

STATE OF TENNESSEE



PROGRESSIVE DESIGN-BUILD ("PDB") CONTRACT

THE CONTRACT IS BETWEEN:

DEPARTMENT:

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

And

DESIGN-BUILD TEAM:

[Enter Design-Build Team name]

THE PROJECT:

Coffee County Bridge Bundle
Coffee County, Tennessee
Project Identification Number (PIN): 134889.00 and 124047.00
State Project Number: 16S055-S1-005 and 16S002-S1-004

Contract Number: PD2501

The Design Consultant:

[Enter firm name]

The Department's Project Manager:

William Curtis
TDOT Project Manager
Region 2 Alternative Delivery
7512 Volkswagen Drive
Building A
Chattanooga, TN 37416
Phone: 423-510-1247

Class of Project:

This is a State Funded Project

PDB CONTRACT

TABLE OF CONTENTS

RECITALS	1
ARTICLE 1 — SERVICES OF THE DESIGN-BUILD TEAM	1
1.1 General Statement of Design-Build Team's Assignment	1
1.2 General Design Criteria.....	1
1.3 Field Surveys	2
1.4 Reserved	2
1.5 Detail of Plans Preparation Services.....	2
1.6 Schedules	4
ARTICLE 2 — STATE'S SERVICES	4
2.1 State-Provided Items.....	4
ARTICLE 3 — MISCELLANEOUS PROVISIONS	5
3.1 Ownership of Engineering Documents.....	5
3.2 Delays and Extensions.....	5
3.3 Progress.....	5
3.5 Disputes	5
3.6 General Compliance with Laws.....	5
3.7 Subletting, Assignment, or Transfer	6
3.8 Employment of State Workers	6
3.9 Covenant Against Contingent Fees	6
3.10 Engineer's Endorsement.....	6
3.11 Control.....	6
3.12 Access to Records	6
3.13 Title VI, Civil Rights Act of 1964	6
3.14 Effect of Existing Data on Amounts Payable.....	8
3.15 Equipment and Instrumentations	8
3.16 Equal Employment Opportunity	8
3.17 Environmental Protection Regulations	8
3.18 Energy Policy and Conservation Act.....	8
3.19 Additional Employment Regulations	8
3.20 Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions	8
3.21 Certification Regarding Use of Contract Funds For Lobbying.....	10
3.22 Standard of Care	11
3.23 Copyrighting	11

3.24	Subject to Funds Availability	11
3.25	Records	11
3.26	Prohibition of Illegal Immigrants	12
3.27	Independent Contractor	12
3.28	Patient Protection and Affordable Care Act	13
3.29	Governing Law	13
3.30	Severability.....	13
3.31	Strict Performance	13
3.32	Tennessee Department of Revenue Registration	13
3.33	Iran Divestment Act	13
3.34	Disadvantaged Business Enterprise Assurance	13
3.35	Prompt Pay Requirements	14
3.36	Conflicts of Interest	14
3.37	Boycott of Israel	14
ARTICLE 4 — PAYMENTS		14
4.1	Payment Terms.....	14
4.2	Additional Services.....	14
4.3	Change of Work	14
4.4	Abandonment of Project.....	15
4.5	Failure to Reconcile the GMP and Agree to a Construction Contract.....	15
4.6	Mode of Payment.....	15
4.7	Final Settlement	15
ATTACHMENT 1 SERVICES PROVIDED BY THE DESIGN-BUILD TEAM		17
ATTACHMENT 2 ATTESTATION REGARDING PERSONNEL USED IN CONTRACT/AGREEMENT PERFORMANCE		18
ATTACHMENT 3 FEE PERCENTAGE INCLUSIONS AND EXCLUSIONS		19

This Agreement, made and entered into as of this [enter day] day of the [enter month] month, [enter year], by and between [enter DESIGN-BUILD TEAM NAME], a [enter entity type] with an office located at [enter street, city, state zip], hereinafter referred to as the "DESIGN-BUILD TEAM", and THE STATE OF TENNESSEE, DEPARTMENT OF TRANSPORTATION, Nashville, Tennessee, hereinafter referred to as the "STATE".

RECITALS

WHEREAS, the STATE proposes bridge replacement and associated improvements for the SR-55 and SR-2 structures ("Project"); and,

WHEREAS, the STATE proposes under the authority of this Agreement No. [enter No.] to employ the DESIGN-BUILD TEAM, a firm adjudged by the STATE to be qualified, for the performance of the progressive design-build services described in Attachment 1 on the Project as identified above; and,

WHEREAS, the STATE is authorized under Section 4-3-2303 and Section 54-1-501 *et seq.* of the Tennessee Code Annotated to enter into this Agreement.

NOW, THEREFORE, in consideration of these premises and mutual covenants herein set forth, it is agreed by and between the parties hereto as follows:

ARTICLE 1 — SERVICES OF THE DESIGN-BUILD TEAM

1.1 General Statement of Design-Build Team's Assignment — The DESIGN-BUILD TEAM's assignment for this Project shall consist of providing requisite professional engineering, constructability, construction planning, scheduling, pricing, and other technical services and the assumption of the inherent responsibilities pertaining to the performance of said services detailed in Attachment 1 for the proposed facility. The DESIGN-BUILD TEAM's plans shall conform with current technical and safety standards and shall be accompanied by construction quantities and any needed supplemental specifications for the acquisition of all required rights-of-way and easements, utility coordination plans, and, if the STATE and DESIGN-BUILD TEAM reach an agreement on a guaranteed maximum price (GMP), services to complete the final design and construction of the Project.

The DESIGN-BUILD TEAM's plans and related preparation of said plans shall be governed by the requirements of the STATE's Design Guidelines, the STATE's Project Delivery Network, the STATE's *Progressive Design-Build Standard Guidance*, and this Agreement. The DESIGN-BUILD TEAM shall use the STATE's roadway design standards and design criteria as provided by the STATE for use on the proposed work. The DESIGN-BUILD TEAM shall prepare all plan sheets in accordance with the STATE'S standards and, if applicable, grouped into complete Project plans within the time limitations noted in Attachment 1. All of the DESIGN-BUILD TEAM's designs and plans shall conform with the standards of the STATE drafting practices with respect to desired craftsmanship and quality of work (also with regard to symbols, legends, notations, etc.) and shall be prepared in accordance with the STATE's current format requirements (including title sheet, abbreviation, and legend requirements) described in the STATE'S Standard Drawings and the STATE'S Design Guidelines. In addition, the DESIGN-BUILD TEAM shall use as general specifications the STATE'S current *Standard Specifications for Road and Bridge Construction*.

1.2 General Design Criteria — Throughout the duration of this Agreement, the DESIGN-BUILD TEAM shall endeavor to obtain the most feasible design with appropriate weight and consideration given to safety,

reasonable speeds, and construction costs. The hereinabove referred to design criteria are tentative and may be changed for any part or over any portion of the work at the discretion of the STATE.

1.3 Field Surveys — Under this Agreement the DESIGN-BUILD TEAM shall perform all field surveys necessary for the Project. The DESIGN-BUILD TEAM shall procure all field surveys and collect field information and data involved in any title searches to the extent necessary for determination of property ownership as required for proposed design purposes. The STATE will furnish rights-of-entry for those properties inaccessible to the DESIGN-BUILD TEAM during the procurement of the surveys. The DESIGN-BUILD TEAM's surveys under this Agreement shall be performed consistent with the requirements stipulated in the STATE's current "Survey Manual", unless otherwise directed by the STATE.

1.4 Reserved

1.5 Detail of Plans Preparation Services — For the compensation hereinafter provided, the DESIGN-BUILD TEAM agrees to design and furnish to the STATE all requisite plans for the Project at the time schedules set forth in Attachment 1, which plans shall be satisfactory and acceptable to the STATE and shall include:

1.5.1 Coordination of the Design-Build Team's Work with Others — The DESIGN-BUILD TEAM shall coordinate its work with that of the STATE with respect to all matters regarding the alignment, cross-section, and profile of the proposed improvements and other affected roads and highways, and also with other consultants and publicly and privately owned utilities or railroads insofar as the work of such agencies affects the herein described improvements. The coordination shall include the holding of the field/plan reviews, conferences, and inspections, which may be at the request of either the DESIGN-BUILD TEAM or the STATE and field/plan checks as requested by the STATE. The DESIGN-BUILD TEAM shall originate the minutes of these meetings for the STATE'S distribution to the participants of these proceedings.

1.5.2 Preparation of Plans — The DESIGN-BUILD TEAM shall furnish copies of the plans in *.pdf Adobe® Acrobat® format for use during field inspections or field review meetings. The DESIGN-BUILD TEAM shall make all needed revisions from the noted reviews.

1.5.3 Preparation of Plans Necessary to Acquire Right-Of-Way — As further described in Attachment 1, the plans the STATE will use to acquire right-of-way shall be complete and shall show all details necessary for acquiring rights-of-way and easements. All plans, including cross-sections, shall be in an electronic format using Adobe® Acrobat® *.pdf. The DESIGN-BUILD TEAM shall participate in a field/plan review of the plans and make revisions as directed by the STATE pursuant to plans acceptance.

1.5.4 Preparation of Plans to Use for Utility Coordination and Railroad Coordination — As further described in Attachment 1 as the Utility Coordination Plans and Railroad Coordination Plans, respectively, the plans used to coordinate with identified utility owners and railroad(s) shall be complete and show the present location and elevation of all overhead and underground utilities and railways, including pipelines and waterlines in public and private right-of-way affected by the Project. All utility owners and railroad(s) are to be identified on the plans. All plans, including cross-sections, shall be in an electronic format using Adobe® Acrobat® *.pdf. The DESIGN-BUILD TEAM shall participate in a field/plan review of the plans and make revisions as directed by the STATE pursuant to plans acceptance. The STATE will furnish to the railroad, private utility companies and officials of publicly owned utilities the necessary information pertaining to the proposed construction affecting the respective properties for use

in preparing plans for any necessary changes in utility or railroad facilities. The DESIGN-BUILD TEAM shall incorporate these plans from the utility owners and railroad(s) into its project plans.

1.5.5 Final Roadway Construction Documents/Plans and Specifications — If completed under this Agreement, the DESIGN-BUILD TEAM shall prepare and deliver final roadway construction documents/plans and specifications to the STATE as one (1) separate construction project within the time limitations listed in Attachment 1. All construction documents/plans, including cross-sections, shall be in an electronic format using Adobe® Acrobat® *.pdf. All plans sheets, except cross-sections, shall be digitally signed and certified by the responsible Professional Engineer in a method approved by the Tennessee Board of Architectural and Engineering Examiners using Adobe® CDS certificates. The DESIGN-BUILD TEAM shall use cross-sections when developing plans quantities, and the DESIGN-BUILD TEAM shall include these details in the plans. The format and coverage of information and data on the construction plans shall follow the policies prescribed in the STATE'S Design Guidelines and the Project Delivery Network.

1.5.6 Preparation of Special Provisions — The DESIGN-BUILD TEAM shall provide special provisions necessary to supplement the STATE's current *Standard Specifications for Road and Bridge Construction*, amendments thereto. The DESIGN-BUILD TEAM shall submit the special provisions using a layout size of 8-1/2" x 11" in Adobe® *.pdf format.

1.5.7 Preparation of Quantities — The DESIGN-BUILD TEAM shall calculate and check all pay item quantities needed for the Project's construction work. The DESIGN-BUILD TEAM shall include the quantities in the plans in the format and detail as directed by the STATE. The DESIGN-BUILD TEAM shall prepare an "Item Nos. & Quantities" form for the Project and submit this form and necessary backup at the time of each estimate or Guaranteed Maximum Price (GMP) Proposal submittal, as further detailed Paragraph 1.5.8 in this Article 1.

1.5.8 Construction Estimate/GMP Proposal Submittal — The DESIGN-BUILD TEAM shall prepare and submit its estimate or Guaranteed Maximum Price (GMP) Proposal for the Project, or portion thereof, along with the DESIGN-BUILD TEAM's open-book information. This information shall include backup data, all estimate/GMP proposal documents, design files, specifications, quotations, takeoffs, associated pricing assumptions, and other cost estimate information. The number of submittals and timing for each submittal are listed in Attachment 1 (or as agreed to with the STATE). The fee percentage agreed to for each estimate or Guaranteed Maximum Price (GMP) Proposal shall adhere to the inclusions and exclusions listed in Attachment 3.

1.5.9 Soils Engineering

1.5.9.1 The DESIGN-BUILD TEAM shall obtain the necessary borings and/or soundings and shall prepare an adequate, formal geological report(s) from data obtained by the same as further described in Attachment 1. The DESIGN-BUILD TEAM shall show the rock lines and special treatments on the roadway cross-section sheets following the guidance in the STATE's Design Guidelines and the Project Delivery Network.

1.5.9.2 The DESIGN-BUILD TEAM shall provide a qualified soils engineer for any needed analysis or evaluation of the samples taken at the various locations. The DESIGN-BUILD TEAM shall also perform the actual supervision of the boring procedures and field layouts.

1.5.10 CADD Files — The DESIGN-BUILD TEAM shall perform survey and design efforts using Open Roads Designer Connect, and at several phases of the project development process, the DESIGN-BUILD TEAM shall submit copies of the Open Roads Designer Connect *.dgn files and other files used to produce the plans. If completed under this Agreement, copies of the final stamped and sealed plan set delivered to the STATE in *.pdf Adobe Acrobat format will serve as the engineering record, along with the Open Roads Designer Connect files. Additionally, the DESIGN-BUILD TEAM shall resubmit all files containing revisions after the initial submission of final construction documents/plans as revisions are required. The DESIGN-BUILD TEAM shall submit the files on a portable USB storage device in conformance with the STATE's latest CADD standards in effect at the time of initial submission.

1.5.11 Local Office — The DESIGN-BUILD TEAM'S work under this Agreement shall be conducted at the DESIGN-BUILD TEAM'S office in [enter City, State]. All of the STATE's reviews of the DESIGN-BUILD TEAM's in-progress work will be made, at the STATE's discretion, at the STATE's regional office, the DESIGN-BUILD TEAM's office, or at the Project site.

1.6 Schedules — Since time is of the essence in the DESIGN-BUILD TEAM's completion of its assignment, the DESIGN-BUILD TEAM agrees to begin work immediately after receiving authorization to proceed. The DESIGN-BUILD TEAM agrees to ardently prosecute its assignment. Inasmuch as the DESIGN-BUILD TEAM'S work is dependent upon the timely receipt of information provided by the STATE and prompt review and approval of the DESIGN-BUILD TEAM's work by the STATE and others, the schedule may be adjusted to account for delays due to factors beyond the DESIGN-BUILD TEAM's control.

ARTICLE 2 — STATE'S SERVICES

2.1 State-Provided Items — The STATE will provide to the DESIGN-BUILD TEAM the following as each item becomes available:

1. Electronic copies of all requested material available regarding and indicating policies of the STATE with reference to geometrics, standards, specifications and methods, and other memoranda and directives pertaining to any part or phase of the work.
2. Access to and use of all reports, data, or information in the possession of the STATE that might prove pertinent to the work set forth herein. No warranty is made as to the sufficiency of such data furnished by the STATE.
3. Traffic counts and projections (as the data is available).
4. Pavement design criteria.
5. Project utility information.
6. Survey for the Project.

All information furnished to the DESIGN-BUILD TEAM by the STATE, electronically or otherwise, is provided solely for the specific purpose set forth in this Agreement. Should the DESIGN-BUILD TEAM use such information for any other purpose, it shall do so at its own risk and shall assume full responsibility for such action.

ARTICLE 3 — MISCELLANEOUS PROVISIONS

The DESIGN-BUILD TEAM and the STATE mutually agree as follows:

3.1 Ownership of Engineering Documents — The DESIGN-BUILD TEAM shall deliver tracings, plans, specifications, and any maps prepared or obtained under the terms of this Agreement to the STATE, and this information will become the property of the STATE. The DESIGN-BUILD TEAM shall make available, upon request, its basic design notes and sketches, charts, computations, all original drawings, and other data prepared or obtained under this Agreement to the STATE without restriction or limitation of use.

3.2 Delays and Extensions — Time is of the essence with this Agreement. Reasonable extensions of promised times shall be mutually agreed to by the parties in the event of unavoidable delays.

3.3 Progress — The DESIGN-BUILD TEAM shall prepare detailed progress schedules for the several phases or items of the work and shall submit monthly progress reports based on such schedules to the STATE. Each report shall provide an identification of work accomplished since the previous report.

3.4 Termination — The STATE reserves the right to terminate this Agreement as follows:

3.4.1 Termination for Convenience — The STATE may terminate this Agreement for convenience without cause and for any reason. The State shall give the DESIGN-BUILD TEAM at least thirty (30) days written notice before the termination date. The DESIGN-BUILD TEAM will be entitled to compensation for all satisfactory, authorized services completed as of the termination date. In no event shall the STATE be liable to the DESIGN-BUILD TEAM for compensation for any services neither requested by the STATE nor satisfactorily performed by the DESIGN-BUILD TEAM. In no event shall the STATE's exercise of its right to terminate this Agreement for convenience relieve the DESIGN-BUILD TEAM of any liability to the STATE for any damages or claims arising under this Agreement. Work completed or partially completed shall become the property of the STATE as set forth in Paragraph 3.1 in this Article 3.

3.4.2 Termination for Cause — If the DESIGN-BUILD TEAM fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the DESIGN-BUILD TEAM materially violates any terms of this Agreement, the STATE shall have the right to immediately terminate this Agreement and withhold payments in excess of compensation for satisfactorily completed services. Notwithstanding the above, the DESIGN-BUILD TEAM shall not be relieved of liability to the STATE for damages sustained by virtue of the DESIGN-BUILD TEAM's failure to perform its obligations in a timely or proper manner, or for any material violation of the terms of this Agreement, and the STATE may seek other remedies allowed at law or in equity for breach of this Agreement. Work completed or partially completed shall become the property of the STATE as set forth in Paragraph 3.1 in this Article 3.

3.5 Disputes — Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the DESIGN-BUILD TEAM and the STATE shall be referred to the Commissioner of the Tennessee Department of Transportation, or its duly authorized representative, whose decision regarding same shall be final, subject to the DESIGN-BUILD TEAM's right to challenge such decision in a court of competent jurisdiction.

3.6 General Compliance with Laws — The DESIGN-BUILD TEAM 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 STATE and

Federal government regarding fortifications, military, and naval establishments and other areas. The DESIGN-BUILD TEAM shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement. In the event such laws, ordinances, regulations, instructions, or orders are modified after the date of this Agreement, the DESIGN-BUILD TEAM shall be compensated for the Additional Services required to allow the DESIGN-BUILD TEAM to effect compliance with such changed laws, ordinances, regulations, instructions, or orders.

3.7 Subletting, Assignment, or Transfer — Subletting, assignment, or transfer of all or part of the interest of either party to this Agreement is prohibited unless by written consent of the other party and approval by all agencies participating in the funding of this Agreement.

3.8 Employment of State Workers — The DESIGN-BUILD TEAM shall not engage (on a full, part-time, or other basis during the period of this Agreement) any professional or technical personnel who are or have been at any time during the period of this Agreement in the employ of the STATE, except regularly retired employees, without the written consent of the STATE.

3.9 Covenant Against Contingent Fees — The DESIGN-BUILD TEAM warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the DESIGN-BUILD TEAM to solicit or secure this Agreement, 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-BUILD TEAM, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the STATE will have the right to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

3.10 Engineer's Endorsement — The DESIGN-BUILD TEAM shall place its engineer's endorsement on the final maps of the survey; on preliminary and final construction documents/plans, specifications, and estimates; and on other engineering data and documents furnished by the DESIGN-BUILD TEAM to the STATE.

3.11 Control — The DESIGN-BUILD TEAM shall perform all work in accordance with the terms of the Agreement pursuant to the applicable standard of care and in accordance with the established customs, practices, and procedures of the STATE and in conformity with the standards adopted by the American Association of State Highway and Transportation Officials and approved by the Secretary of Transportation as provided in Title 23 U.S.C., Sec. 109(b) as amended. The decision of the STATE is to control in all questions regarding locations, type of design, dimension of design, and similar questions. The DESIGN-BUILD TEAM may periodically request sufficient conferences to ensure that the work is being done in a satisfactory manner and that all locations and designs are made in accordance with the wishes of the STATE.

3.12 Access to Records — The DESIGN-BUILD TEAM and its subcontractors (at all tiers) shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and make such materials available at its respective offices at all reasonable times during this Agreement period and for five (5) years from the date of the final payment under this Agreement for inspection by the STATE and any other agency participating in the funding of this Agreement, or any authorized agents thereof. Copies shall be furnished if requested.

3.13 Title VI, Civil Rights Act of 1964 — During the performance of this Agreement, the DESIGN-BUILD TEAM, for itself, its assignees, and successors in interest agree as follows:

3.13.1 Compliance with Regulations — The DESIGN-BUILD TEAM 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 C, 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 Agreement.

3.13.2 Nondiscrimination — The DESIGN-BUILD TEAM, regarding the work performed by itself during this Agreement, shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The DESIGN-BUILD TEAM shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when this Agreement covers a program set forth in Appendix B of the Regulations.

3.13.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment — In all solicitations either by competitive bidding or negotiations made by the DESIGN-BUILD TEAM for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier, or lessor (of all tiers) shall be notified by the DESIGN-BUILD TEAM of the DESIGN-BUILD TEAM's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, religion, sex, sexual orientation, gender identity, or national origin.

3.13.4 Information and Reports — The DESIGN-BUILD TEAM 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 STATE 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 DESIGN-BUILD TEAM is in the exclusive possession of another who fails or refuses to furnish this information, the DESIGN-BUILD TEAM shall so certify to the STATE and shall set forth what efforts it has made to obtain the information.

3.13.5 Sanctions for Noncompliance — In the event of the DESIGN-BUILD TEAM's noncompliance with the nondiscrimination provisions of this Agreement, the STATE shall impose such sanctions as it may determine to be appropriate, including, but not necessarily limited to:

1. Withholding of payments to the DESIGN-BUILD TEAM under this Agreement until the DESIGN-BUILD TEAM complies, and/or
2. Cancellation, termination, or suspension of this Agreement in whole or in part.

3.13.6 Incorporation of Provisions — The DESIGN-BUILD TEAM shall include the provisions of paragraphs 3.13.1 through 3.13.5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The DESIGN-BUILD TEAM shall take such action with respect to any subcontract or procurement as the STATE 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 DESIGN-BUILD TEAM becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such directions, the DESIGN-BUILD TEAM may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition and as appropriate, the DESIGN-BUILD TEAM may request the United States to enter into such litigation to protect the interests of the United States.

3.14 Effect of Existing Data on Amounts Payable — The DESIGN-BUILD TEAM hereby certifies that prior to agreement of the parties to this Agreement on the amounts payable, as expressed in Article 4, it has reviewed, considered, and evaluated existing engineering data, traffic counts, services, projections, and other related materials or data to be provided by the STATE and has determined the amounts payable in contemplation of the effect of said data and materials upon its undertaking under this Agreement. Existing engineering data so reviewed, considered, and evaluated includes, but is not necessarily limited to, those set out in Article 2.

3.15 Equipment and Instrumentations — It is understood and agreed that if any additional equipment is needed for the Project, the DESIGN-BUILD TEAM shall notify the STATE prior to any action. If necessary, said equipment may be purchased by the STATE in compliance with the STATE'S low-bid procedures. Said equipment must be considered as the STATE'S property, unless other means pertaining to the disposition of same are provided elsewhere within this Agreement.

3.16 Equal Employment Opportunity — During the performance of work under this Agreement the DESIGN-BUILD TEAM 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).

3.17 Environmental Protection Regulations — Under this Agreement, the DESIGN-BUILD TEAM 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).

3.18 Energy Policy and Conservation Act — Under this Agreement, the DESIGN-BUILD TEAM shall give due consideration to and, as applicable, comply with the standards, orders, and requirements relating to energy efficiency contained in the STATE energy conservation plans issued in compliance with the Energy Policy and Conservation Act (P.L. 94-165).

3.19 Additional Employment Regulations — The DESIGN-BUILD TEAM 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-BUILD TEAM shall comply with Section 2012 of the Vietnam Era Veterans Readjustment Act of 1974 which requires the DESIGN-BUILD TEAM to take affirmative action to employ and advance in employment qualified veterans of the Vietnam Era.

3.20 Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions.

3.20.1 Instructions for Certification — By signing and submitting this Agreement, the DESIGN-BUILD TEAM 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 DESIGN-BUILD TEAM 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 STATE's determination whether to enter into this Agreement. However, failure of the DESIGN-BUILD TEAM 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 STATE determined to enter into this Agreement. If it is later determined that the DESIGN-BUILD TEAM knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the STATE may terminate this Agreement for cause or default.

The DESIGN-BUILD TEAM shall provide immediate written notice to the STATE if at any time the DESIGN-BUILD TEAM learns that the certification is erroneous or has become erroneous by reason of changed circumstances.

The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this provision, have the meanings set out in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

The DESIGN-BUILD TEAM agrees by entering into this Agreement that, should this Agreement 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 STATE.

The DESIGN-BUILD TEAM further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by the STATE, without modification, in all lower tier covered transactions exceeding a \$25,000 threshold.

The DESIGN-BUILD TEAM 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 System for Award Management for this information.

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 Agreement 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 STATE may terminate this transaction for cause or default.

3.20.2 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants - The DESIGN-BUILD TEAM 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 the due date of the DESIGN-BUILD TEAM's 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 the DESIGN-BUILD TEAM's proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
5. Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding the DESIGN-BUILD TEAM's proposal (USDOT Order 4200.6 implementing appropriations act requirements); and
6. Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

Where the DESIGN-BUILD TEAM is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Agreement.

(Exceptions to the above are to be submitted on a separate sheet attached to this Agreement)

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.

3.21 Certification Regarding Use of Contract Funds For Lobbying.

3.21.1 The DESIGN-BUILD TEAM certifies, by signing this Agreement 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 DESIGN-BUILD TEAM, 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 Agreement, 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 Agreement, or any Federal contract, grant, loan, or cooperative agreement.

3.21.2 The DESIGN-BUILD TEAM 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 Agreement, the DESIGN-BUILD TEAM shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3.21.3 The DESIGN-BUILD TEAM understands that this certification is a material representation of fact upon which reliance was placed when this Agreement 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.

3.21.4 The DESIGN-BUILD TEAM 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.

3.21.5 The DESIGN-BUILD TEAM agrees that during the period of performance of this Agreement 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.

3.22 Standard of Care — The DESIGN-BUILD TEAM shall assume full responsibility for the quality of the DESIGN-BUILD TEAM'S work and its conformance with all applicable laws, rules, regulations, and orders governing said work. The DESIGN-BUILD TEAM shall hold harmless and indemnify the STATE for all claims and damages that result from the failure of the DESIGN-BUILD TEAM to perform its duties in conformance with the reasonable standard of care as applicable to design professionals within the State of Tennessee. Said indemnification shall include, but not be limited to, costs incurred by the STATE, such as costs for the redesign of plans and the preparations of new specifications as well as the costs for repairs to the construction work itself. The DESIGN-BUILD TEAM, being an independent contractor, agrees to maintain professional liability (errors and omissions) insurance in such an amount **(\$1,000,000.00 minimum)** and form as are agreeable to the STATE. Any reuse or modification of such Work Product for purposes other than those intended in the DESIGN-BUILD TEAM's scope of services without written verification or adaptation by the DESIGN-BUILD TEAM for the specific purpose intended shall be at the STATE's sole risk and without liability to the DESIGN-BUILD TEAM.

3.23 Copyrighting — The DESIGN-BUILD TEAM shall be prohibited from copyrighting any papers, reports, forms, or other material which is a part of any work under this Agreement without written approval from the STATE. Publication rights to any documents produced are reserved by the STATE.

3.24 Subject to Funds Availability — This Agreement is subject to the appropriation and availability of STATE and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the STATE reserves the right to terminate this Agreement upon written notice to the DESIGN-BUILD TEAM. Said termination shall not be deemed a breach of this Agreement by the STATE. Upon receipt of the written notice, the DESIGN-BUILD TEAM shall cease all work associated with this Agreement. Should such an event occur, the DESIGN-BUILD TEAM shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the DESIGN-BUILD TEAM shall have no right to recover from the STATE any actual, general, special, incidental, consequential or any other damages whatsoever of any description or amount.

3.25 Records — The DESIGN-BUILD TEAM and its subcontractor (at all tiers) shall maintain documentation for all charges against the STATE under this Agreement. The books, records, and documents of this Agreement, insofar as each relates to the work performed or money received under this Agreement, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject

to audit at any reasonable time and upon reasonable notice by the STATE, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

3.26 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 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, up to and including termination of this Agreement.

3.26.1 The DESIGN-BUILD TEAM hereby attests, certifies, warrants, and assures that the DESIGN-BUILD TEAM 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 subcontractor (at all tiers) who will utilize the services of an illegal immigrant in the performance of this Agreement. The DESIGN-BUILD TEAM shall reaffirm this attestation, in writing, by submitting to the STATE a completed and signed copy of the document as Attachment 2, hereto, semi-annually during the period of this Agreement. Such attestations shall be maintained by the DESIGN-BUILD TEAM and made available to STATE officials upon request.

3.26.2 Prior to the use of any subcontractor in the performance of this Agreement, and semi-annually thereafter, during the period of this Agreement, the DESIGN-BUILD TEAM shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to (at all tiers) perform work relative to this Agreement 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 Agreement. Attestations obtained from such subcontractors shall be maintained by the DESIGN-BUILD TEAM and made available to STATE officials upon request.

3.26.3 The DESIGN-BUILD TEAM shall maintain records for all personnel used in the performance of this Agreement. Said records shall be subject to review and inspection at any reasonable time upon reasonable notice by the STATE.

3.26.4 The DESIGN-BUILD TEAM 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 DESIGN-BUILD TEAM 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 DESIGN-BUILD TEAM is discovered to have knowingly used the services of illegal immigrants during the performance of this Agreement.

3.26.5 For purposes of this Agreement, "illegal immigrant" shall be defined as any person who has entered into or remains in the United States but who is not 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 United States.

3.27 Independent Contractor — The parties hereto, in the performance of this Agreement, 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.

The DESIGN-BUILD TEAM, being an independent contractor and not an employee of the STATE, agrees to carry adequate general commercial liability, automobile, workers' compensation, and other appropriate forms of insurance to cover DESIGN-BUILD TEAM's employees for necessary field work. The DESIGN-BUILD TEAM shall pay all applicable taxes incident to this Agreement.

3.28 Patient Protection and Affordable Care Act — The DESIGN-BUILD TEAM agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The DESIGN-BUILD TEAM shall indemnify the STATE and hold it harmless for any costs to the STATE arising from DESIGN-BUILD TEAM's failure to fulfill its PPACA responsibilities for itself or its employees.

3.29 Governing Law — This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The DESIGN-BUILD TEAM agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The DESIGN-BUILD TEAM 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 9-8-408.

3.30 Severability — If any terms and conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.

3.31 Strict Performance — Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

3.32 Tennessee Department of Revenue Registration — The DESIGN-BUILD TEAM shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax or provide confirmation from the Department of Revenue that the DESIGN-BUILD TEAM is not required to register for the Tennessee sales and use tax. This registration requirement is a material requirement of this Agreement.

3.33 Iran Divestment Act — The requirements of Tennessee Code Annotated, Sections 12-12-101 through 12-12-113, addressing contracting with persons as defined at Tennessee Code Annotated, section 12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Agreement. The DESIGN-BUILD TEAM certifies, under penalty of perjury, that to the best of its knowledge and belief it is not on the list created pursuant to Tennessee Code Annotated, Section 12-12-106. The DESIGN-BUILD TEAM also hereby agrees that it shall not utilize any subcontractor (at all tiers) that is identified on a list created pursuant to Tennessee Code Annotated, Section 12-12-106 in the performance of this Agreement.

3.34 Disadvantaged Business Enterprise Assurance — The DESIGN-BUILD TEAM shall carry out applicable requirements of 49 C.F.R. Part 26, as applicable to any Disadvantaged Business Enterprise goals

established under this Agreement. Failure by the DESIGN-BUILD TEAM to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the STATE deems appropriate.

3.35 Prompt Pay Requirements — The STATE requires that the DESIGN-BUILD TEAM pay subcontractors promptly for their work after receipt of payment for the associated work from the STATE. The DESIGN-BUILD TEAM shall pay each subcontractor for work performed under its subcontract no later than thirty (30) calendar days from the date the DESIGN-BUILD TEAM receives payment for the work from the STATE. The DESIGN-BUILD TEAM shall not withhold retainage from any payment to a subcontractor. These same prompt payment requirements apply to subcontractors at all tiers.

3.36 Conflicts of Interest — The DESIGN-BUILD TEAM shall not have, directly or indirectly, a financial or other personal interest, other than the DESIGN-BUILD TEAM's employment or retention by the STATE, in any contract or subcontract in connection with any work performed under this Agreement. No officer or employee of the DESIGN-BUILD TEAM shall have, directly or indirectly, any financial or other personal interest in any real property acquired for any project with respect to which the DESIGN-BUILD TEAM has performed services under this Agreement unless such interest is openly disclosed upon the public records of the STATE, and such officer, employee or person has not participated in such acquisition for and in behalf of the STATE. The DESIGN-BUILD TEAM shall include this provision in any subcontract.

3.37 Boycott of Israel — The DESIGN-BUILD TEAM certifies that it is not currently engaged in, and covenants that it will not, for the duration of this Agreement, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.

ARTICLE 4 — PAYMENTS

For the satisfactory performance of all services and assumption of the intrinsic responsibilities described and set forth in Article 1, the STATE agrees to compensate the DESIGN-BUILD TEAM as hereinafter provided, as follows:

4.1 Payment Terms — For the successful completion of the DESIGN-BUILD TEAM's services set out in Attachment 1, the STATE agrees to pay the DESIGN-BUILD TEAM [enter \$ amount] in accordance with Attachment 4. Said amount shall not be adjusted except through an approved supplemental agreement originated for said purpose. The DESIGN-BUILD TEAM's proposal for services and the STATE's memorandum approving the services shall be incorporated into the supporting documentation for services included herein.

4.2 Additional Services — In the event that the STATE, in writing, requests the DESIGN-BUILD TEAM to perform additional services not covered by Article 1 of this Agreement, the DESIGN-BUILD TEAM agrees to perform the same after an agreement between the STATE and the DESIGN-BUILD TEAM providing for an adjusted payment for the additional work is entered into and approved.

4.3 Change of Work — In the event the STATE should decide during the course of this work to change any work to be performed by the DESIGN-BUILD TEAM under this Agreement after same has been approved by the STATE, the STATE shall notify the DESIGN-BUILD TEAM, in writing, to make the change, and the DESIGN-BUILD TEAM shall make the change after an agreement is entered into between the STATE and the DESIGN-BUILD TEAM providing for an adjusted payment, which shall be agreed upon if the scope of work is changed.

4.4 Abandonment of Project — In the event the STATE decides to abandon all or any part of the Project subsequent to the effectuation of this Agreement, the DESIGN-BUILD TEAM shall be paid by the STATE by an adjusted payment mutually agreed upon for all work completed prior to receiving written notice from the STATE to stop work.

4.5 Failure to Reconcile the GMP and Agree to a Construction Contract — If the STATE does not accept the DESIGN-BUILD TEAM's Guaranteed Maximum Price (GMP) proposal or does not agree to enter into a final design and construction phase contract for the Project (or portion thereof), the STATE will terminate this Agreement and may elect to (i) execute a separate agreement with the DESIGN-BUILD TEAM's designer to finalize the plans and specifications for the Project (or portion thereof), (ii) procure another designer to finalize the design plans and specifications for the Project (or portion thereof), or (iii) use the DESIGN-BUILD TEAM designer's work product, or part of it, to proceed with the Project through a design-build process. The DESIGN-BUILD TEAM shall be paid by the STATE by an adjusted payment mutually agreed upon for all work completed prior to receiving written notice from the STATE to stop work.

4.6 Mode of Payment — The DESIGN-BUILD TEAM's estimates and billings are to be broken and submitted in accordance with the STATE project numbers assigned to the work. The STATE will make monthly progress payments to the DESIGN-BUILD TEAM in accordance with Attachment 4.

4.6.1. The DESIGN-BUILD TEAM must report monthly to the STATE all firm names and amounts paid to subcontractors that are certified by the STATE as Disadvantaged Business Enterprises (DBE).

4.6.2. The DESIGN-BUILD TEAM shall also report all firm names and amounts paid to subcontractors (at all tiers) that are Woman-Owned Business Enterprises (WBE) or Minority-Owned Business Enterprises (MBE) not certified by the STATE as a DBE.

4.6.3. Payments on all subsequent supplemental agreements shall also be reported in this same manner.

4.7 Final Settlement — The STATE will make final settlement to the DESIGN-BUILD TEAM within ninety (90) days following the completion of the work and approval of all of the DESIGN-BUILD TEAM's work as set out in Attachment 1.

IN WITNESS WHEREOF, the STATE has caused this Agreement to be signed by the COMMISSIONER OF TRANSPORTATION, and the DESIGN-BUILD TEAM has executed said agreement through its duly authorized officer, effective as of the date first above written.

[ENTER DESIGN-BUILD TEAM ENTITY NAME]

DESIGN-BUILD TEAM Signature

Print Name and Title

TENNESSEE DEPARTMENT OF TRANSPORTATION:

Howard H. Eley, Deputy Governor and TDOT Commissioner

APPROVED AS TO FORM AND LEGALITY:

Leslie South, TDOT General Counsel

ATTACHMENT 1 SERVICES PROVIDED BY THE DESIGN-BUILD TEAM

Following are the scope items contained in this Agreement:

A. Detailed Work Plan

Add detailed scope from RFP Section 4

B. Personnel/Staffing Plan and Rates

Include staffing plan and rates for the DESIGN-BUILD TEAM's staff

C. Schedule

- a. Completion: All work must be completed by [Scope of Work Completion Date]. If additional time is required beyond the Scope of Work Completion Date, the DESIGN-BUILD TEAM must submit a "Contract Date Extension Modification" to the STATE's Project Manager for approval and processing.
- b. Contract Period: This Agreement will terminate [Enter Contract Expiration Date], unless otherwise extended or canceled in accordance with the terms and conditions of this Agreement.

**ATTACHMENT 2
ATTESTATION REGARDING PERSONNEL
USED IN CONTRACT/AGREEMENT PERFORMANCE**

SUBJECT CONTRACT/AGREEMENT NUMBER:	
CONTRACTOR/ENGINEER LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor/Engineer, identified above, does hereby attest, certify, warrant, and assure that the Contractor/Engineer 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 subcontractor who will utilize the services of an illegal immigrant in the performance of this Agreement.

SIGNATURE & DATE:

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor/Engineer. 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/Engineer.

ATTACHMENT 3 FEE PERCENTAGE INCLUSIONS AND EXCLUSIONS

	Costs NOT TO BE included in Fee Percentage	Costs TO BE included in Fee Percentage
Item	Costs for the categories below to be negotiated and included in the direct "Cost of the Work"	Other indirect and non-reimbursable costs to be included in the fee percentage are listed below
E.1	Mobilization	Project Principal – all costs
E.2	Project Manager	Cost Estimator services during final design/construction phase –all costs. <i>(Note: Cost Estimator services during the preliminary design/preconstruction phase are reimbursable as included in the Preconstruction Services Fee</i>
E.3	Construction Manager/Superintendent	Project Manager relocation, housing, and subsistence costs.
E.4	All other on-site, construction management staff as approved by the Agency	Construction Manager/Superintendent relocation, housing, and subsistence costs.
E.5	On-site administrative staff, including clerical and secretarial staff	Additional staff relocation, housing, and subsistence cost.
E.6	All project direct costs related to Safety	Home, branch and regional office administrative support staff and all related costs
E.7	All project direct costs related to Quality Control	Home, branch and regional office safety support staff and all related costs
E.8	Project office costs for cleaning, set up/demobilization, maintenance, security, utilities, rent/lease, equipment, and furniture	Home, branch and regional office quality control support staff and all related costs
E.9	Materials and equipment handling, including shipping/transport to site and storage costs	Profit
E.10	Job site temporary toilet facilities and maintenance	
E.11	Construction rental equipment	
E.12	Actual cost of permits	
E.13	All project direct costs related to implementation of Agency-approved DBE program	
E.14	Construction equipment and vehicles at Proposer's internal cost rate, including costs of maintenance and fuel	
E.15	All costs related to cell phones, radios, fax machines, pagers, computers, and software.	
E.16	All costs of capital and interest; licenses and taxes required by law.	
E.17	Miscellaneous project office costs, including but not limited to, drinking water, printing, reproduction, postage, delivery, and supplies	

ATTACHMENT 4 FEES - UNIT PRICE

1. **UNIT PRICE:** For all services and materials pertinent hereto and/or specifically described herein, except as otherwise explicitly cited, the STATE agrees to pay the DESIGN-BUILD TEAM for the work performed at the unit prices reviewed and approved by the STATE. A unit price includes labor costs, including overhead and profit (Unit Price).

The costs included in the Unit Price have been derived as consistent with the RFP requirements, including:

- Provide evidence of TDOT-approved rates of pay for each category specific to the respective Proposer or Key Individual firm (apply TDOT Policy 301-01 for state-funded projects); **OR**
- If the Proposer or Key Individual firm does not have an established federal acquisition regulation (FAR) rate with TDOT but does have an established FAR rate with another state, the Proposer or Key Individual firm is to provide information regarding the FAR rate accepted by other states' transportation agencies. Include a cognizant letter from the Proposer's/firm's home state, if applicable, and documentation showing approval from the other state transportation agency (apply TDOT Policy 301-01 for state-funded projects); **OR**
- If the Proposer or Key Personnel firm does not have an established FAR rate with any other state transportation agency, the Proposer or Key Individual firm is to establish the noted rates in accordance with TDOT Policy 301-01 (for state funded projects) or as reflected in market-derived unit rates for comparable services (for federally funded projects). The Proposer or Key Individual firm is to provide supporting documentation to show the elements and calculations required by TDOT.

2. **DIRECT EXPENSES:**

- a) If necessary and STATE approved, any additional direct expenses incurred in fulfilling the terms of this Agreement, including reproduction, telephone, equipment, supplies, and fees will be reimbursed at actual costs.
- b) If necessary and STATE approved, any additional direct travel or lodging expenses incurred in fulfilling the terms of this Agreement will be reimbursed per TDOT Policy 301-01.
- c) If the DESIGN-BUILD TEAM's normal accounting practice is to include costs in (b) and (c) above as indirect expenses, then this Agreement will be consistent with that practice. These types of costs must be disclosed as part of the DESIGN-BUILD TEAM's accounting practices and in conformance to Federal Cost Principles.

3. **PERSONNEL/STAFFING PLAN:** Any change in personnel from that specifically identified in Attachment 1 of this Agreement must be approved by the STATE through a modification to this Agreement prior to any work being performed by new personnel. Invoices submitted for payment with unauthorized personnel will not be paid.

4. **MODIFICATIONS:** In the event the STATE requires changes of services which materially affect the scope of work or work plan, a modification to the Agreement for a change in compensation and/or time for completion must be entered into by the parties hereto prior to making such change. Any such work done without prior agreement must be deemed **not** covered in the compensation and time herein provided.

5. **PROGRESS PAYMENTS:** Progress payments are based upon the approved progress and associated costs incurred and are made pursuant to certified invoices received.

6. **INVOICES:** The DESIGN-BUILD TEAM will invoice the STATE using up to the negotiated Unit Price rates agreed upon and shown in Attachment 1. These unit rates will be fixed for the period of this Agreement. Any changes to the unit price rates must be approved in advance by the STATE by written Agreement modification. The STATE will not issue payments for work performed by personnel, an increase in a rate, or other direct charges not approved in advance by the STATE.

The DESIGN-BUILD TEAM will submit monthly payment requests promptly and no later than 45 calendar days after each monthly billing cycle. Invoices are to reflect charges as they apply to the appropriate Agreement, project, and account number, and must be properly certified and executed by an official legally authorized to bind the firm. The invoice must be substantiated with appropriate supporting documentation such as time sheets, labor reports, or cost accounting system print-out of employee time, receipts for direct expenses, and subcontractor invoices and supporting documentation that is reviewed and approved by the STATE. If an invoice is incorrect, defective, or otherwise improper, the STATE will notify the DESIGN-BUILD TEAM within 15 days of discovering the error(s).

Payment requests for services performed on or before the last day of the fiscal year (June 30) must be submitted no later than the time defined in TDOT policy.

The DESIGN-BUILD TEAM acknowledges untimely billing may adversely affect the STATE due to federal funding requirements in 41 C.F.R. § 105-71.123. The DESIGN-BUILD TEAM waives payment, and waives the right to bring action in law or in equity to recover payment for services, for any and all payment requests the STATE does not receive from the DESIGN-BUILD TEAM within the timeframe provided under this Agreement.

7. **FINAL PAYMENT:** Final invoice payment will be released only after all materials and services associated with this Agreement have been reviewed and approved by the STATE.

The STATE has the right to hold the final invoice payment on certain projects when design and construction are performed by two separate contractor teams (including the DESIGN-BUILD TEAM) or if there is a potential possibility of a design or construction error. The STATE also has the right to hold the final invoice payment until the final audit is complete upon the request of the STATE Project Manager.

8. **FINANCIAL SUMMARY:** The total maximum amount of disbursement pertinent to this Agreement is listed in Section 4.1. Agreement overruns will not be paid.