

**KENTUCKY DEPARTMENT OF EDUCATION
DIVISION OF FACILITIES MANAGEMENT
AMENDMENT TO
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ARCHITECT
AIA B141/CMa-1992**

**ARTICLE 2
SCOPE OF ARCHITECT'S BASIC SERVICES**

2.1 DEFINITION

- 2.1.1 Revise the paragraph to read: "...and include structural, mechanical, electrical engineering and services and approvals required by 702 KAR 4:160, And the Request for Proposal."

2.2 SCHEMATIC DESIGN PHASE

- 2.2.8 Insert new paragraph: "Architect shall revise the scope of Work to be within the approved BG-1 budget or advise the owner to provide revised financial document BG-1 for the Owner to request additional financial scope approved by KDE."
- 2.2.9 Insert new paragraph: "A project for a total new school facility shall include a master campus plan."

2.3 DESIGN DEVELOPMENT PHASE

- 2.3.4 Insert new paragraph: "The Architect shall review the Construction Manager's cost estimate and advise the Owner of any conflict with the budget established by the BG-1."

2.4 CONSTRUCTION DOCUMENTS PHASE

- 2.4.4 Change the word "assist" to "advise".
- 2.4.5 Revise paragraph to read: "The Architect shall be responsible assisting Owner in filing documents required for and obtaining the approval of governmental authorities having jurisdiction over the Project."
- 2.4.6 Insert new paragraph: "The Architect shall review the Construction Manager's cost estimate and advise the Owner of any conflict with the budget established by the BG-1."

2.5 BIDDING OR NEGOTIATION PHASE

- 2.5.1 Revise paragraph to read: "The Architect and Construction Manager, following the Owner's and the Kentucky Department of Education's approval of the Construction Documents and of the Construction Manager's latest estimate of Construction Cost, shall assist the Owner in obtaining Bids. The Architect shall assist the Construction Manager in conducting pre-bid conferences with bidders."

- 2.5.2 Insert new paragraph: "The Architect shall be responsible for assisting the owner in preparing and placing the Advertisement for Bids in the newspaper having the largest local circulation."
- 2.5.3 Insert new paragraph: "The Architect shall assist the Construction Manager in obtaining and evaluating Bids, and shall make recommendations as to the award of Contracts to successful Bidders and Material Suppliers."
- 2.5.4 Insert new paragraph: "The Architect shall assist the Construction Manager in conducting pre-bid conferences with bidders."

2.6 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT

- 2.6.1 Revise paragraph to read: "The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates when the final payment to all Contractors and Material Suppliers is due, which coincides with KDE approval of the BG-4, May 1993, after a one-year warranty inspection is completed and all Work is accepted by the Owner."
- 2.6.3 Revise sentence: In lieu of "written consent of", insert "consultation with".
- 2.6.4 Delete: "...and (2) as an additional service at the Owner's direction from time to time during the correction period described in the Contracts for Construction."
- 2.6.5 Revise paragraph to read: "...the Architect shall keep the Owner informed of the progress and quality of the Work with written reports, and shall endeavor to guard the Owner against defects and deficiencies in the Work."
- 2.6.14 Revise paragraph to read: "The Architect, assisted by the Construction Manager, shall conduct inspections, after certification of substantial completion by the Construction Manager, to determine date or dates of Substantial Completion and the date of Final Completion."
- 2.6.14 Insert new sentence: "The Architect shall review and forward to the Owner all written warranties and related close-out documents assembled by the Contractors and submitted by the Construction Manager."
- 2.6.20 Add new paragraph: "The Architect shall provide a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings, and other data furnished by the Contractor to the Architect."

ARTICLE 3 ADDITIONAL SERVICES

3.1 GENERAL

- 3.1.1 Revise the paragraph to read: "The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized and confirmed in writing by the Owner and accompanied by a written Board of Education Order."

3.4 OPTIONAL ADDITIONAL SERVICES

- Preface all paragraphs with the following: "The services described under Paragraphs 3.4.1 through 3.4.20 shall not be provided unless authorized and confirmed in writing by the Owner in the Request for Proposal."
- 3.4.16 Delete paragraph in its entirety.

3.5 Insert new heading: TIME

- 3.5.1 Insert new paragraph: "The Architect shall perform Basic, Additional, and Optional Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall consult with the Construction Manager to coordinate the Architect's time schedule with the Project Schedule."

ARTICLE 4 **OWNER'S RESPONSIBILITY**

- 4.1 Revise 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."
- 4.2 Revise paragraph to read: "The Owner shall establish and update an overall budget for the Project based on consultation with the Architect, the Construction Manager, and the Owner's Fiscal Agent, as applicable, which shall include the Construction Cost, the Owner's other project costs and reasonable contingencies related to all of these costs."
- 4.4 Revise paragraph to read: Second Sentence, "The Owner, through Board of Education Order, shall examine and take action, in a timely manner, pertaining to documents submitted by the Architect..."
- 4.5 Revise paragraph to read: "...as described in the current edition of AIA Document B801/CMa," and "...shall not be modified without consultation with the Architect."
- 4.6 Revise paragraph to read: "...shall include, as applicable, delineation of current designated flood plain limits, grades, and lines..."
- 4.7 Revise paragraph to read: "The Owner shall furnish the services of Geotechnical Engineers when such services are deemed necessary and requested by the Architect, Consultants, and/or the Construction Manager."
- 4.8 Revise paragraph to read: "...and reports required by law, government agencies, or the Contract Documents."
- 4.9 Revise the paragraph to read: "...at any time for the Project." (Delete remaining portion of paragraph.)

ARTICLE 5 **CONSTRUCTION COST**

5.1 DEFINITION

- 5.1.1 Revise paragraph to read: "The Construction Cost shall be the total cost or estimated cost, as defined on the BG-1 to the Owner..."
- 5.1.2 Delete last sentence: "Construction cost shall also include the compensation of the Construction Manager and Construction Manager's consultants."

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.2 Delete paragraph in its entirety.

5.2.3 Revise paragraph to read: Delete "or negotiated proposal"; Add "Should cost exceed the budget a minimum of 10%, the Architect, assisted by the Construction Manager, shall be responsible for redesign in order to achieve the approved budget amount."

ARTICLE 7
ARBITRATION

7.1 Revise the paragraph to read: "...shall be subject to and decided by mediation in accordance with the current procedures of the Mediation Center of Kentucky, 201 West Short, Suite 310, Lexington, Kentucky, or other non-profit mediation councils approved by the Division of Facilities Management."

7.2 Change the word "arbitration" to "mediation".

7.3 Change the word "arbitration" to "mediation".

7.4 Delete the paragraph in its entirety.

ARTICLE 8
TERMINATION, SUSPENSION OR ABANDONMENT

8.7 Delete paragraph in its entirety.

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.2 Revise paragraph to read: "...Construction Manager-Advisor Edition, and all KDE supplements, current as of..."

9.10 Insert the following paragraphs: "The Architect shall carry professional liability insurance, including errors and omissions, in addition to insurance to protect themselves from claims under Workman'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."

9.10.1 "During the term of this Agreement, the Architect agrees to provide evidence of insurance coverage in the amounts stated in 9.10.2. 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 (2) 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."

9.10.2 "Professional liability coverage shall be provided in the following minimum amounts:

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| .1 | Projects up to \$1,000,000 | \$250,000 per claim and
\$250,000 per annual aggregate; |
| .2 | Projects from \$1,000,000 to \$10,000,000 | \$500,000 per claim and
\$500,000 per annual aggregate; and |

- .3 Projects in excess of \$10,000,000 \$1,000,000 per claim and
\$1,000,000 per annual aggregate.

The deductible for these policies shall not exceed 5% of the total limit of liability."

- 9.10.3 "Sub-consultants to the Architect must carry professional liability coverage during the term of the Agreement as stated in 9.10.1 and shall furnish evidence of such insurance to the Owner. The minimum limit of liability for sub-consultants is \$250,000."
- 9.10.4 "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:
- .1 The Owner shall be named as an additional insured;
 - .2 Waiver of Subrogation;
 - .3 Severability of Interest (Separation of Insureds); and
 - .4 Cross Liability Endorsement."
- 9.10.5 "The Architect shall carry Workmen's Compensation Insurance as required by statute, including Employers Liability, with limits of:
- .1 \$100,000 each accident;
 - .2 \$500,000 disease - policy limit; and
 - .3 \$100,000 disease - each employee."
- 9.10.6 "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."
- 9.10.7 "The above indicated coverages shall be subject to all of the terms, exclusions and conditions of the policies. Certificates of Insurance shall be provided to the Owner upon execution of the Agreement and prior to the commencement of services by the Architect."
- 9.11** Insert a new paragraph: "The Architect and all Consultants shall provide the Owner with a notarized non-collusion affidavit on current KDE form as required in the Request for Proposal."

ARTICLE 10 PAYMENTS TO THE ARCHITECT

10.2 REIMBURSABLE EXPENSES

- 10.2.1 Insert new sentence: "All reimbursable expenses are to be approved by the Board of Education prior to executing the Contract."

10.2.1.5 Revise sentence to read: "...in excess of that required by KDE carried by the Architect..."

Insert new sentence: "Expense of additional insurance coverage requested by the Owner shall be approved by the Board of Education prior to executing the Contract."

10.2.1.6 Add to sentence: "...as specifically requested and approved by the Owner."

10.3 PAYMENT ON ACCOUNT OF BASIC SERVICES

10.3.1 Delete paragraph in its entirety.

10.3.2 Delete the first word: "Subsequent".

10.3.3 Add to sentence: "...and as approved by KDE."

10.3.4 Delete the phrases: "or negotiated proposals," and "or proposals".

Revise phrase to read, "...the most recent estimate of Construction Cost as listed on Form BG-3, May 1993, prepared by..."

10.3.5 Insert new paragraphs: "The Architect shall pay each project Consultant within 10 days upon 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 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.

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, Land Survey, 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 with 10% of it being retained until final contract completion as designated by the submission of the BG-4, May 1993, by the owner to the Kentucky Department of Education."

10.5 PAYMENTS WITHHELD

10.5.2 Insert new paragraph: "Should liquidated damages be assessed and received by the Owner, the Owner shall pay the Architect and Consultants a prorata share of proceeds based on total amount received for compensation of continued services beyond the original approved contract time period.

ARTICLE 11 **BASIS OF COMPENSATION**

11.1 Delete in its entirety.

11.2 BASIC COMPENSATION

11.2.2 Revise paragraph to read:

Schematic Design Phase	(15%)
Design Development Phase	(35%)
Construction Documents Phase (Completed Plans & Specifications)	(75%)
Bidding and Negotiation Phase	(80%)

11.5 ADDITIONAL PROVISIONS

11.5.1 Delete paragraph in its entirety.

11.5.2 Delete the last sentence: "Amounts unpaid ... of the Architect."

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