

AGREEMENT
No. 2019-02



11305 Fox Hunters Road
Mulkeytown, IL 62865
618.218.4641
office@kellyacllc.com

April 15, 2018

Steve Leek, Vice-Chairman
Franklin County Board
901 Public Square
Benton, IL 62812

Subject: Owner/Architect Agreement for Services

Mr. Leek:

KELLY Architecture & Consulting, LLC would like to take this time to thank you for choosing us to provide the Franklin County Board with professional services. We are looking forward to working with you.

Project Description:

The scope of work is based on discussion with the owner's representative Randall Crocker. The project is to move the offices of the County Treasurer and County Clerk from their existing location in the County Court house into the Campbell Building.

Ground Level Renovation

Renovate the remaining unused space in the Campbell Building into new space for the offices of the County Clerk and County Treasurer offices. The spaces will be designed with the input of the current office holders. The existing unused space to be used is approximately 3,535 sq. ft. Possible recover area includes the existing County Board Office and Conference room which are approximately 892 sq. ft. Discussions have also indicated a new, larger break room will be required.

Basement Level Renovations

Investigate providing storage area in the basement. This will require vertical circulation in the form of a stairwell or two, and a possible elevator. Additional investigation will be required.

Scope or Work:

The Architect will use input provided by the current office holder to provide office space for a minimum of:

Office of the Treasurer – minimum of 5 employees, 3 common desks and 2 offices, and a work counter for visitors.

Office of the County Clerk – minimum of 5 employees, 4 common, 1 office, ~~plantroom~~^{plant-room} for 8-10 persons with access to computer area.

Breakroom – for approximately 20 employees.

This proposal is based on information available at the time of preparing this agreement. It is understood be both party's (Architect and Owner) that a full and final scope of work is not finalized and changes may be made to the agreement.

Exclusions to the scope of work include, but not limited to:

1. Permit fees.



2. Printing.
3. Cost to advertise the project.
4. Produce Record Documents.
5. Materials sampling.
6. Environmental consulting for this project.
7. Performing the duties of Construction Manager for this project.
8. Mechanical design (if required).
9. Electrical design (if required).
10. Plumbing design (if required).
11. Structural design (if required).

Professional Services Fee:

This design fee is proposed as an hourly rate, not to exceed \$40,000, plus reimbursable expenses indicated in the exclusions of the Scope of Work Section of the proposal.

Reimbursable cost would include, but not limited to, consultants fees, printing and/or plotting, shipping, mileage, meals, advertising, etc.

2019 Fee Schedule

Principal	\$105.00
CAD Tech	\$ 85.00
Clerical	\$ 75.00

Additional Services:

Items requested that are not listed in the scope of work, requested after the permit issuance, or is specifically listed in the exclusions, will be billed at the current hourly rates of the architect.

2019 Fee Schedule

Refer above fee schedule.

Reimbursable Expenses:

The Architect will be compensated for the following reimbursable expenses at our cost.

- a. Printing: In-House (company owned equipment)
 1. Black and white
 - a. 8.5x11: \$0.15
 - b. 11x17: \$0.30
 2. Color
 - a. 8.5x11: \$0.75
 - b. 11x17: \$1.50

The Architect will be compensated for the following reimbursable expenses at our cost plus a 20% overhead fee.

1. Consultant's hourly fee for additional services.
2. Consultant's reimbursable expenses.
3. Consultant's invoices not part of basic services (consultant invoice will be provided)
4. Printing: Out of House Printing (non-company owned equipment, third party)
5. Meals
6. Mileage:
 - ii. Current IRS Standard Mileage Rate.
 - iii. Does not apply to rented vehicles.



We would like to thank you once again for the opportunity to provide professional services for the Franklin County Board. Please feel free to contact me at your convenience if further discussions or clarifications that you may need with this agreement.

Respectfully Submitted,

Andrew C. Kelly – NCARB
KELLY Architecture & Consulting, LLC.

Accepted by:

Signature

Date: 4-16-19

Printed Name
Title



KELLY ARCHITECTURE & CONSULTING, LLC – TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

1. **SERVICES.** KELLY Architecture & Consulting, LLC. ("the Architect") shall provide professional services in accordance with the agreed upon scope of work. These terms and conditions are hereby made a part of the scope of work.
2. **EXECUTION.** This Agreement becomes effective upon signatures by authorized representatives of the Owner and the Architect and upon receipt by the Architect of a signed original or scanned and emailed transmittal. If scanned and emailed transmittal is initially sent to the Architect, Owner will provide the Architect with a signed original for record as soon as practicable.
3. **INITIATION.** The Architect is authorized to proceed with services upon receipt of an executed Agreement or written Notice to Proceed from the Owner.
4. **COMPLETION/TERMINATION OR SUSPENSION.** This Agreement shall remain in force until completion and acceptance of the services or until terminated by mutual agreement. This contract may be terminated by the Owner and/or the Architect upon 10 days written notice. In the event of such termination, the Architect will be paid the portion of the compensation (and fixed fee, if applicable) for services performed in accordance with the scope of services under the terms of this Agreement to the date of receipt of the termination letter together with all costs arising out of such termination.

Continuing Service Agreements shall be reviewed annually for rates and shall remain in force until terminated in writing by either party, or otherwise stipulated contractually.

The provisions of this Contract have been agreed upon with the expectation of any orderly progression of the project to completion. In the event of project suspension by the Owner for a period in excess of three (3) months, the Architect may (at Architect's sole discretion) perform activities necessary to complete critical calculations, organize project files, or otherwise prepare for an orderly cessation of work; and Architect shall be entitled to invoice Owner for labor and reimbursable expenses incurred in performing such activities.

Should the Owner decide to restart the Project after a suspension, the Agreement shall be revised/amended to include start-up cost for labor and reimbursable expenses that will be incurred by the Architect.

5. **STANDARD OF CARE.** Services provided by the Architect under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. The Architect makes no warranty or guaranty, either expressed or implied.
6. **INDEPENDENT CONSULTANT.** The Architect is and shall be at all times during the term of this Agreement an independent consultant and not an employee or agent of the Owner. Likewise, all contracted consultants to the Architect are and shall be at all times during the term of this Agreement an independent consultant and not an employee or agent of the Architect.
7. **COMPLIANCE WITH LAWS.** The Architect will endeavor to comply with Federal, State, and local laws and ordinances applicable to the services to be provided under this Agreement.
8. **PAYMENTS TO THE ARCHITECT.** Invoices are prepared by the Architect on a monthly basis and are payable within 15 days form invoice date. A late payment charge will be added to all amounts not paid within 15 days of invoice date; calculated at 1.5 percent per month from invoice date. Any costs incurred by the Architect in collecting and delinquent amount, including reasonable attorney's fees, shall be reimbursed by



Owner. If a portion of the Architect's invoice is disputed, the undisputed portion shall be paid by Owner by the due date. Owner shall advise the Architect in writing of the basis for any disputed portion of any invoice. If placed for collection, reasonable collection fees will be added; if placed with an attorney, reasonable attorney fees will be added. All drafts dishonored for any reason shall be assessed a \$100.00 service charge. In the event that Owner stops payment on any draft issued KELLY Architecture & Consulting, LLC, for any reason, Owner hereby recognizes that KELLY Architecture & Consulting, LLC, would suffer damage, the exact amount which cannot be determined with certainty and Owner shall pay KELLY Architecture & Consulting, LLC liquidated damages of \$500.00 for each such draft.

When invoices are required to be approved by a Board or Council, the invoice date may be considered to be the date of the Board or Council meeting if agreed between the Owner and the Architect.

Taxes as may be imposed by Federal, state and local authorities shall be in addition to the payments due the Architect stated in the Agreement. This does not apply to tax exempt entities.

9. **COLLECTION COSTS.** In the event legal action is necessary to enforce the payment provisions of this Agreement if Owner fails to make payment within sixty (60) days of the invoice date, the Architect shall be entitled to collect from the Owner any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Architect in connection therewith and, in addition, the reasonable value of the Architect's time and expenses spent in connection with such collection action, computed at the Architect's prevailing fee schedule and expense policies.
10. **OWNERSHIP OF DOCUMENTS.** Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Agreement are instruments of service and are, and shall remain, the property of the Architect. The Architect will retain all common law, statutory, and other reserved rights, including the copyright thereto. The Architect shall not be held liable for reuse of documents or modifications thereof by the Owner or its representatives for any purpose other than the original intent of this Agreement, without written authorization of and appropriate compensation to the Architect.
11. **SITE VISITS/OBSERVATION.** If included in the Scope of Work, the Architect shall visit the project and/or construction site at appropriate intervals to become generally familiar with the progress, quality of work (contractors' work), and to determine if the work is proceeding in general accordance with the Contract Documents. Visits to the project site and observations made by the Architect as part of services during construction under Agreement shall not make the Architect responsible for, nor relieve the construction contractor(s) of the obligation to conduct comprehensive monitoring of the work sufficient to ensure conformance with the intent of the Contract Documents, and shall not make the Architect responsible for, nor relieve the construction contractor(s) of the full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto.
12. **INSURANCE.** The Architect shall maintain Workman's Compensation, General Liability, and Professional Liability Insurance throughout the period of this Agreement. Certificates of insurance are available on request.

The expense of any additional insurance coverage or increased policy limits of liability, including professional liability insurance, requested by the Owner in excess of the standard coverage of the Architect and its consultants shall be borne by the Owner.

The Owner shall require the contractor to name the Architect and his consultants as an Additional Insured on the contractor insurance policy.

13. **INDEMNIFICATION/HOLD HARMLESS.** The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments, including reasonable attorneys' fees and expenses recoverable under applicable law, to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.

Owner agrees to require all construction contractors to indemnify, defend and hold harmless the Architect, and its officers, directors, employees, agents and consultants from any and all loss where loss is caused or incurred (or alleged to be caused or incurred) in whole or in part as a result of the negligence or other actionable fault of the contractors, their agents, or subcontractors.

If the project involves construction, and the Architect does not provide architectural services during construction including, but not limited to, on-site monitoring, site visits, shop drawing review and design clarifications, Owner agrees to indemnify and hold harmless the Architect and its officers, directors, employees, agents and consultants from any liability arising from this Project or Contract.

Owner shall indemnify and hold the Architect, and its officers, directors, employees, agents and consultants, harmless from all damages, costs, liabilities, expenses and fees, including attorney's fees for any claim or cause of action for bodily injury or property damage arising out of or relating to the Project, but only to the extent such damages, costs, liabilities, expenses and fees are caused by the negligent act or omission or other breach of duty by Owner, Developer, Prime Contractors and Prime Contractor's sub-Contractors, General Contractor and General Contractor's sub-Contractors, and other parties not hired by the Architect. The Architect shall be held harmless against all damages, liabilities, expenses, or costs, including attorney's fees, for any claim or petition, or where the Architect is dismissed from the claim or petition, for defense costs, arising out of or resulting from the use of engineering documents, the petitioner will be responsible for the compensation of all legal fees and defense costs, including the Architect's personnel's time for defense of petition.

14. **PROFESSIONAL RESPONSIBILITIES.** Services performed by the Architect under this Agreement shall be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of their respective professions practicing in the same locality under similar conditions.

No other representation, expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or any report, opinion, document, or otherwise.

In no event will the Architect be liable for any special, indirect or consequential damages; including, without limitation, damages or losses in the nature of increased Project costs, loss of revenue or profit, lost production, or governmental fines or penalties.

The Architect's aggregate liability for all damages connected with its services for the Project, not excluded by subparagraph 13, will not exceed the compensation paid for services.

The obligations and remedies stated in Professional Responsibility, are the sole and exclusive obligations of the Architect and remedies of Owner, whether liability of the Architect is based on contract, warranty, strict liability, tort (including negligence), indemnity or otherwise.

15. **ACCESS.** Owner will provide access (right of entry) for the Architect's staff, its agents, sub consultants, and others, as appropriate for this Project; and Owner will be responsible for the time, place, and manner of entry upon all property where the Architect is to provide services under this Agreement. Owner agrees to

hold the Architect harmless from any and all liability or claims arising from such entry onto property by the Architect. The Architect will take reasonable precautions to minimize property damage; however, it is understood that some minor damage may occur; for which the Architect shall not be held responsible.

16. **HAZARDOUS ENVIRONMENTAL CONDITIONS.** Nothing in this Agreement shall impose any responsibility or liability on the Architect for expenses, claims, or damages arising from, or in any manner related to, hazardous environmental conditions and/or the presence of other regulated substances.
17. **OPINION OF COST AND PROJECTIONS.** Opinions of cost and projections of construction costs and/or schedules are based on the Architect's experience, judgments, industry published data, historical data, and projects of similar/like building construction available to the Architect at the time the opinion of cost and projections are prepared.

Since the Architect has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction contractor's procedures and methods, and other factors, the Architect cannot and does not guarantee the accuracy of any of the Architect's estimates and projections related to this Project.

Scope differences and market conditions can cause opinions of cost and projections to vary significantly.

Opinions of cost and projections are not a guarantee of final cost to the owner

Opinions of cost and projections do not include specialty or proprietary items such as items supplied by the Owner, including but not limited to, furniture, draperies, electronics, etc. Specialty and proprietary item cost may be provided to the Architect by the Owner to insert as a line item in the Opinions of cost and projections. The Owner takes full responsibility for the cost of the items. The Architect shall be held harmless for cost differences for cost supplied by the Owner.

18. **ON-SITE SERVICES.** On-site visits by Architect during construction and installation procedures for Project, or the furnishing of on-site Project representatives, shall not make the Architect responsible for construction means, methods, techniques, sequences or procedures; for construction safety precautions or programs; or for any failure by construction contractor(s) to perform their work in accordance with the Contract Documents.
19. **CHANGES.** Owner shall have the right to make changes within the general scope of the Architect's services, with an appropriate change in compensation, upon execution of a mutually acceptable contract amendment signed by an authorized representative of the Owner and the Architect.

In the Schematic Design Phase (SD), the Owner shall have the right to three minor changes to the preliminary plan without incurring change in compensation. Minor changes are defined as small changes within the foot print proposed.

In the Design Development Phase (DD), the Construction Document (CD), and in the Construction Phase (CP), the Owner shall have the right to make changes with an appropriate change in compensation.

20. **LIMITATION OF LIABILITY.** The Architect, Architect's consultants, nor their agents or employees shall be jointly, severally or individually liable to the Owner in excess of \$25,000 or the total compensation to be paid to the Architect pursuant to this Agreement, whichever is greater. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.
21. **DISPUTES/DISPUTE RESOLUTION.** Any action for claims arising out of or relating to this Agreement and/or respective services shall be governed by the laws of the State of Illinois. Mediation is an express

condition precedent to the filing of any legal action. Unless the parties agree otherwise, the mediation shall be conducted pursuant to the Construction Mediation Rules of the American Arbitration Association.

In an effort to resolve any conflicts that arise during the design or construction, or following completion of the Project, Owner and Engineer agree that all disputes between them arising out of, or relating to, this Contract shall be submitted to non-binding mediation (unless the parties mutually agree otherwise), thereby providing for mediation as the primary method for dispute resolution between Owner and the Architect.

22. **PRINTED OR ELECTRONIC MEDIA.** Owner shall not make, or permit to be made, any modifications to any documents, including drawings and specifications, furnished by the Architect pursuant to this Contract, without the prior written authorization of the Architect. Owner shall indemnify and hold harmless the Architect from all claims, damages, losses, and expenses (including attorney fees) arising from any modification of such documents.

Only copies of data or work products delivered by the Architect as instruments of service with respect to this Contract as hard copies may be relied upon by Owner. Any electronic files furnished in respect to the Architect's services are supplied for the convenience of the Owner (or others at the Owners request). Any conclusions or information derived from such electronic files shall be at Owner's sole risk, because such files can be modified by others or inadvertently corrupted.

23. **RIGHTS AND BENEFITS.** The Architect's services under this Contract will be performed solely for the benefit of the Owner, and not for the benefit of any other person or entity.

24. **ENTIRE CONTRACT.** These Terms and Conditions for Professional Services and the related Agreement contain the entire Contract between the Architect and Owner relative to the Architect's services for this Project. All previous or contemporaneous agreements, representations, promises, or conditions pertaining to the Architect's services for this project are hereby superseded.

Since terms contained in purchase orders do not generally apply to professional services, in the event the Owner issues to Architect a purchase order, no preprinted terms thereon shall become part of this Contract. Said purchase order document, whether or not signed by Architect, shall be considered solely as a document for Owner's internal management purposes.

This Contract may be amended, in writing, by mutual agreement between the Architect and Owner.

25. **ATTORNEY FEES.** Should there be any suit or action instituted to enforce any right granted in this contract, the substantially prevailing party shall be entitled to recover its costs, disbursements and reasonable attorney fees from the other party. The party who is awarded a net recovery against the other shall be deemed the substantially prevailing party unless such other party has previously made a bona fide offer of payment in settlement and the amount of recovery is the same or less than the amount offered in settlement. Reasonable attorney fees may be recovered regardless of the forum in which the dispute is heard, including an appeal.