts.

4. REVIEW AND COMMENT, OR ACCEPTANCE

The Department’s consideration, Review and Comment, or Acceptance of any matters, or the Department’s authorization of any action, will not be deemed or construed as relieving the Design Builder of its sole responsibility for, and its complete and exclusive control over the means, methods, sequences and techniques for, performance of the work in accordance with the terms of the Contract.

5. EXTRA WORK TO BE PROVIDED BY THE DESIGN-BUILDER

The Design Builder shall perform Extra Work in accordance with **DB Standard Guidance**, Chapter 2.

C. RELATIONSHIP AND ROLES OF THE PARTIES

1. INDEPENDENT ENTITY

The Design Builder is an independent entity and not an officer, employee, or agent of the Department.

2. DEPARTMENT REPRESENTATIVE AND CONTACT INFORMATION

The Department’s representative for this Project is

Ms. Lia Obaid, P.E.
CONSTRUCTION DIVISION REPRESENTATIVE
Address: TENNESSEE DEPARTMENT OF TRANSPORTATION
505 DEADERICK STREET, SUITE 700
NASHVILLE, TN 37243

E-mail: lia.obaid@tn.gov

Telephone Number: 615-532-7522 **Fax Number:** 615-741-0782

3. DESIGN-BUILDER REPRESENTATIVE

The Design Builder’s representative for this Project is

Design Builder’s Project Manager

Address: _____



E-mail: _____

Telephone Number: _____

Fax Number: _____

4. KEY PERSONNEL AND DESIGN PROFESSIONALS

The Design Builder’s Key Personnel, Design Professionals, shall perform the functions established under the Contract for the duration of the Contract and are listed below.

a. KEY PERSONNEL

Design Builder’s Project Management Personnel (Level “1” Personnel) shall consist of the following:

- Project Manager: _____
- Construction Quality Manager: _____
- Design Manager: _____
- Traffic Engineering Manager: _____
- Traffic Control Supervisor: _____
- Environmental Compliance Manager: _____

b. DESIGN PROFESSIONALS

The Design Builder’s design professionals (Level “2” Personnel) shall consist of the following:

- Utilities Design Engineering/Coordination Supervisor: _____
- Design Lead Engineer - Structures: _____
- Design Lead Engineer - Roadway: _____
- Erosion Prevention/Sediment Control Inspector: _____

5. SUBSTITUTION OF KEY PERSONNEL AND/OR DESIGN PROFESSIONALS

The Parties agree that each Key Personnel, Design Professional and Subcontractor is unique, and that the Department has relied upon their qualifications in selecting

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the Design Builder to perform the Contract. Therefore, the Design Builder shall not replace any Key Personnel or Design Professional during the term of the Contract. Notwithstanding the foregoing, in those limited circumstances in which the Department elects to consider substitutions, the process shall be governed by the provisions of **DB Standard Guidance**, Chapter 2. In the event the Department approves a substitution request, the Department retains the right to strictly enforce this Section C.5 in the event of future requests for substitution. No individual substitution approval or pattern of substitution approvals shall constitute a waiver of this requirement. Should the Department, in its sole discretion, elect to authorize a substitution, such authorization shall not relieve the Design-Builder of its sole responsibility under the Contract to complete all work and deliver the Project in accordance with all Contract requirements.

D. DATE OF COMMENCEMENT AND COMPLETION OF SERVICES

1. TIME FOR PERFORMANCE

The Contract shall take effect on the Effective Date and shall be performed by the Parties according to its terms, unless earlier terminated, until Final Acceptance by the Department in accordance with **DB Standard Guidance**, Chapter 7.

2. COMMENCEMENT OF SERVICES

The Design Builder is authorized to commence the work within the Contract for post award submittals pursuant to **DB Standard Guidance**, Chapter 3. The Design Builder shall not perform any services beyond post award submittal until the issuance of first Notice to Proceed (NTP) and for each subsequent phase requiring a Review and Approval NTP.

3. COMPLETION DATES

The Design Builder shall complete all work to be done under the Contract, except for plant establishment, not later than **October 30, 2014**.

The Design Builder shall specify the number of calendar days for completion of the project within their price proposal. The number of calendar days specified by the Design Builder in their price proposal will be placed in the Contract above prior to execution of this design build contract.

E. COMPENSATION

1. CONTRACT AMOUNT

The Department agrees to compensate the Design Builder for all work performed under the Contract for a fixed price of \$_____ (the “Contract Amount”). The Contract Amount includes the entire cost of completing the Project in accordance with all Contract requirements as contemplated by the Parties under the Contract, and further includes all contingencies and the Design Builder’s overhead and profit. The Contract Amount shall be payable in accordance with **DB Standard Guidance**, Chapter 9.

2. PROGRESS PAYMENTS

The Department shall make progress payments to the Design Builder in accordance with **DB Standard Guidance**, Chapter 9. Progress payments shall be based upon the Design Builder’s Schedule of Items submitted with the Price Proposal, which shall include the cost of all work. The Department’s payment of progress payments shall not be deemed by either Party to constitute Acceptance or Approval of any Pay Item covered by such payment, or a waiver of a claim or demand for repair of any defects therein.

3. ADJUSTMENTS TO THE CONTRACT AMOUNT

The Contract Amount shall only be adjusted through issuance of properly-authorized Change Orders.

4. PAYMENTS FOR EXTRA WORK

The Department will make payments for Extra Work in accordance with the provisions of **DB Standard Guidance**, Chapter 2.

5. DEDUCTIONS FROM MONIES DUE

The Department may deduct from monies due or to become due the Design-Builder, as follows:

- Amounts representing price adjustments authorized under the provisions of the **DB Standard Guidance**;
- Amounts representing recoupment of damages, including but not limited to Liquidated Damages as stated in **Contract Book 3 (Project Specific Information)**;
- Amounts assessed by Authorities (e.g., fines and penalties) for which the Design-Builder is responsible under the terms or the Contract or by law;

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- Amounts the Department is compelled by court order or other legal mandate to withhold and/or tender to Authorities or third parties; and
- Any other amounts authorized under the Contract or by law to be deducted.

F. CHANGES IN THE WORK

Changed work and Extra Work shall be authorized by the Department only under the circumstances set forth in, and pursuant to the terms of, **DB Standard Guidance**, Chapter 1. The Design Builder shall not begin performance of any Changed work or Extra Work until the Department has issued a properly-authorized Change Order, and the Design Builder shall perform all such work strictly in accordance with the terms of the Change Order.

G. INSURANCE AND BONDING REQUIREMENTS

1. INSURANCE REQUIREMENTS

During the term of the Contract, the Design Builder shall maintain in full force, at its own expense, from insurers holding a current certificate of authority to transact the business of insurance in the State of Tennessee, all of the insurance coverage's required under **DB Standard Guidance**, Chapter 2.

The Design Builder, being an independent contractor, agrees to maintain errors and omissions insurance in such an amount (\$ **minimum**) and form as are agreeable to the Department.

2. BONDING REQUIREMENTS

During the term of the Contract, the Design Builder shall maintain in full force, at its own expense and from Sureties licensed to do business in Tennessee, Performance and Payment Bond in the full Contract Amount. The Parties understand and agree that the obligation of the Design Builder's Surety for the faithful performance of the Contract shall include not only all construction, but also the performance of all design services under the Contract.

3. INDEMNIFICATION

The Design Builder shall assume full responsibility for the quality of the Design Builder's work and its conformance with all applicable law, rules, regulations and orders governing said work. The Design Builder shall hold harmless and indemnify the Department for all claims and damages which result from the failure of the Design Builder to perform its duties in conformance with the reasonable standard of care within the State of Tennessee. Said indemnification shall include, but not be limited to, costs for the redesign of plans and the preparations of new specifications as well as the costs for repairs to the construction work itself. This requirement of

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indemnification shall be a continuing obligation of the Design-Builder and shall survive the termination of the Contract regardless of cause.

H. OWNERSHIP AND USE OF WORK PRODUCT OF THE DESIGN-BUILDER

All work product of the Design Builder arising from performance of the Contract shall be the exclusive property of the Department, as more particularly provided for under **DB Standard Guidance**.

Plans, specifications and any maps prepared or obtained under the terms of this Contract shall be delivered to and become the property of the Department pursuant to **DB Standard Guidance**, Chapter 5. Basic design notes and sketches, charts, computations, all original drawings, and other data prepared or obtained under this Contract shall be made available, upon request, to the Department without restriction or limitation of their use.

I. PROJECT RECORDS

1. FINANCIAL AND OTHER PROJECT RECORDS

The Design Builder shall maintain complete Project Records as described in **DB Standard Guidance**, Chapters 1 and 7, in the manner required under the terms of the Contract. The Design Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management of the Project. The accounting and control systems shall be satisfactory to the Department.

2. RECORD RETENTION PERIOD

The Design Builder shall retain and preserve all Project Records for a period as stated in **DB Standard Guidance**, Chapter 7 after final payment or for such longer period as may be required by law (the "Record Retention Period").

3. ACCESS TO RECORDS

The Department, the Department's representatives and FHWA shall be afforded reasonable and regular access to the Project Records for the duration of the Contract and the Record Retention Period. This requirement to make Project Records available to the Department shall be a continuing obligation of the Design-Builder and shall survive the termination of the Contract regardless of cause.

4. SUBCONTRACT RECORD RETENTION REQUIREMENTS

The Design Builder shall require each Subcontractor to retain its Project Records for the Record Retention Period, and to provide equivalent access to Project

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Records to the Department, the Department's representatives and FHWA. The Design Builder shall require each Subcontractor to include in lower-tier subcontracts the same Project Record retention and access requirements.

5. LOCATION

The Design Builder shall maintain all Project Records at the locations required under the terms of the Contract for the duration of the Contract. Subsequent to Contract completion, the Project Records shall be maintained for the Record Retention Period with suitable security, protection against damage and casualty loss, and access to the Department.

J. TERMINATION OR SUSPENSION

1. TERMINATION FOR CONVENIENCE AND NO FAULT; PAYMENT

The Contract may be terminated for convenience by the Department in accordance with Department Standard Specifications, as amended. In such case, the Department will make payment in accordance with **DB Standard Guidance**, Chapter 9. However, the amount to be paid to the Design Builder shall in no event exceed the Contract Amount.

2. TERMINATION FOR CAUSE; AMOUNTS PAYABLE

The Contract may be terminated by the Department for default in accordance with Department Standard Specifications, as amended, and **DB Standard Guidance**, Chapter 9. In addition to the acts listed in the above documents the following shall also be considered defaults for which the Contract may be terminated:

- The Design Builder or its Design Professionals no longer hold the licenses or certificates required to perform the work or any portion thereof;
- The Design Builder so fails to perform any agreed-upon portion of the work or Contract item or applicable standard of care as to materially affect the Design Builder's performance under the Contract in accordance with its terms, and such breach, default or failure is not cured within the requirements of **DB Standard Guidance**; or
- The Design Builder made knowing or reckless misrepresentations, concealed facts, or failed to disclose information in Design Builder'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.

In case of termination for cause, the Department will make payment consistent with the payment provisions included in **DB Standard Guidance** and at the

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Department's option, including payment for materials left on hand, in accordance with Department Standard Specifications, as amended.

3. *CONTRACT NOTICE OF CONTRACT TERMINATION*

The Department may terminate the Contract, in whole or in part, immediately upon notice to the Design Builder, or at such later date as the Department may establish in such notice, in accordance with Department Standard Specifications, as amended.

4. *QUALITY OF THE WORK*

In the event of the Department's termination of the Contract, regardless of reason, the Design Builder shall remain responsible for the quality of the work performed through the date of termination.

5. *LITIGATION*

In the event of litigation instigated by the Design Builder in accordance with the Contract or by the Department for breach of contract or fraudulent inducement, the Department may pursue both recoupment and set-off in addition to its other available remedies.

K. ENUMERATION OF CONTRACT

The Contract includes the following:

- 1. *CONTRACT BOOK 1 (INSTRUCTIONS TO DESIGN-BUILDERS - ITDB);***
- 2. *CONTRACT BOOK 2 (DESIGN-BUILD CONTRACT);***
- 3. *CONTRACT BOOK 3 (PROJECT SPECIFIC INFORMATION);***
- 4. *DB STANDARD GUIDANCE AND ADDENDUM;***
- 5. *THE DEPARTMENT STANDARD SPECIFICATIONS;***
- 6. *THE DEPARTMENT SUPPLEMENTAL SPECIFICATIONS;***
- 7. *THE DEPARTMENT DESIGN GUIDELINES, AND ADDENDUM;***
- 8. *THE DEPARTMENT CONSTRUCTION CIRCULAR LETTERS;***
- 9. *THE DEPARTMENT STANDARD DRAWINGS;***
- 10. *THE DEPARTMENT MATERIAL AND TEST STANDARD OPERATING PROCEDURES;***
- 11. *EXHIBIT A (TECHNICAL PROPOSAL);***
- 12. *CHANGE ORDERS;***
- 13. *FORCE ACCOUNT WORK ORDERS;***
- 14. *WRITTEN ORDERS AND AUTHORIZATIONS ISSUED BY THE DEPARTMENT;***

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- 15. ALL OTHER PROGRAMMATIC PLANS OR ANY OTHER DOCUMENTS; IN ANY FORM, REQUIRED TO BE SUBMITTED TO THE DEPARTMENT PURSUANT TO THE TERMS OF APPLICABLE CONTRACT.**
- 16. ALL MATERIAL INCLUDED BY REFERENCE IN ANY OF THE ABOVE DOCUMENTS.**

L. ORDER OF PRECEDENCE

All Contract Documents are intended to be complementary. Conflicts, if any, will be resolved utilizing the following descending order of precedence.

- 1. CONTRACT BOOK 3 (PROJECT SPECIFIC INFORMATION) AND ADDENDA;**
- 2. EXHIBIT A (TECHNICAL PROPOSAL);**
- 3. CONTRACT BOOK 2 (DESIGN-BUILD CONTRACT);**
- 4. CONTRACT BOOK 1 (INSTRUCTIONS TO DESIGN-BUILDERS - ITDB);**
- 5. THE DEPARTMENT SUPPLEMENTAL SPECIFICATIONS;**
- 6. THE DEPARTMENT CONSTRUCTION CIRCULAR LETTERS;**
- 7. THE DEPARTMENT STANDARD SPECIFICATIONS;**
- 8. THE DEPARTMENT DESIGN GUIDELINES AND ADDENDUM;**
- 9. THE DEPARTMENT STANDARD DRAWINGS;**
- 10. DB STANDARD GUIDANCE AND ADDENDUM;**
- 11. ALL OTHER PROGRAMMATIC PLANS OR ANY OTHER CONTRACT DOCUMENTS;**
- 12. ALL MATERIAL INCLUDED BY REFERENCE IN ANY OF THE ABOVE DOCUMENTS.**

M. DESIGN-BUILDER CERTIFICATIONS AND DISCLOSURES

1. NONDISCRIMINATION

The Design-Builder shall follow the nondiscrimination provisions as provided in this **Contract Book 2 (Design-Build Contract)**.

2. DBE COMPLIANCE

The Design-Builder shall follow the DBE provisions as provided in this **Contract Book 2 (Design-Build Contract)**. The Design Builder shall comply with the Department DBE requirements in the **DB Standard Guidance**, and shall require that all Subcontractors so comply. The Design Builder shall include the Department DBE requirements in all subcontracts.

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3. *ILLEGAL IMMIGRANTS*

The Design-Builder shall follow the Illegal Immigrant provisions as provided in this **Contract Book 2 (Design-Build Contract)**.

4. *CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS*

The Design-Builder shall follow the debarment, suspension, and other responsibility matters provisions as provided in this **Contract Book 2 (Design Build Contract)**.

5. *CERTIFICATION FOR GRANTS, LOANS, AND COOPERATIVE AGREEMENTS.*

The Design-Builder shall follow the provisions as provided in this **Contract Book 2 (Design-Build Contract)**.

The Design Builder 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 Design Builder shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

6. *GOALS AND TARGETS*

There is a DBE Utilization Goal of **8%** for this Project. If a goal is stated, the Design-Builder shall follow the DBE provisions as provided in **Contract Book 3 (Project Specific Information)**.

N. MISCELLANEOUS PROVISIONS

1. *EMPLOYMENT OF DEPARTMENT WORKERS*

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

2. *COVENANT AGAINST CONTINGENT FEES*

The Design Builder warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Design Builder to

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solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Design Builder, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the Department shall have the right to deduct from the Contract Amount or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

3. ENERGY POLICY AND CONSERVATION ACT

Under this Contract, the Design Builder 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).

4. ADDITIONAL EMPLOYMENT REGULATIONS

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

5. COPYRIGHTING

The Design Builder shall be prohibited from copyrighting any papers, reports, forms or other material which is a part of any work under this Contract without written approval from the Department. Publication rights to any documents produced are reserved by the Department.

6. GOVERNING LAW; JURISDICTION; VENUE

The Design Builder is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the Department and Federal Government regarding fortifications, military and naval establishments and other areas. The Design Builder shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Contract.

This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Design Builder agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may

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arise under this Contract. The Design Builder acknowledges and agrees that any rights or claims against the Department or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under TCA § 9-8-101 through 9-8-407.

7. CONTRACT INTERPRETATION

Notwithstanding anything in the Contract to the contrary, no field explanations or interpretations provided by the Department at any meetings, and no comments by the Department on Design Documents or Construction Documents, shall be deemed, construed or interpreted to (a) amend, supersede or alter the terms, requirements, limitations or meaning of any Contract Document or (b) release or relieve the Design Builder from full responsibility for the design of the Project in accordance with the Contract. However, written interpretive engineering decisions from the designated Department contact person(s) pursuant to the Contract may be relied upon to provide information, and interpretations of ambiguous or uncertain requirements set forth in the Contract.

8. NOTICES

Notices to be given hereunder shall be given in writing by personal delivery, facsimile, e-mailing or mailing the same, postage prepaid, to the Design Builder or the Department at the addresses or numbers set forth in Sections C.2 and C.3, or as either Party may hereafter indicate pursuant to this Section. Any notice delivered by facsimile and email shall be deemed to be received when confirmation of successful transmission is generated by the transmitting machine. Any notice so mailed, personally delivered, facsimile or e-mail transmission shall be the sole responsibility of the Design Builder to track and confirm receipt by the Department and shall be confirmed by telephone notice to the Department for the Project. Any notice shall be effective as to the Design Builder upon delivery into the possession of one of the Design Builder's designated management personnel, and as to the Department, upon delivery to the Department. 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.

9. DISCLOSURE OF TAX IDENTIFICATION NUMBER

The Design-Builder 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 State, Federal and local tax law.

10. SEVERABILITY

The Parties agree that if any term or provision of the 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.

11. 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.

12. MEDIA CONTACTS; CONFIDENTIALITY

Unless otherwise specifically authorized in writing, the Design Builder 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. The Design Builder shall require this clause within all Subcontractors agreements.

13. ORGANIZATIONAL CONFLICTS OF INTEREST

The Design Builder shall identify all relevant facts relating to past, present, or planned interest(s) of the Design-Builder’s (including the Major Participants, proposed Design Builder members, and their respective chief executives, directors, and Key Personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this Project.

The Design Builder shall disclose:

- a. any current contractual relationships with the Department (by identifying the Department contract number and project manager);
- b. present or planned contractual or employment relationships with any current Department employee;
- c. any current relationships between the Major Participants, Key Personnel, and/or Design Professionals of the Design Builder on other Department projects; and
- d. any other circumstances that might be considered to create a financial interest in the contract for the Project by any current Department employee if the Design Builder is awarded the contract.

The Design Builder must also disclose any current contractual relationships where the Design Builder is a joint venture. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

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For any fact, relationship, or circumstance disclosed in this Section 14.13, the Design Builder must identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest.

In cases where Major Participants on different Design-Builder organizations belong to the same parent company, each Design-Builder must describe how the participants would avoid conflicts of interest through the qualification and proposal phases of the Project. All Organizational Conflicts of Interest shall be addressed on Form COI.

14. THE DEPARTMENT'S INSURANCE

The State of Tennessee is self-insured and such insurance shall cover the Department's operations and activities under the Contract.

15. JOINT VENTURES AND PARTNERSHIPS

If the Design Builder is a joint venture or a partnership, each joint venture member or partner is executing this Contract on behalf of both itself and the Design Builder, and each joint venture member or partner and Design Builder shall be jointly and severally liable under this Contract.

16. MERGER CLAUSE

The Contract constitutes the entire Contract between the Parties on the subject matter addressed herein. The terms of this Contract cannot be waived or amended, in any manner whatsoever, except by written instrument signed by the Parties and containing all required State of Tennessee approvals. Any waiver, 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, regarding this Contract except as contained or incorporated by reference herein.

THIS CONTRACT is executed in three (3) original copies, of which one is to be delivered to the Design Builder, and the remainder to the Department.

The Design Builder's authorized representative, by his/her signature below, hereby acknowledges that he/she has read this Contract, understands it, and can affirm that the Design Builder agrees to be bound by its terms and conditions. This 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.

IN WITNESS WHEREOF, the Parties have executed this Contract, which shall be effective as of the Effective Date.

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DESIGN-BUILDER

NAME: _____

Company Officer Signature

Printed Name and Title

Date

**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

This Contract is accepted this _____ day of _____, _____, and
is effective on the _____ day of _____, _____.

John Schroer, Commissioner

John Reinbold, General Counsel
Approved as to Form and Legality

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APPENDIX A

SUPPLEMENTAL SPECIFICATIONS TO THE STANDARD SPECIFICATIONS

The following, revised as noted, incorporates the Supplemental Specifications by reference for bidding purposes and will be printed with the contract after award. These Supplemental Specifications may be obtained from the Department’s website:

www.tdot.state.tn.us/construction

Supplemental Specifications to The Standard Specifications Revision Date

Supplemental Specification to Section 100-----	12/13/10
Supplemental Specification to Section 200-----	05/05/10
Supplemental Specification to Section 300-----	01/05/10
Supplemental Specification to Section 400-----	05/09/11
Supplemental Specification to Section 500-----	12/13/10
Supplemental Specification to Section 600-----	05/09/11
Supplemental Specification to Section 700-----	12/13/10
Supplemental Specification to Section 800-----	05/05/10
Supplemental Specification to Section 900-----	12/13/10

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APPENDIX B

SPECIAL PROVISIONS

TITLE	SP#
EMPLOYING AND CONTRACTING WITH ILLEGAL IMMIGRANTS	102I
BUY AMERICAN REQUIREMENTS	106A
WATER QUALITY AND STORM WATER PERMITS	107FP
CONTRACTOR EMPLOYEE SAFETY AND HEALTH PROGRAM	107 SHP
PROJEET COMPLETION AND LIQUIDATED DAMAGES	108B
PAYMENT ADJUSTMENT FOR FUEL	109A
PRICE ADJUSTMENT FOR BITUMINOUS MATERIAL	109B
DRILLED CAISSONS	204DC
BITUMINOUS PLANT MIX PAVEMENTS (HOT MIX) ROADWAY DENSITY	407DEN
BITUMINOUS PLANT MIX MATERIAL TRANSFER DEVICE (MTD)	407G
ASPHALTIC CONCRETE SURFACE (HOT MIX)	411B
RETAINING WALLS	624
HIGHWAYS SIGNS, LUMINARIES, & TRAFFIC SIGNALS	700SIG
Uniform Police Officer	712PO
TRAFFIC CONTROL SUPERVISOR	712BA
SOUND-ABSORBING NOISE BARRIERES	718NB
TECHNICAL SPECIFICATION	725
EQUAL EMPLOYMENT OPPORTUNITY	1230
STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)	1231
NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)	1232
TRAINING PROGRAM REQUIREMENTS	1240
DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION	1246
DBE CONTRACT GOALS	1247

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TITLE	SP#
REQUIRED CONTRACT PROVISIONS (FEDERAL-AID CONSTRUCTION CONTRACTS)	FHWA 1273
TENNESSEE DEPARTMENT OF TRANSPORTATION MINIMUM WAGE SCALES FOR FEDERAL-AID CONSTRUCTION AND STATE FUNDED CONSTRUCTION	1320
FEDERAL WAGE RATES	AA-FED RATES
STATE WAGE RATES	AA-ST RATES

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APPENDIX C

CONTRACT BOOK 2 (DESIGN-BUILD CONTRACT) FORMS

FORM NAME	FORM DESIGNATION
ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE	FORM AT
CONFLICT OF INTEREST DISCLOSURE STATEMENT	FORM COI
CONTRACT PAYMENT AND PERFORMANCE BOND	FORM CP&PB
LOBBYING CERTIFICATE	FORM LC
TECHNICAL PROPOSAL SIGNATURE PAGE	FORM TPSP

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