

**KENTUCKY DEPARTMENT OF EDUCATION
DIVISION OF FACILITIES MANAGEMENT
AMENDMENT TO
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ARCHITECT
AIA B101-2007**

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

- 2.1** Add the following: "The Architect shall also comply with 702 KAR 4:160, pertaining to services and actions required of the Architect."
- 2.5** Delete the entire paragraph and substitute therefor the following: ""The Architect shall carry professional liability insurance in addition to insurance to protect themselves from claims under Worker's Compensation Acts, for claims for damages because of bodily injury, including death, to their employees, and for other liability normally covered by such insurance and shall furnish evidence of such insurance to the Owner."
- 2.5.1** "During the term of this Agreement, the Architect shall provide evidence of professional liability insurance coverage in the amounts stated in Subparagraph 2.5.2. In addition, the Architect agrees to attempt to maintain continuous professional liability coverage for the period of design and construction of this project, and for a period of two years following Substantial Completion, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half the architects practicing in the State are able to obtain such coverage."
- 2.5.2** "Professional liability coverage shall be provided in the following minimum amounts:
- | | |
|------------------------------------|---|
| "a. Projects \$1,000,000, or less | \$500,000 per claim and
\$1,000,000 aggregate per annum. |
| "b. Projects exceeding \$1,000,000 | \$1,000,000 per claim and
\$2,000,000 aggregate per annum. |
- 2.5.3** "The Architect's Consultants shall carry professional liability coverage during the term of the Agreement as stated in Subparagraph 2.5.1, and shall furnish evidence of such insurance to the Owner. The minimum limit of liability for each of the Architect's Consultants is \$250,000 aggregate, except that structural design and mechanical-electrical-plumbing consultants shall carry a minimum amount of \$1,000,000 aggregate for projects \$1,000,000, or less, and \$2,000,000 aggregate for projects exceeding \$1,000,000."
- 2.5.4** "The Architect shall carry Commercial General Liability Insurance with limits of \$500,000 per occurrence and \$1,000,000 aggregate. This policy shall be written or endorsed to include the following provisions:
- | | |
|-----|--|
| "a. | The Owner shall be named as an additional insured, |
| "b. | Waiver of Subrogation, |
| "c. | Severability of Interest (Separation of Insureds), and |
| "d. | Cross Liability Endorsement." |

- 2.5.5 "The Architect shall carry Worker's Compensation Insurance as required by statute, including Employers Liability, with limits of:
- "a. \$100,000 each accident,
 - "b. \$500,000 disease - policy limit, and
 - "c. \$100,000 disease - each employee."
- 2.5.6 "The Architect shall carry Automobile Liability Insurance, including coverage for hired and leased vehicles, with limits of \$500,000 per occurrence, and Non-Owned Automobile Liability Insurance, including coverage for hired and leased vehicles, with limits of \$500,000 per occurrence."
- 2.5.7 "The above indicated minimum coverages shall be subject to the terms, exclusions and conditions of the policies. The Architect shall provide Certificates of Insurance to the Owner upon execution of the Agreement and prior to commencement of services."
- 2.6 Add the new paragraph: "The Architect and the Architect's Consultants shall provide a notarized non-collusion affidavit on current Kentucky Department of Education form to the Owner upon execution of the Agreement and prior to commencement of services."

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

- 3.1 After the words "usual and customary structural, mechanical and electrical engineering services," add the words ", including civil engineering, landscape, and kitchen design services required for the Project."

3.2 SCHEMATIC DESIGN PHASE SERVICES

- 3.2.5 Add the sentence: "For school Projects on new sites, the Architect shall provide a campus master plan with the Schematic Design Documents."
- 3.2.5.2 Add the sentence: "The Architect shall revise the scope of Work to be within the approved BG-1 estimate of Construction Cost, or advise the Owner to submit to the Kentucky Department of Education a revised BG-1 financial page requesting approval of additional financial support."

3.3 DESIGN DEVELOPMENT PHASE SERVICES

- 3.3.2 Revise the paragraph to read: "The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost, and of any conflict with the budget established by the BG-1."

3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

- 2.4.4 Add the sentence: "The Architect shall advise the Owner of any conflict with the budget established by the BG-1."
- 3.4.5 Add the sentence: "The Architect shall prepare the appropriate application forms and submit them with the required Construction Documents to the applicable governmental authorities."

3.5 BIDDING OR NEGOTIATION PHASE SERVICES

- 3.5.1 Revise the second sentence to read: "Following the Owner's and the Kentucky Department of Education's approval of the Construction Documents, the Architect...contracts for construction." Add the sentence: "The Architect shall prepare the Advertisement for Bids and give it to the Owner"

for placement in the newspaper having the largest local circulation."

3.5.2 COMPETITIVE BIDDING

3.5.2.2 Add new Subparagraph 3.5.2.2.6, as follows: "providing a written evaluation of bids received and recommendations regarding an award of Contract for Construction."

3.5.3 NEGOTIATED PROPOSALS

3.5.3.1 Add the following: Negotiated proposal procedures may only be utilized for emergency construction, for construction estimated to cost no more than \$20,000, or, for those Owners who have adopted the Kentucky Model Procurement Code, under the terms and conditions of KRS 45A.370, KRS 45A.375, KRS 45A.380, and KRS 45A.385.

3.6 CONSTRUCTION PHASE SERVICES

3.6.1.1 In the first sentence, after the words "AIA Document A201-2007, General Conditions of the Contract for Construction," add the words "including amendments thereto current as of the date of this Agreement, unless otherwise provided in this Agreement."

3.6.2 EVALUATIONS OF THE WORK

3.6.2.1 Add the sentence: "The Architect shall keep the Owner informed of the progress and quality of the Work by a written report each month until time of Substantial Completion."

3.6.6 PROJECT COMPLETION

3.6.6.5 Revise the paragraph to read: "Prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct an inspection with the Owner to review the facility operations and performance, and record any nonconforming Work, and shall submit a written report of nonconforming Work to the Contractor, Owner and the Kentucky Department of Education. At the discretion of the Owner and for Reimbursable Expenses, the Architect may be the Owner's agent during the one-year period after Substantial Completion."

3.6.6.6 Add the new paragraph: "As a record of the Work as constructed, the Architect shall prepare and deliver to the Owner a set of drawings showing significant changes in the Work during construction, based upon the drawings maintained by the Contractor at the site during construction, other data furnished by the Contractor to the Architect, Addenda, Construction Change Directives and Change Orders."

ARTICLE 4 ADDITIONAL SERVICES

4.1 Delete the following from the list of Additional Services:

- 4.1.5 Site Evaluation and Planning
- 4.1.7 Civil Engineering
- 4.1.8 Landscape design
Record drawings (See new paragraph 3.6.6.6.)
- 4.1.20 Telecommunications/data systems

ARTICLE 5 OWNER'S RESPONSIBILITIES

5.1 Revise the paragraph to read: "The Owner shall provide full information regarding requirements for the Project, including Educational Specifications, interior and exterior space requirements and relationships, flexibility and expandability, special equipment and systems, site requirements, and the Owner's objectives, schedule and constraints."

5.2 Revise the paragraph to read: "The Owner shall establish and periodically update an overall

budget for the Project based on consultation with the Architect and the Owner's Fiscal Agent, as applicable, which shall include the Construction Cost, the Owner's other related costs and fees, and reasonable contingencies related to all of these costs."

- 5.3 Revise the second sentence of the paragraph to read: "The Owner, through Board of Education Order, shall examine and take action in a timely manner regarding approval of documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services."
- 5.4 Revise the second sentence to add the words "and flood plain limits as applicable" after the words "designated wetlands."
- 5.5 Revise the paragraph to read: "The Owner shall furnish the services of geotechnical engineers when such services are deemed necessary and requested by the Architect."
- 5.7 Revise the paragraph to read: "...and reports required by law, government agencies, or the Contract Documents."

ARTICLE 6 COST OF THE WORK

- 6.1 Revise the paragraph to read: "The Cost of the Work shall be the total construction cost, or to the extent the Project is not completed, the estimated total construction cost recorded on the current BG-1 form financial page, Column A, Line 1, to the Owner to construct..."

ARTICLE 9 TERMINATION OR SUSPENSION

- 9.6 Revise the paragraph to read: "In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due."
- 9.7 Delete the entire paragraph.

ARTICLE 10 MISCELLANEOUS PROVISIONS

- 10.3 Delete the words: " , except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement."
- 10.4 Delete the sentence beginning "If the Owner requests the Architect to execute consents..." In the last sentence, delete the words "or consents."
- 10.8 Revise paragraph to read: "Except as provided under the Kentucky Open Records Act, KRS 61.870 to KRS 61.884, if the Architect or Owner receives information..."

ARTICLE 11 COMPENSATION

- 11.5 Revise paragraph to read:

"Schematic Design Phase.....	15%
"Design Development Phase	20%
"Construction Documents Phase (Completed Plans & Specifications)	40%
"Bidding and Negotiation Phase.....	05%
"Construction Phase	20%"
- 11.6 Revise the subparagraph to read: "...lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of Construction Cost as recorded on the BG-3 form approved by the Kentucky Department of Education. The Architect shall be..."

11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

- 11.8.1.8 Revise the clause to read: "Expense of additional insurance coverage or limits requested by the Owner in excess of that required to be carried by the Architect and the Architect's Consultants by the Kentucky Department of Education."
- 11.8.3 Add the new paragraph: "Prior to incurring Reimbursable Expenses, the Architect shall estimate the cost of the reimbursable items, and obtain approval of the Owner's representative for the expenditures."

11.10 PAYMENTS TO THE ARCHITECT

- 11.10.1 Delete entire paragraph.
- 11.10.5 Add the new paragraph: "The Architect shall pay each project Consultant within 10 days after receipt of each payment from the Owner for services rendered. Consultant's fees shall be based on a typical 80% x total fee for work categories paid to the Architect for which the Consultant is responsible. If the Architect's fee is a lump sum, the Consultant shall receive the same proportionate amount. If such payments are not made in a timely manner, the Consultant may make a written request that the Owner issue joint checks for all subsequent payments to the Architect naming the Architect and the Consultant as payees.
- 11.10.6 Add the new paragraph: "Prior to final payment, the Architect shall provide the Owner a written statement of release from each Consultant stating that all fees up to that point have been paid. (This clause does not apply to Consultants, i.e., geotechnical engineers, land surveyors, having direct contracts with the Owner.) The Architect shall be paid his construction phase fee at the same proportionate percentage as the construction's completion until final contract completion as designated by the submission and approval of the BG-4 form by the Owner, to the Kentucky Department of Education."

END OF AMENDMENT