

DESIGNER AGREEMENTS AND PAYMENTS

2.01 BASIC OWNER / DESIGNER AGREEMENT FORM

A. Form

1. Document SBC-6 is the standard form authorized by the State Building Commission for a Basic Services agreement between Owner (ETSU) and Designer. By reference, it includes document SBC-6a Terms and Conditions. In the *Designers' Manual*, the *Table of Contents* indicates the current edition date and location of copies in the *Administrative Forms*.
2. Generally, all contracts started or revised after SBC adoption of the January 2007 edition will be written on or revised to the January 2007 forms, which changed primarily in:
 - a. Reimbursable hourly rates (SBC-6: B.3.2);
 - b. Base Fee Calculation (SBC-6a: 1-3(a)); and,
 - c. Illegal immigrant participation prohibition (SBC-6a: 11-2).
3. For further information about filling out earlier editions, and to see copies of the forms, refer to a corresponding edition of the *Designers' Manual*.

B. Example Basic Services Fee Calculation:

1. A simple calculation on a single-objective new construction project:

	MACC		Fee Percent		
35 / Log(522,022.00)-1.15 =	7.66251850%		
	522,022.00	x	7.66251850%	=	40,000.00

2. A composite calculation on a project combining a new construction objective and a separate mixed objective of new construction and renovation:

Subproject A:	522,022.00		Wood Shop addition		
	35 / Log(522,022.00)-1.15 =	7.66251850%	
new construction	522,022.00	x	7.66251850%	x 1.00	= 40,000.00
 Subproject B:	 2,539,809.00	 	 Classroom new construction	 	
	+	2,539,809.00	Classrooms renovation	 	
	35 / Log(5,079,618.00)-1.15 =	6.29968760%	
new construction	2,539,809.00	x	6.29968760%	x 1.00	= 160,000.00
renovation	2,539,809.00	x	6.29968760%	x 1.25	= 200,000.00
 Total:					 \$ 400,000.00

3. In the example of #2 above, separate base fee percentages are derived for subprojects A and B because the design efforts are discontinuous or the building types are different; however, these factors do not apply to the elements within subproject B, which therefore use a combined base fee percentage and a split renovation multiplier.

4. Basic Services contracted under a prior edition of contract will normally continue to be paid at the existing contracted rate. Basic Services added, or revised with an increase in MACC, will normally result in a fee recalculation using the latest formula for services not yet provided, requiring a calculation using a combination of rates.

- C. The form is normally filled in by FM and sent to the prospective Designer, with a copy of the Terms and Conditions and Attestation Form, for signature and attachment of insurance certificates, the sub-agreement for payment direct deposit (ACH form), and the federal tax reporting form W-9.

The form is filled out as follows (paragraph numbering corresponds to form):

Filling out the SBC-6 Designer Agreement

Part A: the parties and basic objectives, on page 1:

A.1 The agreement and its parties:

- Date of the Agreement should NOT be filled in by the Designer. It will be filled in by the Owner when the agreement is fully executed by the affixing of the last required signature.
- “East Tennessee State University” is filled in as the State government Owner agency.
- The Designer firm or joint venture name is filled in as Designer. The working address of the Designer is also normally filled in.

A.2 The project:

- Project identification is filled in corresponding to the approval given by the State Building Commission: either by a brief scope statement; or, by the official title, project number, and date of authorization.
- Maximum Allowable Construction Cost is filled in with both words and figures.

Part B: the services and compensation, beginning on page 1:

B.3.1 Extent of services and commensurate fee:

- The paragraph numbers are set forth covering phases of the Designer's Basic Services to be completed, normally beginning with subparagraph 2-1-1, through:

Full Planning				Full Services		
Pre-Planning		Design	Construction	Bidding	Construction	Close-Out
Program	Schematic	Development	Document			
2-1-9	2-1-17	2-1-22	2-1-26	2-1-28	2-1-36	2-1-39

- There are two rectangular boxes, one of which is checked to indicate either:

Lump Sum: Fee for basic services normally is a lump sum, which is filled in accordingly in words and figures. If construction is planned under multiple contracts or construction types, an exhibit is attached delineating fee calculation and apportionment to stages of design and construction.



Multiple of Direct Expense: Maximum normally is not more than what Lump Sum Fee would be, and is filled in accordingly in words and figures.

- If a fee calculation or reference to an explanatory attachment is needed, this is filled in at the bottom of page 2.

B.3.3 Principals' names are filled in. These are the only persons who can

- act for the Designer in execution of the Agreement and subsequent modifications.
- receive hourly compensation at the Principal's rate given in clause B.3.2.1.

B.3.4 Consultants' names are filled in. These are the only persons or firms for whom the Designer can receive Consultant compensation at the rate given in clause B.3.2.3.

Part C: professional liability insurance, on page 2:

Normally, the basic minimum coverage is indicated by filling in

\$ 100,000.00

Additional requirements may be set forth here for professional liability insurance beyond the minimum set forth in Article 15 of the Terms and Conditions. Additional insurance requirements are necessarily considered on a per-project basis; however, it is customary to scale the limit of liability according to the project MACC, thus (in thousands):

if MACC > or =	0	2,500	5,000	10,000	20,000
and <	2,500	5,000	10,000	20,000	40,000
then limit of liability =	100	250	500	750	1,000

Part D: schedule for design, on page 3:

D.2 A schedule for completion of design phases shall be set forth. This part normally requires some discussion of the project between Owner and proposed Designer prior to contract.

- **Pre-Planning:** If paragraph B.3.1 includes services through the Design Development Phase (DDP, ending with paragraph 2-1-22), the first rectangular box is marked; and, in the blank line between "within" and "calendar", a number (of days) is filled in setting the deadline for DDP in terms of calendar days after Notice to Proceed with design.
- **Full Planning:** If paragraph B.3.1 includes services through the Construction Document Phase (CDP, ending with paragraph 2-1-26), the first rectangular box is marked; and, in the blank line between "additional" and "calendar", a number (of days) is filled in setting the deadline for CDP in terms of calendar days after approval of DDP.

Signature spaces:

At "Designer", the name of the firm or joint venture is filled in.

Owner signatures are as shown on the SBC-6 form included in the *Administrative Forms*.

End of instructions for filling out the SBC-6 Designer Agreement

D. Completion of the Owner / Designer Agreement by the Designer:

1. **Do not fill in the date of the Agreement.** This will be filled in by FM after it is fully executed by East Tennessee State University.
2. **Designer Signature:** Seven (7) counterparts are signed by a principal legally empowered to bind Designer to Contract, and listed in B.3.3 on page 2 of the SBC-6. If a joint venture, a principal of each firm should sign, and additional counterparts should be used. The copy of Terms and Conditions and Attestation Form do not have to be returned to FM with the signed counterparts of the Agreement.
3. **Designer Professional Liability Insurance Certificate:** Attach to each counterpart of the Agreement a certificate or certificates showing names of insured, producer, and carriers, coverage complying with Part C of the Agreement, "State of Tennessee" as certificate holder in care of FM, and customary stipulation of notice in the event of change or renewal. When the Designer is a joint venture, certificates shall recognize the Joint Venture relationship, and the limit of liability for each member of the Joint Venture shall be not less than the required total limit divided by the number of members (firms). Values of all limits and deductibles need to be given in like units.
4. **ACH Credits Form:** Complete one (1) counterpart. An example of the form can be found as document 00 54 33 of the *Bidding Documents*.
5. **W-9 Form:** Complete one (1) counterpart. An example of the form can be found as document 00 54 35 of the *Bidding Documents*.
6. Send all of the above, completed and compiled, to FM for execution.

E. Execution:

1. For contracts with ETSU, the State Architect's signature is obtained on a separate counterpart, concurrent with execution ETSU.
The counterpart with the State Architect's signature is filed at FM.
2. Once returned by the Designer, signed and accompanied by appropriate insurance certificates, ACH, and W-9, FM will secure the signatures indicated for the Owner on page 3, and return one (1) counterpart to the Designer.

2.02 MODIFICATIONS TO THE DESIGNER CONTRACT

- A. Document SBC-6s is the standard form used under authority of the State Building Commission for modification of an agreement between Owner and Designer. A current edition is included in the *Administrative Forms*. Like SBC-6, it has been issued as a new 2007 edition; however, it has not changed from the prior edition.
- B. As with the Agreement, the form is normally filled in by FM and sent to the Designer for signature and, when appropriate, attachment of updated insurance certificates. The form is filled out as follows (paragraph numbering corresponds to form):

Filling out the SBC-6s Designer Supplement

Verify Form: Check existing agreement to be sure which edition SBC-6s is appropriate.

Part A: the Supplement and the existing contract it modifies, on page 1:



A.1 The Supplement and the parties:

- Date of the Supplement should NOT be filled in by the Designer. It will be filled in by the Owner when the agreement is fully executed by the affixing of the last required signature.
- The Owner agency name is filled in to match the existing contract, normally as “East Tennessee State University”.
- The Designer firm or joint venture name is filled in to match the existing contract. If the Supplement is acknowledging a change in the name of the Designer, the new name is addressed in paragraph B.1.

A.2 Project identification is filled in to match the existing contract, ideally including the official title and project number.

A.3 The date of the original Agreement is filled in.

A.4 The dates of prior supplements are filled in. If there have been none, “None” or “N/A” is filled in.

A.5 Services and MACC:

- The paragraph numbers for design phases currently under contract are filled in. If the current contract calls for some services under one edition of Terms and Conditions and other services under another edition, that distinction must be made in citing paragraph numbers, since the numbering and service requirements may differ.
- The reference in this paragraph to “Terms and Conditions” may also be modified to clarify which edition is being used, particularly if services started under an older edition are being extended or continued under the new edition.
- Existing Maximum Allowable Construction Cost is filled in with both words and figures.

Part B: changes in the parties, project, services, and compensation, on page 2:

B.1 Special changes:

After the fixed text of this paragraph, the blank space before paragraph B.2 is normally left blank; however, this space is used when needed for changes not addressed in the remaining structure of Part B, such as changes in the parties, consultants, hourly rates of compensation, or the Terms and Conditions.

B.2.1 Scope confirmation or change:

If there is no change in project scope, then “unchanged” is filled in. Otherwise, changes in scope are fully described; or, if the changes are too extensive to include verbatim, reference to an attachment is made.

B.2.2 Maximum Allowable Construction Cost is filled in with both words and figures.

B.3.1 Paragraph numbers will be filled in for services being added by the Supplement. It is permissible to make an all-inclusive reference that incorporates the already contracted services; however, if the modified contract spans editions of the Agreement forms, the necessary distinction of applicable Terms and Conditions may be problematic.

B.3.3 Compensation:

- If the fee is based on a Multiple of Direct Expense with a Maximum not to exceed, at the end of the first line, after “shall be”, it is customary to add “not to exceed” before the amount.
- The all-inclusive new Lump Sum fee or Maximum is filled in with both words and figures.
- In the space below the amount, a fee calculation may be shown, if needed; or, reference may be made to an explanatory attachment.

Part C: professional liability insurance, on page 2:

This is filled in following the same manner as for the original agreement (see above). Normally, the basic minimum coverage is indicated by filling in

\$ 100,000.00

Part D: schedule for design, on page 3:

D.2 This is filled in following the same manner as for paragraph D.1 of the original agreement (see above); however:

- The first rectangular box and associated clause addresses completion of Basic Services through the Design Development Phase.
 - ◇ If these services are being added, or the schedule is being changed, the first rectangular box is marked; and, in the blank line between “within” and “calendar”, a number (of days) is filled in setting the deadline for Design Development Phase in terms of calendar days after Notice to Proceed with design.
 - ◇ If no change in schedule is intended, the box is filled in “N/A”, and existing requirements stand.
- The second rectangular box and associated clause addresses completion of Construction Document Phase.
 - ◇ If these services are being added, or the schedule is being changed, the second rectangular box is marked; and, in the blank line between “additional” and “calendar”, a number (of days) is filled in setting the deadline for Construction Document Phase in terms of calendar days after Notice to Proceed with design. In cases of adding these services some time after Design Development Phase has been completed, at the end of the clause following “Terms and Conditions”, it may be appropriate to add “and receipt of a Notice to Proceed.”
 - ◇ If no change in schedule is intended, the box is filled in “N/A”, and existing requirements stand.

Signature spaces:

At “Designer”, the name of the firm or joint venture is filled in. If the Supplement makes a change in the Designer name, the new name is used. Owner signatures are as shown on the SBC-6s form included in the *Administrative Forms*.



End of instructions for filling out the SBC-6s Designer Supplement

D. Completion by the Designer:

1. **Do not fill in the date of the Supplemental Agreement.** This will be filled in by FM after it is fully executed by East Tennessee State University.
2. **Designer Signature:** Seven (7) counterparts will be signed by a principal legally empowered to bind Designer to Contract, and included in the list of principals applicable both before and after the Supplement. If a joint venture, a principal of each firm should sign, and additional counterparts should be used.
3. **Designer Professional Liability Insurance Certificate:** new certificates may be required if prior certificates have expired.
4. **ACH Credits Form:** New form required for change in Designer name, bank, or account.
5. **W-9 Form:** New form required for change in Designer name.
6. Send all of the above, completed and compiled, to FM for execution.

E. **Execution** is completed the same as for original agreements.

2.03 PROHIBITION OF PARTICIPATION BY ILLEGAL IMMIGRANTS

A. In 2006 and 2007, new requirements were put in place to stop illegal immigrants from participating in contracts with the State of Tennessee. Article 11 of the Terms and Conditions was re-defined from “Non-Discrimination” to “Employment Practices”, and paragraph 11-2 was added. By entering into an agreement or supplemental agreement that incorporates the 2007 SBC-6a, the Designer makes the initial attestation contained in subparagraph 11-2-2.

B. Re-attestation

1. Re-attestation is required at least semi-annually using a form referred to in SBC-6a as “Exhibit A”, which is normally sent to the Designer attached to the Terms and Conditions. This form is also included in the *Designers’ Manual Administrative Forms* as form F226. By being issued together as a part of the *Designers’ Manual*, the form is in fact attached to the SBC-6a, even if one or both is inadvertently omitted from hardcopy transmission.
2. To ensure timely re-attestation, a signed attestation form is to be submitted with each invoice for Basic Services.
3. Attestation is to be obtained from the Designer’s consultants and subcontractors using the same form, and maintained by the designer in accordance with Terms and Conditions subparagraphs 11-2-3 and 11-2-4. These attestations do not get automatically submitted to the Owner, but are maintained by the Designer subject to Owner review as stipulated in those subparagraphs.

2.04 PAYMENTS TO DESIGNERS

- A. Identify yourself, the project, and the SBC project number on pay request.
- B. Reimbursable expenses and additional services should be billed separately from basic services, so that disagreement over one type item will not hinder payment for others.

C. Basic Services:

1. Subdivide lump sum payments for Basic Services to indicate extent of services thusfar provided, prior payments, and balance due. Differentiate between portions of project which are progressing on different timetables or subject to separate approvals.
2. Partial Phase billings (SBC-6a paragraphs 7-3 and 7-5):
 - a. Schematic Design Phase may be considered 50% complete for billing purposes when Owner has given written approval of a design concept (SBC-6a subparagraph 2-1-13).
 - b. Design Development and Construction Document phases may be considered 50% complete for billing purposes when the Designer has submitted sufficient work product to the Project Manager to demonstrate that 50% of the work of the phase has been completed. It is impracticable to provide a universal guideline; therefore, the Project Manager has discretion as to form, extent, delivery, and sufficiency of work product.
 - c. Construction Phase billings:
 - 1) may be submitted with or after issuance of any certificate for contractor payment;
 - 2) must aggregate in proportion to the Phase fee no greater than the Contractor's *total completed and stored to date* (including retainage) on the latest certificate aggregates in proportion to the current construction Contract Sum;
 - 3) must indicate beginning and ending dates of services currently billed; and,
 - 4) must have copies attached of field reports for the period of service.
3. Attach copies of meeting minutes, field reports, and designer logs applicable to the Basic Services being invoiced.
4. Attach a re-attestation, on form F226, after filling in the SBC project number as identified in the design contract, the design firm or joint venture name, the Federal ID number, the signature and date thereof, and the name and title of the signatory.
5. Example Billing Breakdown for Basic Services upon completion of Bidding Phase:

	Pct	Fee	Pct	Due Amt	Prev Billed	Remit
Program Phase	3	1,200	3	1,200	1,200	0
Schematic Phase	12	4,800	12	4,800	4,800	0
Design Development Phase	25	10,000	25	10,000	10,000	0
Construction Document Phase	30	12,000	30	12,000	6,000	6,000
Bidding Phase	3	1,200	3	1,200	0	1,200
Construction Phase	23	9,200	0	0	0	0
Close-Out Phase	4	1,600	0	0	0	0
SUB - TOTAL	100	40,000	73	29,200	22,000	7,200

D. Hourly or Additional Services:

1. Hourly and other direct expenses require FM approval before work is started. Itemize expenses under an appropriate heading. Attach applicable receipts. The hourly rate for principals' time is a maximum hourly rate; the rate for employee's time, including allowable multipliers, cannot exceed the rate for a principal.
2. Example Billing Breakdown for Additional Services

Task "Room B"	DPE		mark-up	Rate Result	Billable Rate	Hrs	Due	Previously	
	Base	plus						Billed	Remit
Principal Jane	155.00	0%	1.00	155.00	155.00	22.5	3,487.50	1,200.00	2,287.50
Principal Dave	155.00	0%	1.00	155.00	155.00	15.0	2,325.00	700.00	1,625.00



Employee Susan	50.00	30%	2.45	159.25	155.00	10.0	1,550.00	392.00	1,158.00
Employee Darth	20.00	30%	2.45	63.70	63.70	15.0	955.50	0.00	955.50
Consultant Jim	75.00	0%	1.20	90.00	90.00	4.0	360.00	0.00	360.00
SUB - TOTAL							\$8,678.00		

Maximum authorized for this task: \$9,000.00

billable:

\$8,678.00	\$2,292.00	\$6,386.00
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3. Note that in the example above:
 - a. Principals base rate is at the maximum flat rate allowed under SBC-6 clause B.3.2.1.
 - b. Employees are increased by the maximum allowed under SBC-6a paragraph 5-2.
 - c. Mark-up is according to SBC-6 clause B.3.2.2 for employees and B.3.2.3 for consultants.
 - d. Billable Rate is capped for employees according to SBC-6 clause B.3.2.2.
 - e. The hours and amount due are cumulative, and cannot exceed the maximum authorized.

E. Reimbursable Expenses:

1. Reimbursable expenses (i.e. survey work, geotechnical investigations, air monitoring services, and printing costs) require FM approval before work is started. Attach statements and summarize under the heading of "Reimbursable Expenses" in invoice. If statements are not itemized, include itemization in summary.
2. Bidding Documents reproduction: Except as pre-approved below, obtain Owner's prior approval for printing costs. Without prior approval, the maximum that will be reimbursed, in-house as well as by others, is limited to a total cost below \$1,200.00 for not more than 30 sets at unit costs not exceeding:

Black Line prints: 15 cents / square foot Project Manual: Cover & Binding: \$3.50 per set AIA A201: Printable from the FM website Text pages: 6 cents / sheet double-sided 4 cents / page single sided, if single sided printing has been approved in advance
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3. Postage, delivery, and other handling costs for design submittals, bidding documents, construction documents, and correspondence will not be reimbursed.
4. Example Billing Breakdown for reimbursable expenses:

	Cost	Multi	Due	Prev Billed	Remit
Printing	655.00	1.00	655.00	0.00	655.00
Air-Monitoring	1,200.00	1.20	1,440.00	700.00	740.00
Surveys	3,200.00	1.20	3,840.00	2,800.00	1,040.00
GeoTechnical	1,500.00	1.20	1,800.00	1,200.00	600.00
SUB - TOTAL			7,735.00	4,700.00	3,035.00

F. Submit original statement and two copies to FM.

G. Automated Clearing House Payments: Payments to Designer shall be made through Owner's automated clearing house (ACH) wire transfer system, as set forth in Article 7 of the SBC-6a Terms and Conditions (See *Administrative Forms*) and the ACH form (See 00 54 33 of *Bidding Documents*).

CHAPTER 2 END

