



State of Delaware
Department of Natural Resources and Environmental Control
Delaware Division of Parks and Recreation
89 Kings Highway
Dover, Delaware 19901

MEMORANDUM

TO: Shawn M. Garvin, Secretary, DNREC Original On File

THRU: Ray Bivens, Director, Parks & Recreation Original On File
Matthew P. Chesser, Environmental Program Administrator, PP&D Original On File

FROM: Cynthia A. Todd, Construction Projects Administrator Original On File

SUBJECT: Contract No. NAT 17-002-PS
Professional Services Procurement
Engineering/Architectural/Landscape/Architecture

DATE: May 25, 2017

The Division of Parks and Recreation has recently completed the review, evaluation, interview, and selected the firms that will be providing professional services for the Departments Statewide Major and Minor Capital improvements program and can be renewed annually for the next five years. This is in accordance with Title 29, Chapter 69 of the Delaware Code and as outlined in the request for Letters of Interest (see attached process).

The interview committee selections are as follows:

AECOM Technical Services
Bernardon
CDA Engineering Inc.
Century Engineering
Davis Bowen & Friedel, Inc.
GWWO Inc., Architects
Orndorf & Associates, Inc.
RK&K (Rummel, Klepper & Kahl, LLP)
Wallace, Roberts & Todds, LLC

It is our intention to prepare Contracts for each firm on an annual basis for five years. Renewals will be determined by the department. Contracts will be on file and the firm will then write "task orders" to the contract as projects develop.

Your approval of the committee's action is requested so that fee negotiations can begin.
Your signature on this memorandum is sufficient.

I would be pleased to provide any additional information concerning the process and
selections should you have any questions

Thank you.

Original On File

STAWN M. GARVIN, Secretary, DNREC

 *We're saving a place for you...*



State of Delaware
Department of Natural Resources and Environmental Control
Delaware Division of Parks and Recreation
89 Kings Highway
Dover, Delaware 19901

June 8, 2017

Brian N. Bolender
AECOM Technical Services
4051 Ogletown Rd. Sabre Bldg. Suite 300
Newark, DE. 19713

**RE: Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services**

Mr. Bolender:

Enclosed is the fully executed agreement between the Department of Natural Resources and Environmental Control and AECOM Technical Services pertaining to the above-captioned contract. This agreement will form the basis for all services you perform relative to the Department's Capital improvements program and can be renewed yearly through the Fiscal Year 2022.

Future requests will be made from the Department for written stipulated sum proposals on specific projects. Proposal will only be accepted upon the issuance of an addendum to this agreement along with a fully executed purchase order. An example of an addendum is enclosed.

We look forward to working with you on this program. Meanwhile, should you have any questions or require additional information, please contact our office at (302) 739-9231.

Sincerely,

Original On File

Cynthia A. Todd, RLA, Construction Projects Administrator
Office of Design and Development

Attachment:

AIA B101-2007 Standard Form of Agreement Between Owner and Architect
Sample Addendum

 *We're saving a place for you...*



LETTER OF TRANSMITTAL

TO: Delaware Department of Natural
Resources and Environmental Control
Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901

From: AECOM
4051 Ogletown Road,
Suite 300
Newark, DE 19713

Attention: Cynthia A. Todd, RLA

Sent Via: FedEx

Date: 5/16/17

Job No.: Contract # NAT 17-002-PS

RE: Contract Documents

The following items are being sent: Attached Under separate cover by
Shop Drawings Prints Plans Samples Specifications Copy of Letter
 Other

Copies	Date or Number	Description
2	5/15/17	Signed AIA Document B101-2007
1		Attachment C – 2017 Rate Schedule
1		DE Business License

Transmittals for reasons checked:

- | | | |
|--|---|---|
| <input type="checkbox"/> For Your Approval | <input type="checkbox"/> No Exceptions Taken | <input type="checkbox"/> Resubmit _____ copies for approval |
| <input checked="" type="checkbox"/> For Your Use | <input type="checkbox"/> Make Corrections Noted | <input type="checkbox"/> Submit _____ copies for distribution |
| <input type="checkbox"/> As Requested | <input type="checkbox"/> Amend and Resubmit | <input type="checkbox"/> Return _____ corrected prints |
| <input type="checkbox"/> For Review and Comment | | |

Remarks: Once executed, please return a fully signed copy for our records. Our Certificate of Insurance will be forwarded under separate cover.

Copies:

If enclosures are not as noted, kindly notify us at once.

Original On File

Brian N. Bolender, P.E.

AECOM
Iron Hill Corporate Center
4051 Ogletown Road, Suite 300
Newark, DE 19713
302-781-5900 (phone)
302-781-5901 (fax)

AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Twenty-Fourth day of April in the year Two Thousand Seventeen

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Department of Natural Resources and Environmental Control
Division of Parks and Recreation
89 Kings Highway
Tel: 302-739-9231

and the Architect:
(Name, legal status, address and other information)

AECOM
Sabre Building, Suite 300
4051 Ogletown Road
Newark, DE 19713
TEL: 302-781-5900

for the following Project:
(Name, location and detailed description)

State of Delaware
Department of Natural Resources and Environmental Control
Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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User Notes:

(3B9ADA2C)

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(Paragraph Deleted)

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

(State below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

Agreement is open-ended, renewable annually at the option of the Owner, and is to encompass improvements, renovations, repairs and replacements for all properties managed by the Department of Natural Resources and Environmental Control. Compensation will be determined separately for each individual project, but consistently as outlined in Articles 11 and 12. Refer to Attachment "A" and Article 12 for amendments to the text of this Agreement.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

To be determined per individual project

- .2 Substantial Completion date:

To be determined per individual project

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User Notes:

(3B9ADA2C)

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement.
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 Comprehensive General Liability

\$1,000,000

.2 Medical / Professional Liability

\$1,000,000 / \$3,000,000

.3 Miscellaneous Errors and Omissions

\$1,000,000 / \$3,000,000

.4 Product Liability

\$1,000,000 / \$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered. If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

.5 Automotive Liability (Bodily Injury):

\$100,000/\$300,000

.6 Automotive Property Damage (to others):

\$25,000

§ 2.6 Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

§ 2.7 The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the

environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the mutually agreed upon program, schedule and construction budget required as well as the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings, outline specifications and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Architect shall perform life cycle cost analysis s required by 29 DEL.C. §6909A.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate of Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of two years from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. *(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility <i>(Architect, Owner or Not Provided)</i>	Location of Service Description <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
§ 4.1.1 Programming (B202™–2009)		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™–2007)		
§ 4.1.6 Building Information Modeling (E202™–2008)		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™–2007)		
§ 4.1.10 Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site Project Representation (B207™–2008)		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings		

Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”

(Paragraphs Deleted)

- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

(Paragraph Deleted)

- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

(Paragraph Deleted)

- .2 Responding to the Contractor’s requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor’s proposals and supporting data, or the preparation or revision of Instruments of Service as outlined in Article 12 E & O policy;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate of Payment, more than 60 days after the date of Substantial Completion.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 (Two) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 (Two) visits per Month to the site by the Architect over the duration of the Project during construction
- .3 (Two) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 (Two) inspections for any portion of the Work to determine final completion

§ 4.3.3 If the services covered by this Agreement have not been completed within (60) months of the date of this Agreement, through no fault of the Architect, extension of the Architect’s services beyond that time may be compensated as Additional Services.

ARTICLE 5 OWNER’S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's best judgment as a design professional.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WSB) format. If the lowest responsible and responsive bid exceeds the estimate Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all the discrepancies at no additional cost to the Owner.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to cooperate in the revising of the Project scope and the quality as required to reduce the Construction Cost, The Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for the bidding phase costs due to the modifications.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without approval of, or additional compensation to the Architect. The Contractor, Subcontractors, Subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for the use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of Work without specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the Architect from reuse of all instruments of service noted above for any other project or clients. The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specification if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a

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filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

The choice is left to the parties.

(Paragraphs Deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect or except for funding purposes, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 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 and all Termination Expenses as defined in Section 9.7.

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§ 11.2 For Additional Services designated in Section 4.1 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Compensation shall be based upon negotiated stipulated sum prior to proceeding with additional services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Compensation shall be based upon service performed on an hourly basis utilizing the attached Schedule of Rates (Attachment C).

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Fifteen	percent (	15	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	One Hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. Design work for Alternates may be included for consideration in the cost of the work

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates may be adjusted subject to negotiation.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-state travel and subsistence based on Delaware's Office of Management and Budget's policy regarding such reimbursement;

(Paragraph Deleted)

- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;

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3 Other documents:

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Attachment 'A' - Amendments to AIA Document B101

Attachment 'B' - State of Delaware Division of Facilities Management Errors & Omissions Policy

Attachment 'C' - Schedule of Rates

This Agreement entered into as of the day and year first written above.

Original On File

OWNER

ARCHITECT

Original On File

(Signature)

Shawn M. Garvin, Cabinet Secretary - DNREC,
State of Delaware

(Printed name and title)

(Signature)

Brian N. Bolender, PE, Project Director, AECOM

(Printed name and title)

Init.

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2019

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NEWARK DE 19713-3101



AECOM TECHNICAL SERVICES INC
4051 OGLETOWN RD STE 300
NEWARK DE 19713-3101

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APPLICATION DULY FILED PURSUANT TO TITLE 30, DEL CODE

DAVID GREGOR

DIRECTOR OF REVENUE

IMPORTANT - TEAR AT ABOVE PERFORATION AND DISPLAY IN A PUBLIC LOCATION

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Business Code 099
Group Code 007

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PROFESSIONAL AND/OR PERSONAL SERVICES

The State of Delaware Business License printed above must be posted in a public area at the location address listed. If you have any questions regarding this license, please call (302) 577-8778.

REPLACEMENT LICENSES

Keep this portion of your license separate, in case you need a replacement for any lost, stolen or destroyed license. A \$15 fee will be charged for the replacement of a license. Send the \$15 along with a copy of this form or provide your Federal Employer Identification Number, or Social Security Number, suffix, Business Code, Business Name and address to Delaware Division of Revenue, Attn.: Business Master File, PO Box 8750, Wilmington, DE 19899-8750. You will receive your replacement license within three to four weeks.

OTHER IMPORTANT INFORMATION

Most licensees are also required to pay either gross receipts or excise taxes in addition to the license fee. You can file these taxes online or obtain a paper form from our website at www.revenue.delaware.gov. You must submit all business tax returns filed with the Division of Revenue under the same identification number. If you are a sole-proprietor, and have a federal employer identification number, use the employer identification number, not your social security number. Only sole proprietors with no employees are allowed to file under their social security number. Inquiries regarding your coupon booklets to pay withholding, corporate tentative, and Sub Chapter "S" estimated taxes, or to make changes to your name, address, or identification number, should be directed to the Business Master File Unit at (302) 577-8778.

INTERNET SITE

The Division of Revenue web address is: www.revenue.delaware.gov. Visit our web site for tax tips, links to telephone numbers, forms that you can download, links to other State agencies, the Delaware Code, the publication "Delaware Guide for Small Business" and lots more. Internet filing of personal income tax returns via the Division of Revenue's website is available. Internet filing for Withholding, Gross Receipts and Corporate Tentative payments is also available.

ATTACHMENT "A"

Owner and Architect Agreement B101

This attachment amends AIA Document B101-2007 as follows:

1. Section 6903, Chapter 69, Title 29 of the Delaware Code requires a "prohibition against contingency fees" statement. An acceptable statement would be as follows:

"By signing this Agreement, the Professional swears that he has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he has not been paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement."

2. The Professional will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Professional will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

3. Amend Article I.1 by adding the following sentence to the end of the Article:

"At the Owner's request, the Architect shall produce all subcontractor agreements, including consultants, or any other agreement related to the Architect's performance on the project."

4. Amend Article 2.5 by striking the second sentence in its entirety.
5. Amend Article 2.5 by striking subsection 2.5.1 through 2.5.4 and inserting the following:

2.5.1 Comprehensive General Liability: \$1,000,000 and

2.5.2 Medical/Professional Liability: \$1,000,000/\$3,000,000 or

2.5.3 Misc. Errors or Omissions: \$1,000,000/\$3,000,000 or

2.5.4 Product Liability: \$1,000,000/\$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered.

If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

2.5.4 Automotive Liability (Bodily Injury): \$100,000/\$300,000

2.5.6 Automotive Property Damage (to others): \$25,000

6. Add a new Article 2.6 which shall read as follows:

Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

7. Add a new Article 2.7 which shall read as follows:

The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

8. Add a new Article 2.8 which shall read as follows:

The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.

9. Amend Article 3.1 by adding the word "civil" after "mechanical," and before "and".
10. Amend Article 3.1.4 by striking "the Architect's approval" and replacing it with "prior notice to the Architect."
11. Amend Article 3.2.5 by adding "the mutually agreed-upon program, schedule and construction budget requirement as well as" after "Based on" and before "the Owner's approval" in the first sentence. In the second sentence add ",outline specifications," after "drawings".
12. Amend Article 3.2.5.2 by adding the following sentence to the end of the Article: "The Architect shall perform life cycle cost analysis as required by 29 Del. C. §6909A."
13. Amend Article 3.2.6 by striking "prepared in accordance with Section 6.3."
14. Amend Article 3.3.1 by striking the word "outline" before "specifications".
15. Amend Article 3.4.3 by adding the following sentence to the end of the Article: "The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local government including municipality in which the project is located."
16. Amend Article 3.4.4 by striking the Article in its entirety and replacing it with the following: "The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit."
17. Amend Article 3.4.5 by adding after the last sentence "After Owner's review, incorporate Owner's comments into final construction documents."
18. Amend Article 3.5.1 by inserting in the first and second sentences "if requested" before Architect. In the second sentence after "(4) awarding and", insert "(5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship to Owner within 48 hours of receipt of official notification from Owner. If mailed, documents shall be sent using a delivery service that can track the shipment."
19. Amend Article 3.5.3 by striking it in its entirety.
20. Amend Article 3.6.1.1 by adding "as well as the Owner's Supplementary General Conditions and the Owner's General Requirements."
21. Amend Article 3.6.1.3 by striking it in its entirety and replacing it with the following: "The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment."

22. Amend Article 3.6.2.4 by adding the following to the end of the paragraph: "The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity."

23. Amend 3.6.4.1 by inserting the following after the first sentence: "The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents."

Also, amend by striking the final period in the last sentence and inserting the following: ", but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner."

24. Amend Article 3.6.4.2 by striking the first sentence in its entirety and replacing it with the following: "In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with information given and the design concepts in the Contract Documents."

25. Amend Article 3.6.4.4 by striking "Subject to the provisions of Section 4.3," and starting the sentence with "The".

Also amend by adding to the end of the fourth sentence the following immediately after "reasonable promptness": "as to cause no delay in the work."

26. Amend Article 3.6.5.1 by striking the following at the beginning of the second sentence: "Subject to the provision of Section 4.3" and starting the sentence with "The".

27. Amend Article 3.6.6.5 by changing "one year" to "two years".

28. Amend Article 4.1 by striking the following subparagraphs from additional services as they are considered Basic Services:

4.1.2 - Multiple Preliminary Drawings

4.1.7 - Civil Engineering

4.1.8 - Landscape Design

4.1.10 - Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.

4.1.11 - Detailed Cost Estimating

4.1.13 - Conformed Construction Documents

4.1.15 - Strike this section in its entirety and replace with the following: Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) "as-built" drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-Rom. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.

4.1.19 - Coordination of Owner's consultants

4.1.20 - In addition to Telecommunications and data design being a Basic Service, the design must comply with the State of Delaware's Department of Technology and Information's standards.

4.1.22 - Incorporate design and review comments from Owner's commissioning agent.

4.1.23 - Is a Basic Service as required in Article 3.2.5.1

4.1.26 - If required by local government including municipalities, Historic Preservation services will be considered Basic Services.

29. Amend Article 4.3.1.1 by striking it in its entirety and replacing it with the following:

"Making revisions in drawings, specifications or other documents, when such revisions are:

.1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget;

Providing services required because of significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contract for construction except for services required under Section 6.7."

30. Amend Article 4.3.1.2 by inserting "except for Life Cycle Cost Analysis" after "energy modeling" and before "or".

31. Amend Article 4.3.1.4 by striking in its entirety and replacing it with the following:

“Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner’s failure to render decisions in a timely manner.

Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”
32. Strike Article 4.3.1.5 in its entirety.
33. Strike Article 4.3.1.6 in its entirety.
34. Strike Article 4.3.1.7 in its entirety.
35. Strike Article 4.3.1.9 in its entirety.
36. Strike Article 4.3.2.1 in its entirety.
37. Amend Article 4.3.2.3 to add at the end “as outlined in Article 12 E & O policy.”
38. Strike Article 4.3.2.6 in its entirety and replace with the following: “Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of Work.”
39. Amend Article 4.3.3.1 by adding the number two before “reviews”.
40. Amend Article 4.3.3.2 by adding “the equivalent of 2 visits per month for the duration of the project.”
41. Amend Article 4.3.3.3 by adding the number two before “inspections”.
42. Amend Article 4.3.3.4 by adding the number two before “inspections”.
43. Amend Article 4.3.4 by changing “shall” to “may”.
44. Amend Article 5.2 by striking the word “shall” in the last sentence and replacing it with “may”.
45. Amend Article 5.6 by striking the last portion of the third sentence that reads “the Architect requests such services...scope of the Project” and replace with “reviewed and approved by the Owner.”

Also amend by adding the following at the end of the paragraph: "The Owner may elect to transfer this responsibility to the Architect as an Additional Service in Article 3 of this Agreement."

46. Amend Article 5.8 by adding the following to the end of the Article: "These services are not provided directly to the Architect."
47. Amend Article 5.10 by adding a third sentence to read as follows: "The Architect shall prepare and distribute meeting minutes during the design and construction phases of the Project."
48. Amend Article 6.2 by inserting "best" before "judgment" in the second sentence. Also, strike the third and fourth sentences in their entirety.
49. Amend Article 6.3 by deleting the second and third sentences and replace with the following: "The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WBS) format. If the lowest responsible and responsive bid exceeds the estimated Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all discrepancies at no additional cost to the Owner."
50. Delete Article 6.7 in its entirety and replace with the following:

"If the Owner chooses to cooperate in the revising the Project scope and quality as required to reduce the Construction Cost, the Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for bidding phase costs due to the modifications."
51. Amend Article 7 by striking it in its entirety and replacing it with the following:

"All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this Agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Architect. The Contractor, Subcontractors, Sub-subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the Architect from the reuse of all instruments of service noted above for any other projects or clients."

The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specifications if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a Project in which the Architect is not also involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp."

52. Amend Article 8.1.1 by striking the last sentence in its entirety.
53. Amend Article 8.1.2 by striking it in its entirety.
54. Amend Article 8.1.3 by striking it in its entirety.
55. Amend Article 8.2.1 by striking it in its entirety.
56. Amend Article 8.2.2 by striking the end of the first sentence "shall be administered ...the date of the Agreement." Also add the following to the beginning of the second sentence: "In accordance with Delaware law,"
57. Amend Article 8.2.4 by checking the box marked "Other" and insert the following: "The choice is left to the parties."
58. Amend Article 8.3 by striking it in its entirety.
59. Amend Article 9.3 by adding the following to the first sentence after "fault of the Architect": "or except for funding purposes,"
60. Amend Article 9.7 by striking the following from the end of the sentence: "plus an amount...by the Architect."
61. Amend Article 9.8 by striking it in its entirety.
62. Amend Article 10.1 by striking the following from the end of the sentence: "except that if... govern Section 8.3."
63. Amend Article 10.2 by adding the following to the end of the sentence: "as amended by the Owner's General Requirements and the Owner's Supplemental Conditions."
64. Amend Article 10.8 by adding the following to the beginning of the first sentence: "Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100,".
65. Amend Article 11.2 by adding the following after "Section 4.1": "as amended by Owner's Attachment A."
66. Amend Article 11.3 by adding the following after "Section 4.3": "as amended by Owner's Attachment A."

67. Amend Article 11.6 by adding the following sentence at the end: "Design Work for Alternates may be included for consideration in the cost of work."
68. Amend Article 11.7 by striking the second sentence in its entirety and replacing it with the following: "The rates may be adjusted subject to negotiation."
69. Amend 11.8.1.1 by striking the phrase "out-of-town" and replacing it with "out-of-state". Normally the State only reimburses "out-of-state" transportation and living expenses directly related to a project.

Also, insert the following at the end of the sentence: "based on Delaware's Office of Management and Budget's policy regarding such reimbursement."

70. Amend Article 11.8.1.2 by striking it in its entirety.
71. Amend Article 11.8.1.8 by striking it in its entirety.
72. Amend Article 11.8.1.9 by striking it in its entirety.
73. Amend Article 11.9 by striking it in its entirety.
74. Amend Article 11.10.1 by striking it in its entirety.
75. Amend Article 11.10.2 by striking the second sentence in its entirety and replace with: "Payments are due and payable within 30 days after Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one percent per month not to exceed twelve percent per annum."
76. Amend Article 11.10.3 by striking it in its entirety.
77. Amend Article 12 to include reference to the "Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy."
78. Amend Article 13.2 by striking it in its entirety and replacing with the following: "All attachments including Owner's Attachment A and all related exhibits."

July 3, 2013

ATTACHMENT "B"

STATE OF DELAWARE

DIVISION OF FACILITIES MANAGEMENT

Article 12

Errors and Omissions Policy

Table of Contents

- 1. Insurance**
- 2. Assignment of Responsibility**
- 3. Error and/or Omission Discovery**
- 4. Resolution and Appeal**

This document includes a general discussion on errors and/or omissions occurring during project implementation, how to initiate a correction for an error or omission, and what each party's responsibilities are in making the correction. The Division intends to seek reimbursement for additional costs (defined below) associated with correcting errors and omissions during planning, design and construction, including but not limited to, multiple report rewrites, construction costs, and construction engineering.

1. INSURANCE

This article does not address the types of liability insurance a firm may need to carry. Insurance usually carried by consultants includes Comprehensive General Liability, Comprehensive Automobile Liability, Workers' Compensation and Employers' Liability, Professional Liability, and other specialty insurance required in an agreement or that a firm may consider prudent based on the scope of work. The actual agreement covering the work will specify the minimum insurance requirements.

2. ASSIGNMENT OF RESPONSIBILITY

Services procured under the auspices of this document are considered "Professional Services". This in itself infers that, no matter what the scope of work entails, there are associated, industry professional, standards which are expected to be met. For projects involving public safety, meeting these standards takes on even more significance. Firms selected through the Division's professional services procurement process are the best technically qualified, with a proven history of meeting similar contract obligations. Such designation carries with it an acknowledgement of the firm's responsibility to know the accepted standards for doing business in Delaware.

Because of the Division's review process and the involvement of internal support sections as well as other state agencies, utility companies, public groups, municipalities, and the like, acceptance of the responsibility for an error and/or omission in a professional manner will depend on good project monitoring. Complete review and comment records are to be kept by both the Consultant and the Division. It is required that an office copy of each marked or edited review submission and comments be prepared and retained for future reference. Detailed minutes of project review meetings are also required. In projects that involve existing facilities, the Division will normally compensate at Consultant to perform a "pre-design survey" of the facility to determine the existing conditions and how the proposed work will be incorporated into the design. Firms are encouraged to exercise the utmost professional care during these surveys in order to complete full and complete construction drawings and specifications.

Because of the underlying expectation that a firm will comply with established standards throughout project development, there are occasions when a Project Manager and the Construction Projects Administrator will determine that a firm may not have met this obligation. When discovered, the error and/or omission should be reported immediately to the Consultant for resolution. While invoices should annotate the time and associated costs for correcting the lapse, the Division shall not be charged to correct errors and/or omissions.

3. ERROR AND/OR OMISSION DISCOVERY

Definitions:

Errors are defined as unknown, ignorant, or unintentional deviations from accuracy or correctness. Errors may arise from mistaken judgment, misplaced confidence, incorrect belief as to the existence or effect of matters of fact, or other actions. Errors also include failure to meet established Delaware requirements, or design standards for that type of project, (i.e., ASHRAE, DNREC, DelDOT, ICC, NEC, NSPA, or other established government requirements or design standards).

Omissions are defined as missing or unmentioned detail or requirements through either failure to perform properly, neglect, or failure to use reasonable care. Omissions also include failure to identify and implement cost-effective solutions.

Additional costs refers to that portion of the project cost the consultant is responsible for which includes those expenses over and above the cost the Division would have incurred had the error or omission not been made.

During Project Development

Errors and/or omissions discovered during project development are relatively easy to resolve when identified early because the Consultant's Project Manager and the Division's Project Manager are both aware of the circumstances surrounding the problem. The major issue remaining involves arriving at a mutual agreement on whether full, partial or no compensation is due the Consultant to correct the problem. (See Resolution below.)

During Implementation or Construction

Most often it will be obvious if a Consultant error and/or omission truly occurred. Frequently, however, there is a time lapse between the completion of professional services to develop the project and actual implementation of the plan, project, or construction. Associated with this delay is the updating and modification of completed work because of changes in specifications, updated regulations, legislative initiatives, or additional valid comments for improving a project. In essence, the quality and content of a project become a shared responsibility. Changes of scope or specifications (owner requested), updated regulations, legislative initiatives, or comments for improving a project after acceptance of the final design, shall in no way be construed as an error/or omission.

Professional responsibility of the Consultant preparing the project does not terminate with acceptance of the product and/or final payment for its development. Failure to discover the error and/or omission during the design, review or implementation of the project does not relieve the Consultant of their responsibility to correct the effects of the error and/or omission. The extent of the responsibility of the consultant for payment for correcting any errors and/or omissions may be in question, but the active participation of the firm in resolving a problem upon request is mandatory. The level of the Consultant's participation shall be determined by the Division.

The procedure to initiate the correction of an error and/or omission lies with the person responsible for ensuring proper implementation of the plan, project, or construction. At the first indication of an error and/or omission, the Division's representative should notify the project Supervisor. All subordinates should be instructed to keep detailed documentation on the work being performed.

At this same time, the Division's Project Manager responsible for developing the project, if not the person identifying the error and/or omission, should be notified. Depending upon how critical a correction is to project scheduling, report preparation and review may be impractical. When such timing is critical, the Project Manager is verbally notified, and guidance is requested with emphasis on what additional data is needed to document and resolve the error and/or omission. The Division's Project Manager, in turn, should immediately advise the consultant, the supervisor, and up through the chain of command as necessary.

The Division holds the prime Consultant responsible for all work performed or not performed under an agreement including that of any subconsultants. When necessary, based on the opinion of the Division's Project Manager, Construction Project Administrator, Chief Engineer, Deputy Director, and/or Director, the prime consultant will be notified of the problem and requested to participate in a solution in cooperation with Division staff. There will be no compensation to either the prime or subconsultant for services related to the verification and correction of an error and/or omission unless as otherwise agreed. The primary objective is to keep the project on schedule by proposing a viable alternative. Records should be kept of any immediate action taken to correct the situation.

4. RESOLUTION AND APPEAL

Resolution

The Division's Project Manager shall document the error and/or omission that was identified, collect all supporting materials, review their findings with the Consultant, determine the required action to correct the error and/or omission and analyze the cost impact of the resolution (including but not limited to materials, overtime, and force account). All documentation shall be presented to the Construction Project Administrator. The prime Consultant is expected to participate at the appropriate level, from site visits to preparation of corrective documents. Much of this participation is mutually agreed to as solutions are developed.

The Construction Project Administrator (or Chief Engineer) will review the materials, discuss the resolution options with the Consultant and make a final recommendation to the Chief Engineer (or Deputy Director) for review. At the conclusion of the Deputy Director's review, the recommendation will be presented to the Director for approval.

Appeal

Should the Consultant not participate in the resolution process or disagree with the finding of financial responsibility as presented, the Consultant can schedule a review with the Deputy Director or Director. The Deputy Director or Director can modify the terms of the resolution or refer the appeal to the OMB Director per the Consultant's contract.

Default

Should the Consultant not honor the terms of the final resolution, the Division, for just and definable acts, has the option of filing a Consultant insurance claim, filing legal process for restitution, terminating all current agreements, or barring the firm from further work with the Division for up to five years, or any combination thereof.



**ATTACHMENT C
AECOM TECHNICAL SERVICES, INC.
DELAWARE OFFICES
BILLING RATES FY17**

CHARGES

Our current billing rates shall be as follows:

<u>Classification</u>	<u>Hourly Rate</u>
Senior Principal Professional	\$170.00 - 230.00
Principal Professional	\$130.00 - 185.00
Project Professional / Construction Manager	\$110.00 - 165.00
Senior Professional	\$ 90.00 - 135.00
Staff Professional	\$ 55.00 - 115.00
Staff Designer	\$ 60.00 - 130.00
GIS	\$ 75.00 - 105.00
Project Field Technician	\$ 60.00 - 110.00
Administrative Staff	\$ 50.00 - 100.00
Survey Crew (2 person)	\$140.00 - 180.00
Survey Crew (3 person)	\$180.00 - 240.00
Contracted Services and Equipment Rentals	1.1 times our cost

These rates include our general overhead, profit and nominal expenses. Communication, transportation, and any special equipment required or requested for the project will be billed as a direct expense unless otherwise noted. Transportation costs will be billed by computed mileage using the most current GSA approved rate. These billing rates are updated annually. Individual billing rates are determined using our direct salary costs and set multipliers for field and office staff. Charges for contract personnel under our supervision and using our facilities will be billed according to the hourly rate corresponding to their classification.



State of Delaware
Department of Natural Resources and Environmental Control
Delaware Division of Parks and Recreation
89 Kings Highway
Dover, Delaware 19901

June 8, 2017

Ring W. Lardner
Andrews, Miller & Associates
601 East Main Street, Suite 100.
Salisbury, MD. 21804

**RE: Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services**

Mr. Lardner:

Enclosed is the fully executed agreement between the Department of Natural Resources and Environmental Control and Andrews, Miller & Associates pertaining to the above-captioned contract. This agreement will form the basis for all services you perform relative to the Department's Capital improvements program and can be renewed yearly through the Fiscal Year 2022.

Future requests will be made from the Department for written stipulated sum proposals on specific projects. Proposal will only be accepted upon the issuance of an addendum to this agreement along with a fully executed purchase order. An example of an addendum is enclosed.

We look forward to working with you on this program. Meanwhile, should you have any questions or require additional information, please contact our office at (302) 739-9231.

Sincerely,

Original On File

Cynthia A. Todd, RLA, Construction Projects Administrator
Office of Design and Development

Attachment:

AIA B101-2007 Standard Form of Agreement Between Owner and Architect
Sample Addendum

 We're saving a place for you...

File copy



AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Twenty-Fourth day of April in the year Two Thousand Seventeen

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:

(Name, legal status, address and other information)

Department of Natural Resources and Environmental Control
Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901
Tel: 302-739-9231

and the Architect:

(Name, legal status, address and other information)

Andrews, Miller & Associates A Division of Davis, Bowen & Friedel, Inc.
601 East Main Street, Suite 100.
Salisbury, MD. 21804
Tel: 410-543-9091

for the following Project:

(Name, location and detailed description)

State of Delaware

Department of Natural Resources and Environmental Control
Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
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- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

(Paragraph Deleted)

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

(State below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

Agreement is open-ended, renewable annually at the option of the Owner, and is to encompass improvements, renovations, repairs and replacements for all properties managed by the Department of Natural Resources and Environmental Control. Compensation will be determined separately for each individual project, but consistently as outlined in Articles 11 and 12. Refer to Attachment "A" and Article 12 for amendments to the text of this Agreement.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

To be determined per individual project

- .2 Substantial Completion date:

To be determined per individual project

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement.
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 Comprehensive General Liability

\$1,000,000

.2 Medical / Professional Liability

\$1,000,000 / \$3,000,000

.3 Miscellaneous Errors and Omissions

\$1,000,000 / \$3,000,000

.4 Product Liability

\$1,000,000 / \$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered. If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

.5 Automotive Liability (Bodily Injury):

\$100,000/\$300,000

.6 Automotive Property Damage (to others):

\$25,000

§ 2.6 Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

§ 2.7 The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the

Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

§ 2.8 The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the
(Paragraph Deleted)

contract.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, civil and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without prior notice to the Architect.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating

environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the mutually agreed upon program, schedule and construction budget required as well as the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings, outline specifications and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Architect shall perform life cycle cost analysis s required by 29 DEL.C. §6909A.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms. The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local governments including municipality in which the project is located.

§ 3.4.4 The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. After Owner's review, incorporate Owner's comments into the final construction documents.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect if requested shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect if requested shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction (5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship within 48 hours of receipt of official notification from the Owner.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

(Paragraphs Deleted)

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement as well as the Owner's Supplementary General Conditions and the Owner's General Requirements.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques,

sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate of Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

Init.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review, but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner. The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the information given and the design concepts in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness as to cause no delay. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of two years from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility <i>(Architect, Owner or Not Provided)</i>	Location of Service Description <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
§ 4.1.1 Programming (B202™–2009)		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™–2007)		
§ 4.1.6 Building Information Modeling (E202™–2008)		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™–2007)		
§ 4.1.10 Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site Project Representation (B207™–2008)		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings		

§ 4.1.15 Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) “as-built” drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-ROM. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.		
§ 4.1.16 Post occupancy evaluation		
§ 4.1.17 Facility Support Services (B210™–2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner’s consultants		
§ 4.1.20 Telecommunications/data design must comply with the State of Delaware's Department of Technology and Information's standards		
§ 4.1.21 Security Evaluation and Planning (B206™–2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

Except as identified as included in Architect’s Basic Services per Attachment A, Additional Services listed in 4.1 will be provided by the Architect via request of the Owner on a project by project basis.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner’s written authorization:

- .1 Making revisions in drawings, specifications or other documents, when such revisions are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustment in the Owner’s program or Project budget;
- .2 Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, except for Life Cycle Cost Analysis or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner's failure to render decisions in a timely manner.

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Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”

(Paragraphs Deleted)

- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

(Paragraph Deleted)

- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

(Paragraph Deleted)

- .2 Responding to the Contractor’s requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor’s proposals and supporting data, or the preparation or revision of Instruments of Service as outlined in Article 12 E & O policy;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate of Payment, more than 60 days after the date of Substantial Completion.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 (Two) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 (Two) visits per Month to the site by the Architect over the duration of the Project during construction
- .3 (Two) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 (Two) inspections for any portion of the Work to determine final completion

§ 4.3.3 If the services covered by this Agreement have not been completed within (60) months of the date of this Agreement, through no fault of the Architect, extension of the Architect’s services beyond that time may be compensated as Additional Services.

ARTICLE 5 OWNER’S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request

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from the Architect, the Owner may furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect may thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize reviewed and approved by the Owner. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided. The Owner may elect to transfer this responsibility to the Architect as an additional service in Article 3 of this Agreement.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. These services are not provided directly to the Architect.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. The Architect shall prepare and distribute meeting minutes during the design and construction phase of the Project.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

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ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's best judgment as a design professional.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WSB) format. If the lowest responsible and responsive bid exceeds the estimate Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all the discrepancies at no additional cost to the Owner.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to cooperate in the revising of the Project scope and the quality as required to reduce the Construction Cost, The Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for the bidding phase costs due to the modifications.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without approval of, or additional compensation to the Architect. The Contractor, Subcontractors, Subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for the use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of Work without specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the Architect from reuse of all instruments of service noted above for any other project or clients. The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specification if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a

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Project in which the Architect is not involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

(Paragraphs Deleted)

§ 8.2 MEDIATION

(Paragraph Deleted)

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise. In accordance with Delaware Law, A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of

filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

The choice is left to the parties.

(Paragraphs Deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect or except for funding purposes, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 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 and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

(Paragraph Deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction as amended by the Owner's General Requirements and the Owner's Supplemental Conditions.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, 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 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 Except in accordance with Delaware Freedom of Information Act (FOIA), 29 DEL.C.ch. 100, if the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Compensation shall be based upon a negotiated stipulated sum or DFM's architectural & engineering fee schedule based on the lowest bona fide bid plus alternates. Refer to 12.4 for further clarification.

§ 11.2 For Additional Services designated in Section 4.1 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Compensation shall be based upon negotiated stipulated sum prior to proceeding with additional services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Compensation shall be based upon service performed on an hourly basis utilizing the attached Schedule of Rates(Attachment C).

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Fifteen	percent (	15	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	One Hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. Design work for Alternates may be included for consideration in the cost of the work

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates may be adjusted subject to negotiation.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-state travel and subsistence based on Delaware's Office of Management and Budget's policy regarding such reimbursement;

(Paragraph Deleted)

- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;

- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

(Paragraphs Deleted)

- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

(Paragraphs Deleted)

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Payments are due and payable within 30 days after the Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one (1) percent per month not to exceed twelve (12) percent per annum.

(Insert rate of monthly or annual interest agreed upon.)

Per annum

(Paragraph Deleted)

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

Office of Management and Budget Division of Facilities Management's Errors and Omission Policy Attachment 'A'
Wherever the term "Architect" is used in this agreement, it shall be interchangeable with the term "Engineer".

§ 12.2 Amend Item 10 of Attachment A by adding to the words "prior notice to the Architect" the following:
"provided such directive or substitution is lawful, does not jeopardize the standard of care required of the architect and does not increase the established scope without equitable compensation."

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect

(Paragraph Deleted)

- .3 Other documents:

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Attachment 'A' - Amendments to AIA Document B101 007
Attachment 'B' - State of Delaware Division of Facilities Management Errors & Omissions Policy
Attachment 'C' - Schedule of Rates

This Agreement entered into as of the day and year first written above.

Original On File

OWNER

ARCHITECT

Original On File

(Signature)

Shawn M. Garvin, Cabinet Secretary - DNREC,
State of Delaware

(Printed name and title)

(Signature)

Ring Lardner, PE, Principle-in-Charge, Andrews,
Miller & Associates

(Printed name and title)

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User Notes:

(3B9ADA27)

ATTACHMENT "A"

Owner and Architect Agreement B101

This attachment amends AIA Document B101-2007 as follows:

1. Section 6903, Chapter 69, Title 29 of the Delaware Code requires a "prohibition against contingency fees" statement. An acceptable statement would be as follows:

"By signing this Agreement, the Professional swears that he has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he has not been paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement."

2. The Professional will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Professional will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

3. Amend Article I.1 by adding the following sentence to the end of the Article:

"At the Owner's request, the Architect shall produce all subcontractor agreements, including consultants, or any other agreement related to the Architect's performance on the project."

4. Amend Article 2.5 by striking the second sentence in its entirety.
5. Amend Article 2.5 by striking subsection 2.5.1 through 2.5.4 and inserting the following:

2.5.1 Comprehensive General Liability: \$1,000,000 and

2.5.2 Medical/Professional Liability: \$1,000,000/\$3,000,000 or

2.5.3 Misc. Errors or Omissions: \$1,000,000/\$3,000,000 or

2.5.4 Product Liability: \$1,000,000/\$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered.

If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

2.5.4 Automotive Liability (Bodily Injury): \$100,000/\$300,000

2.5.6 Automotive Property Damage (to others): \$25,000

6. Add a new Article 2.6 which shall read as follows:

Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

7. Add a new Article 2.7 which shall read as follows:

The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

8. Add a new Article 2.8 which shall read as follows:

The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.

9. Amend Article 3.1 by adding the word "civil" after "mechanical," and before "and".
10. Amend Article 3.1.4 by striking "the Architect's approval" and replacing it with "prior notice to the Architect."
11. Amend Article 3.2.5 by adding "the mutually agreed-upon program, schedule and construction budget requirement as well as" after "Based on" and before "the Owner's approval" in the first sentence. In the second sentence add ",outline specifications," after "drawings".
12. Amend Article 3.2.5.2 by adding the following sentence to the end of the Article: "The Architect shall perform life cycle cost analysis as required by 29 Del. C. §6909A."
13. Amend Article 3.2.6 by striking "prepared in accordance with Section 6.3."
14. Amend Article 3.3.1 by striking the word "outline" before "specifications".
15. Amend Article 3.4.3 by adding the following sentence to the end of the Article: "The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local government including municipality in which the project is located."
16. Amend Article 3.4.4 by striking the Article in its entirety and replacing it with the following: "The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit."
17. Amend Article 3.4.5 by adding after the last sentence "After Owner's review, incorporate Owner's comments into final construction documents."
18. Amend Article 3.5.1 by inserting in the first and second sentences "if requested" before Architect. In the second sentence after "(4) awarding and", insert "(5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship to Owner within 48 hours of receipt of official notification from Owner. If mailed, documents shall be sent using a delivery service that can track the shipment."
19. Amend Article 3.5.3 by striking it in its entirety.
20. Amend Article 3.6.1.1 by adding "as well as the Owner's Supplementary General Conditions and the Owner's General Requirements."
21. Amend Article 3.6.1.3 by striking it in its entirety and replacing it with the following: "The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment."

22. Amend Article 3.6.2.4 by adding the following to the end of the paragraph: "The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity."

23. Amend 3.6.4.1 by inserting the following after the first sentence: "The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents."

Also, amend by striking the final period in the last sentence and inserting the following: ", but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner."

24. Amend Article 3.6.4.2 by striking the first sentence in its entirety and replacing it with the following: "In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with information given and the design concepts in the Contract Documents."

25. Amend Article 3.6.4.4 by striking "Subject to the provisions of Section 4.3," and starting the sentence with "The".

Also amend by adding to the end of the fourth sentence the following immediately after "reasonable promptness": "as to cause no delay in the work."

26. Amend Article 3.6.5.1 by striking the following at the beginning of the second sentence: "Subject to the provision of Section 4.3" and starting the sentence with "The".

27. Amend Article 3.6.6.5 by changing "one year" to "two years".

28. Amend Article 4.1 by striking the following subparagraphs from additional services as they are considered Basic Services:

4.1.2 - Multiple Preliminary Drawings

4.1.7 - Civil Engineering

4.1.8 - Landscape Design

4.1.10 - Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.

4.1.11 - Detailed Cost Estimating

4.1.13 - Conformed Construction Documents

4.1.15 - Strike this section in its entirety and replace with the following: Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) "as-built" drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-Rom. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.

4.1.19 - Coordination of Owner's consultants

4.1.20 - In addition to Telecommunications and data design being a Basic Service, the design must comply with the State of Delaware's Department of Technology and Information's standards.

4.1.22 - Incorporate design and review comments from Owner's commissioning agent.

4.1.23 - Is a Basic Service as required in Article 3.2.5.1

4.1.26 - If required by local government including municipalities, Historic Preservation services will be considered Basic Services.

29. Amend Article 4.3.1.1 by striking it in its entirety and replacing it with the following:

"Making revisions in drawings, specifications or other documents, when such revisions are:

.1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget;

Providing services required because of significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contract for construction except for services required under Section 6.7."

30. Amend Article 4.3.1.2 by inserting "except for Life Cycle Cost Analysis" after "energy modeling" and before "or".

31. Amend Article 4.3.1.4 by striking in its entirety and replacing it with the following:

“Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner’s failure to render decisions in a timely manner.

Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”
32. Strike Article 4.3.1.5 in its entirety.
33. Strike Article 4.3.1.6 in its entirety.
34. Strike Article 4.3.1.7 in its entirety.
35. Strike Article 4.3.1.9 in its entirety.
36. Strike Article 4.3.2.1 in its entirety.
37. Amend Article 4.3.2.3 to add at the end “as outlined in Article 12 E & O policy.”
38. Strike Article 4.3.2.6 in its entirety and replace with the following: “Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of Work.”
39. Amend Article 4.3.3.1 by adding the number two before “reviews”.
40. Amend Article 4.3.3.2 by adding “the equivalent of 2 visits per month for the duration of the project.”
41. Amend Article 4.3.3.3 by adding the number two before “inspections”.
42. Amend Article 4.3.3.4 by adding the number two before “inspections”.
43. Amend Article 4.3.4 by changing “shall” to “may”.
44. Amend Article 5.2 by striking the word “shall” in the last sentence and replacing it with “may”.
45. Amend Article 5.6 by striking the last portion of the third sentence that reads “the Architect requests such services...scope of the Project” and replace with “reviewed and approved by the Owner.”

Also amend by adding the following at the end of the paragraph: "The Owner may elect to transfer this responsibility to the Architect as an Additional Service in Article 3 of this Agreement."

46. Amend Article 5.8 by adding the following to the end of the Article: "These services are not provided directly to the Architect."
47. Amend Article 5.10 by adding a third sentence to read as follows: "The Architect shall prepare and distribute meeting minutes during the design and construction phases of the Project."
48. Amend Article 6.2 by inserting "best" before "judgment" in the second sentence. Also, strike the third and fourth sentences in their entirety.
49. Amend Article 6.3 by deleting the second and third sentences and replace with the following: "The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WBS) format. If the lowest responsible and responsive bid exceeds the estimated Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all discrepancies at no additional cost to the Owner."
50. Delete Article 6.7 in its entirety and replace with the following:

"If the Owner chooses to cooperate in the revising the Project scope and quality as required to reduce the Construction Cost, the Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for bidding phase costs due to the modifications."
51. Amend Article 7 by striking it in its entirety and replacing it with the following:

"All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this Agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Architect. The Contractor, Subcontractors, Sub-subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the Architect from the reuse of all instruments of service noted above for any other projects or clients."

The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specifications if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a Project in which the Architect is not also involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp."

52. Amend Article 8.1.1 by striking the last sentence in its entirety.
53. Amend Article 8.1.2 by striking it in its entirety.
54. Amend Article 8.1.3 by striking it in its entirety.
55. Amend Article 8.2.1 by striking it in its entirety.
56. Amend Article 8.2.2 by striking the end of the first sentence "shall be administered ...the date of the Agreement." Also add the following to the beginning of the second sentence: "In accordance with Delaware law,"
57. Amend Article 8.2.4 by checking the box marked "Other" and insert the following: "The choice is left to the parties."
58. Amend Article 8.3 by striking it in its entirety.
59. Amend Article 9.3 by adding the following to the first sentence after "fault of the Architect": "or except for funding purposes,"
60. Amend Article 9.7 by striking the following from the end of the sentence: "plus an amount...by the Architect."
61. Amend Article 9.8 by striking it in its entirety.
62. Amend Article 10.1 by striking the following from the end of the sentence: "except that if... govern Section 8.3."
63. Amend Article 10.2 by adding the following to the end of the sentence: "as amended by the Owner's General Requirements and the Owner's Supplemental Conditions."
64. Amend Article 10.8 by adding the following to the beginning of the first sentence: "Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100,".
65. Amend Article 11.2 by adding the following after "Section 4.1": "as amended by Owner's Attachment A."
66. Amend Article 11.3 by adding the following after "Section 4.3": "as amended by Owner's Attachment A."

67. Amend Article 11.6 by adding the following sentence at the end: "Design Work for Alternates may be included for consideration in the cost of work."
68. Amend Article 11.7 by striking the second sentence in its entirety and replacing it with the following: "The rates may be adjusted subject to negotiation."
69. Amend 11.8.1.1 by striking the phrase "out-of-town" and replacing it with "out-of-state". Normally the State only reimburses "out-of-state" transportation and living expenses directly related to a project.

Also, insert the following at the end of the sentence: "based on Delaware's Office of Management and Budget's policy regarding such reimbursement."

70. Amend Article 11.8.1.2 by striking it in its entirety.
71. Amend Article 11.8.1.8 by striking it in its entirety.
72. Amend Article 11.8.1.9 by striking it in its entirety.
73. Amend Article 11.9 by striking it in its entirety.
74. Amend Article 11.10.1 by striking it in its entirety.
75. Amend Article 11.10.2 by striking the second sentence in its entirety and replace with: "Payments are due and payable within 30 days after Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one percent per month not to exceed twelve percent per annum."
76. Amend Article 11.10.3 by striking it in its entirety.
77. Amend Article 12 to include reference to the "Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy."
78. Amend Article 13.2 by striking it in its entirety and replacing with the following: "All attachments including Owner's Attachment A and all related exhibits."

July 3, 2013

ATTACHMENT "B"

STATE OF DELAWARE

DIVISION OF FACILITIES MANAGEMENT

Article 12

Errors and Omissions Policy

Table of Contents

- 1. Insurance**
- 2. Assignment of Responsibility**
- 3. Error and/or Omission Discovery**
- 4. Resolution and Appeal**

This document includes a general discussion on errors and/or omissions occurring during project implementation, how to initiate a correction for an error or omission, and what each party's responsibilities are in making the correction. The Division intends to seek reimbursement for additional costs (defined below) associated with correcting errors and omissions during planning, design and construction, including but not limited to, multiple report rewrites, construction costs, and construction engineering.

1. INSURANCE

This article does not address the types of liability insurance a firm may need to carry. Insurance usually carried by consultants includes Comprehensive General Liability, Comprehensive Automobile Liability, Workers' Compensation and Employers' Liability, Professional Liability, and other specialty insurance required in an agreement or that a firm may consider prudent based on the scope of work. The actual agreement covering the work will specify the minimum insurance requirements.

2. ASSIGNMENT OF RESPONSIBILITY

Services procured under the auspices of this document are considered "Professional Services". This in itself infers that, no matter what the scope of work entails, there are associated, industry professional, standards which are expected to be met. For projects involving public safety, meeting these standards takes on even more significance. Firms selected through the Division's professional services procurement process are the best technically qualified, with a proven history of meeting similar contract obligations. Such designation carries with it an acknowledgement of the firm's responsibility to know the accepted standards for doing business in Delaware.

Because of the Division's review process and the involvement of internal support sections as well as other state agencies, utility companies, public groups, municipalities, and the like, acceptance of the responsibility for an error and/or omission in a professional manner will depend on good project monitoring. Complete review and comment records are to be kept by both the Consultant and the Division. It is required that an office copy of each marked or edited review submission and comments be prepared and retained for future reference. Detailed minutes of project review meetings are also required. In projects that involve existing facilities, the Division will normally compensate at Consultant to perform a "pre-design survey" of the facility to determine the existing conditions and how the proposed work will be incorporated into the design. Firms are encouraged to exercise the utmost professional care during these surveys in order to complete full and complete construction drawings and specifications.

Because of the underlying expectation that a firm will comply with established standards throughout project development, there are occasions when a Project Manager and the Construction Projects Administrator will determine that a firm may not have met this obligation. When discovered, the error and/or omission should be reported immediately to the Consultant for resolution. While invoices should annotate the time and associated costs for correcting the lapse, the Division shall not be charged to correct errors and/or omissions.

3. ERROR AND/OR OMISSION DISCOVERY

Definitions:

Errors are defined as unknown, ignorant, or unintentional deviations from accuracy or correctness. Errors may arise from mistaken judgment, misplaced confidence, incorrect belief as to the existence or effect of matters of fact, or other actions. Errors also include failure to meet established Delaware requirements, or design standards for that type of project, (i.e., ASHRAE, DNREC, DelDOT, ICC, NEC, NSPA, or other established government requirements or design standards).

Omissions are defined as missing or unmentioned detail or requirements through either failure to perform properly, neglect, or failure to use reasonable care. Omissions also include failure to identify and implement cost-effective solutions.

Additional costs refers to that portion of the project cost the consultant is responsible for which includes those expenses over and above the cost the Division would have incurred had the error or omission not been made.

During Project Development

Errors and/or omissions discovered during project development are relatively easy to resolve when identified early because the Consultant's Project Manager and the Division's Project Manager are both aware of the circumstances surrounding the problem. The major issue remaining involves arriving at a mutual agreement on whether full, partial or no compensation is due the Consultant to correct the problem. (See Resolution below.)

During Implementation or Construction

Most often it will be obvious if a Consultant error and/or omission truly occurred. Frequently, however, there is a time lapse between the completion of professional services to develop the project and actual implementation of the plan, project, or construction. Associated with this delay is the updating and modification of completed work because of changes in specifications, updated regulations, legislative initiatives, or additional valid comments for improving a project. In essence, the quality and content of a project become a shared responsibility. Changes of scope or specifications (owner requested), updated regulations, legislative initiatives, or comments for improving a project after acceptance of the final design, shall in no way be construed as an error/or omission.

Professional responsibility of the Consultant preparing the project does not terminate with acceptance of the product and/or final payment for its development. Failure to discover the error and/or omission during the design, review or implementation of the project does not relieve the Consultant of their responsibility to correct the effects of the error and/or omission. The extent of the responsibility of the consultant for payment for correcting any errors and/or omissions may be in question, but the active participation of the firm in resolving a problem upon request is mandatory. The level of the Consultant's participation shall be determined by the Division.

The procedure to initiate the correction of an error and/or omission lies with the person responsible for ensuring proper implementation of the plan, project, or construction. At the first indication of an error and/or omission, the Division's representative should notify the project Supervisor. All subordinates should be instructed to keep detailed documentation on the work being performed.

At this same time, the Division's Project Manager responsible for developing the project, if not the person identifying the error and/or omission, should be notified. Depending upon how critical a correction is to project scheduling, report preparation and review may be impractical. When such timing is critical, the Project Manager is verbally notified, and guidance is requested with emphasis on what additional data is needed to document and resolve the error and/or omission. The Division's Project Manager, in turn, should immediately advise the consultant, the supervisor, and up through the chain of command as necessary.

The Division holds the prime Consultant responsible for all work performed or not performed under an agreement including that of any subconsultants. When necessary, based on the opinion of the Division's Project Manager, Construction Project Administrator, Chief Engineer, Deputy Director, and/or Director, the prime consultant will be notified of the problem and requested to participate in a solution in cooperation with Division staff. There will be no compensation to either the prime or subconsultant for services related to the verification and correction of an error and/or omission unless as otherwise agreed. The primary objective is to keep the project on schedule by proposing a viable alternative. Records should be kept of any immediate action taken to correct the situation.

4. RESOLUTION AND APPEAL

Resolution

The Division's Project Manager shall document the error and/or omission that was identified, collect all supporting materials, review their findings with the Consultant, determine the required action to correct the error and/or omission and analyze the cost impact of the resolution (including but not limited to materials, overtime, and force account). All documentation shall be presented to the Construction Project Administrator. The prime Consultant is expected to participate at the appropriate level, from site visits to preparation of corrective documents. Much of this participation is mutually agreed to as solutions are developed.

The Construction Project Administrator (or Chief Engineer) will review the materials, discuss the resolution options with the Consultant and make a final recommendation to the Chief Engineer (or Deputy Director) for review. At the conclusion of the Deputy Director's review, the recommendation will be presented to the Director for approval.

Appeal

Should the Consultant not participate in the resolution process or disagree with the finding of financial responsibility as presented, the Consultant can schedule a review with the Deputy Director or Director. The Deputy Director or Director can modify the terms of the resolution or refer the appeal to the OMB Director per the Consultant's contract.

Default

Should the Consultant not honor the terms of the final resolution, the Division, for just and definable acts, has the option of filing a Consultant insurance claim, filing legal process for restitution, terminating all current agreements, or barring the firm from further work with the Division for up to five years, or any combination thereof.

LICENSE NO. 1992101958 DORBL

STATE OF DELAWARE

VALID

POST CONSPICUOUSLY

DIVISION OF REVENUE

01/01/15 - 12/31/17
NOT TRANSFERABLE

DLN: 14 95186 18

BUSINESS CODE
GROUP CODE

540
007

LICENSED
ACTIVITY

PROFESSIONAL SERVICES- ENGINEER
PROFESSIONAL AND/OR PERSONAL SERVICES

DATE ISSUED: 11/22/14

VALIDATED

2017

LICENSE FEE: \$ 75.00

MAILING ADDRESS

BUSINESS LICENSE

BUSINESS LOCATION

DAVIS BOWEN & FRIEDEL INC
23 N WALNUT ST
MILFORD DE 19963-1445



DAVIS BOWEN & FRIEDEL INC
23 N WALNUT ST
MILFORD DE 19963-1445

IS HEREBY LICENSED TO PRACTICE, CONDUCT OR ENGAGE IN THE OCCUPATION
OR BUSINESS ACTIVITY INDICATED ABOVE IN ACCORDANCE WITH THE LICENSE
APPLICATION DULY FILED PURSUANT TO TITLE 30, DEL CODE.

PATRICK T. CARTER

DIRECTOR OF REVENUE



CERTIFICATE OF LIABILITY INSURANCE

OP ID: KK

DATE (MM/DD/YYYY)

10/03/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Avery W. Hall Ins Agency Inc 308 East Main Street PO Box 2317 Salisbury, MD 21802-2317 Joseph L. Gast, CPCU, ChFC	CONTACT NAME:		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
E-MAIL ADDRESS:			
PRODUCER CUSTOMER ID #: DAVIS15			
INSURED Davis, Bowen & Friedel, Inc. P.O. Box 93 Salisbury, MD 21803	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Selective Ins Co of SC		19259
	INSURER B : Chesapeake Employers Ins Co		11039
	INSURER C : Continental Casualty Company		20443
	INSURER D : Zurich American Ins Co		16535
	INSURER E :		
INSURER F : Twin City Fire Insurance Co.		29459	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			S2244530	09/30/2016	09/30/2017	EACH OCCURRENCE	\$ 2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 2,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$ 10,000
	<input checked="" type="checkbox"/> Primary						PERSONAL & ADV INJURY	\$ 2,000,000
	<input checked="" type="checkbox"/> Blkt Contractual			GENERAL AGGREGATE	\$ 4,000,000			
	GEN'L AGGREGATE LIMIT APPLIES PER:			PRODUCTS - COMP/OP AGG	\$ 4,000,000			
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC				\$			
A	AUTOMOBILE LIABILITY			S2244530	09/30/2016	09/30/2017	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (PER ACCIDENT)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS				\$			
	<input checked="" type="checkbox"/> NON-OWNED AUTOS				\$			
A	UMBRELLA LIAB	<input checked="" type="checkbox"/>	OCCUR	S2244530	09/30/2016	09/30/2017	EACH OCCURRENCE	\$ 5,000,000
	EXCESS LIAB		CLAIMS-MADE				AGGREGATE	\$ 5,000,000
	DEDUCTIBLE							\$
	<input checked="" type="checkbox"/> RETENTION \$ Zero				\$			
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			4629159 - MARYLAND	09/30/2016	09/30/2017	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	N/A				E.L. EACH ACCIDENT	\$ 500,000
D	If yes, describe under DESCRIPTION OF OPERATIONS below			WC6732926 - DELAWARE	09/30/2016	09/30/2017	E.L. DISEASE - EA EMPLOYEE	\$ 500,000
C	Professional Liab			AEA004314140	09/20/2016	09/20/2017	E.L. DISEASE - POLICY LIMIT	\$ 500,000
F	Employment Prac LI			30KB0280751	09/01/2016	09/01/2017	Per Claim	3,000,000
							Limit	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Re: Certificate is for insurance purposes only.

CERTIFICATE HOLDER**CANCELLATION**

DAVISBO	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
Davis Bowen & Friedel Inc P.O. Box 93 Salisbury, MD 21803	
	AUTHORIZED REPRESENTATIVE Joseph L. Gast, CPCU, ChFC

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Michael R. Wigley, AIA, LEED AP
Randy B. Duplechain, P.E.
W. Zachary Crouch, P.E.
Michael E. Wheelleton, AIA
Jason P. Loar, P.E.
Ring W. Lardner, P.E.

May 12, 2017

Ms. Cynthia A. Todd, RLA
Department of Natural Resources & Environmental Control
Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901

RE: Professional Services Procurement
Contract # NAT 17-002-PS

Dear Ms. Todd

Please find enclosed the documentation required per your letter dated April 24, 2017 for the above referenced Contract. Enclosed are the following:

- 2 signed copies of the Contract including Attachment C
- Copy of our Business License
- Copy of our Certificate of Insurance

If you have any questions or concerns feel free to contact me at (302) 424-1441 or e-mail me at rwf@dbfinc.com.

Sincerely,
Davis, Bowen & Friedel, Inc.

Original On File

Ring W. Lardner, P.E.
Principal

DAVIS, BOWEN & FRIEDEL, INC. ("DBF")
SCHEDULE OF RATES AND GENERAL CONDITIONS
 SCHEDULE NO. 46
 Effective June 1, 2015

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal	\$170.00
Senior Architect	\$150.00
Architect	\$120.00
Senior Landscape Architect	\$150.00
Landscape Architect	\$120.00
Senior Engineer	\$150.00
Engineer	\$120.00
Construction Administrator	\$120.00
Senior Traffic Engineer	\$150.00
Traffic Engineer	\$120.00
Geologist	\$120.00
GIS Specialist	\$110.00
Senior Surveyor	\$150.00
Associate Surveyor	\$120.00
Surveyor	\$115.00
Senior Designer	\$115.00
Computer Graphics Designer	\$100.00
Designer	\$105.00
CADD I	\$95.00
CADD II	\$85.00
Computer Administrator	\$100.00
2 Man Field Crew	\$140.00
3 Man Field Crew	\$175.00
GPS Unit (1 man)	\$110.00
GPS Unit (2 man Crew)	\$150.00
GPS Unit (3 man Crew)	\$200.00
Resident Project Representative	\$80.00
Water/Wastewater Operator	\$120.00
Clerical	\$60.00
Travel	\$0.50
Direct Expense	Cost + 10%
Prints (In-house Reproduction)	\$2.50/sheet

GENERAL CONDITIONS

INVOICES & PAYMENT

Invoices are sent monthly or sooner if project is complete. Payment Terms: Net 30 days of invoice date. Any invoice not paid within 30 days shall bear interest at 1.0% per month (12% annually). If required to engage legal counsel to collect an overdue invoice, DBF shall be entitled to recover also its costs of collection, including counsel fees and expenses. DBF reserves the right to adjust its schedule of rates annually. Any such adjustments will be effective within 30 days after written notification to the client.

TERMINATION OF CONTRACT

Client may terminate this agreement upon seven days' prior written notice to DBF for convenience or cause. DBF may terminate this Agreement for cause upon seven days' prior written notice to client. Failure of client to pay invoices when due shall be cause for immediate suspension and ultimate termination of services, at DBF's sole discretion. This agreement may be terminated by either party for any reason with 30 days advance notice.

LIMITATION OF LIABILITY

Client agrees to limit DBF's liability related to any errors or omissions to a sum that shall not exceed the total professional fee for the project.

INDEMNIFICATION

Client and DBF each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorney's fees caused by the other's negligence. To the extent such claims, losses, damages or expenses are caused by the joint or concurrent negligence of client and DBF, the same shall be borne by each party in proportion to its negligence. This shall in no way affect the limitation of DBF's liability expressed in the preceding paragraph.

FORCE MAJEURE

Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence.

CONSTRUCTION PHASE SERVICES

If this Agreement provides for any construction phase services by DBF, it is understood that the contractor, not DBF, is solely responsible for the construction of the project, and that DBF shall not be responsible for the acts or omissions of any contractor, subcontractor or material supplier; for safety precautions, programs or enforcement; or for construction means, methods, techniques, sequences and procedures employed by the contractor, its subcontractors or suppliers.

OWNERSHIP OF DOCUMENTS

All documents prepared or furnished by DBF pursuant to this Agreement, including electronic media, are instruments of DBF's professional service, and DBF shall retain an ownership and property interest therein. DBF grants client, during the period of DBF's service, a license to use such documents for the purpose of constructing, occupying and maintaining the project. Reuse or modification of any such documents by client or client's agents, without DBF's written permission, shall be at client's sole risk; and client agrees to indemnify and hold DBF harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by client or by others acting through or with the consent of client.

USE OF ELECTRONIC MEDIA

Copies of documents that may be relied upon by client are limited to the printed copies (also known as hard copies) that are signed or sealed by DBF. Files in electronic media format or text, data, graphic or other types that are furnished by DBF to client are only for convenience of client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, DBF makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, computer hardware or of a protocol differing from those in use by DBF during the period of this agreement.

SUCCESSORS & ASSIGNS

The client and DBF bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

MISCELLANEOUS PROVISIONS

Unless otherwise specified, this Agreement shall be governed by laws of the State in which the work is performed, and the courts of such State shall have exclusive jurisdiction over any disputes hereunder. Terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. If this schedule is incorporated or referenced in an agreement with client, the terms of this schedule shall prevail in the event of any conflict with the terms of such agreement.

REIMBURSABLE EXPENSES

Other expenses known as direct expenses incurred in the interest of the project (including travel, toll communications, postage, delivery, photographs, subcontract engineering, testing or other consultants, renderings, models, etc.) will be billed monthly at DBF's actual cost plus ten percent.



State of Delaware
Department of Natural Resources and Environmental Control
Delaware Division of Parks and Recreation
89 Kings Highway
Dover, Delaware 19901

June 8, 2017

William Holloway
Bernadon
123 Justison Street, Suite 101
Wilmington, DE. 19801

**RE: Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services**

Mr. Holloway:

Enclosed is the fully executed agreement between the Department of Natural Resources and Environmental Control and Bernadon pertaining to the above-captioned contract. This agreement will form the basis for all services you perform relative to the Department's Capital improvements program and can be renewed yearly through the Fiscal Year 2022.

Future requests will be made from the Department for written stipulated sum proposals on specific projects. Proposal will only be accepted upon the issuance of an addendum to this agreement along with a fully executed purchase order. An example of an addendum is enclosed.

We look forward to working with you on this program. Meanwhile, should you have any questions or require additional information, please contact our office at (302) 739-9231.

Sincerely,

Original On File

Cynthia A. Todd, RLA, Construction Projects Administrator
Office of Design and Development

Attachment:

AIA B101-2007 Standard Form of Agreement Between Owner and Architect
Sample Addendum

 We're saving a place for you...

True Copy

LICENSE NO. 2011604070 DORBL

STATE OF DELAWARE

VALID

POST CONSPICUOUSLY

DIVISION OF REVENUE

01/01/17 - 12/31/17
NOT TRANSFERABLE

DLN: 17 98130 61 BUSINESS CODE 001
GROUP CODE 007

LICENSED PROFESSIONAL SERVICES - ARCHITECT
ACTIVITY PROFESSIONAL AND/OR PERSONAL SERVICES

DATE ISSUED: 01/19/17

VALIDATED

2017

LICENSE FEE: \$ 75.00

MAILING ADDRESS

BUSINESS LICENSE

BUSINESS LOCATION

BERNARDON LLC
123 S JUSTISON ST STE 101
WILMINGTON DE 19801-5364



BERNARDON LLC
123 S JUSTISON ST STE 101
WILMINGTON DE 19801-5364

IS HEREBY LICENSED TO PRACTICE, CONDUCT OR ENGAGE IN THE OCCUPATION OR BUSINESS ACTIVITY INDICATED ABOVE IN ACCORDANCE WITH THE LICENSE APPLICATION DULY FILED PURSUANT TO TITLE 30, DEL CODE.

DAVID GREGOR

DIRECTOR OF REVENUE

IMPORTANT - TEAR AT ABOVE PERFORATION AND DISPLAY IN A PUBLIC LOCATION

Federal E.I. No. or Social Security Number 1 45274 5793 001

Business Code 001
Group Code 007

Licensed PROFESSIONAL SERVICES - ARCHITECT
Activity PROFESSIONAL AND/OR PERSONAL SERVICES

The State of Delaware Business License printed above must be posted in a public area at the location address listed. If you have any questions regarding this license, please call (302) 577-8778.

REPLACEMENT LICENSES

Keep this portion of your license separate, in case you need a replacement for any lost, stolen or destroyed license. A \$15 fee will be charged for the replacement of a license. Send the \$15 along with a copy of this form or provide your Federal Employer Identification Number, or Social Security Number, suffix, Business Code, Business Name and address to Delaware Division of Revenue, Attn.: Business Master File, PO Box 8750, Wilmington, DE 19899-8750. You will receive your replacement license within three to four weeks.

OTHER IMPORTANT INFORMATION

Most licensees are also required to pay either gross receipts or excise taxes in addition to the license fee. You can file these taxes online or obtain a paper form from our website at www.revenue.delaware.gov. You must submit all business tax returns filed with the Division of Revenue under the same identification number. If you are a sole-proprietor, and have a federal employer identification number, use the employer identification number, not your social security number. Only sole proprietors with no employees are allowed to file under their social security number. Inquiries regarding your coupon booklets to pay withholding, corporate tentative, and Sub Chapter "S" estimated taxes, or to make changes to your name, address, or identification number, should be directed to the Business Master File Unit at (302) 577-8778.

INTERNET SITE

The Division of Revenue web address is: www.revenue.delaware.gov. Visit our web site for tax tips, links to telephone numbers, forms that you can download, links to other State agencies, the Delaware Code, the publication "Delaware Guide for Small Business" and lots more. Internet filing of personal income tax returns via the Division of Revenue's website is available. Internet filing for Withholding, Gross Receipts and Corporate Tentative payments is also available.

AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Twenth-Fourth day of April in the year Two Thousand Seventeen

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:

(Name, legal status, address and other information)

Department of Natural Resources and Environmental Control
Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901
TEL: 302-739-9231

and the Architect:

(Name, legal status, address and other information)

Bernardon LLC.
123 Justison Street, Suite 101
Wilmington, DE. 19801
Tel: 302-622-9550

for the following Project:

(Name, location and detailed description)

State of Delaware
Department of Natural Resources and Environmental Control
Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

(Paragraph Deleted)

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

(State below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

Agreement is open-ended, renewable annually at the option of the Owner, and is to encompass improvements, renovations, repairs and replacements for all properties managed by the Department of Natural Resources and Environmental Control. Compensation will be determined separately for each individual project, but consistently as outlined in Articles 11 and 12. Refer to Attachment "A" and Article 12 for amendments to the text of this Agreement.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

To be determined per individual project

- .2 Substantial Completion date:

To be determined per individual project

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§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement.

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 Comprehensive General Liability

\$1,000,000

.2 Medical / Professional Liability

\$1,000,000 / \$3,000,000

.3 Miscellaneous Errors and Omissions

\$1,000,000 / \$3,000,000

.4 Product Liability

\$1,000,000 / \$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered. If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

.5 Automotive Liability (Bodily Injury):

\$100,000/\$300,000

.6 Automotive Property Damage (to others):

\$25,000

§ 2.6 Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

§ 2.7 The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the

Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

§ 2.8 The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the
(Paragraph Deleted)

contract.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, civil and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without prior notice to the Architect.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating

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environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the mutually agreed upon program, schedule and construction budget required as well as the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings, outline specifications and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Architect shall perform life cycle cost analysis as required by 29 DEL.C. §6909A.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms. The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local governments including municipality in which the project is located.

§ 3.4.4 The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. After Owner's review, incorporate Owner's comments into the final construction documents.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect if requested shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect if requested shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction (5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship within 48 hours of receipt of official notification from the Owner.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

(Paragraphs Deleted)

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement as well as the Owner's Supplementary General Conditions and the Owner's General Requirements.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques,

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User Notes:

(3B9ADA22)

sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate of Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review, but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner. The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the information given and the design concepts in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness as to cause no delay. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of two years from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. *(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™–2009)		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™–2007)		
§ 4.1.6 Building Information Modeling (E202™–2008)		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™–2007)		
§ 4.1.10 Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site Project Representation (B207™–2008)		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings		

§ 4.1.15 Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) “as-built” drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-ROM. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.		
§ 4.1.16 Post occupancy evaluation		
§ 4.1.17 Facility Support Services (B210™–2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner’s consultants		
§ 4.1.20 Telecommunications/data design must comply with the State of Delaware’s Department of Technology and Information’s standards		
§ 4.1.21 Security Evaluation and Planning (B206™–2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

Except as identified as included in Architect’s Basic Services per Attachment A, Additional Services listed in 4.1 will be provided by the Architect via request of the Owner on a project by project basis.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner’s written authorization:

- .1 Making revisions in drawings, specifications or other documents, when such revisions are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustment in the Owner’s program or Project budget;
- .2 Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, except for Life Cycle Cost Analysis or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner’s failure to render decisions in a timely manner.

Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”

(Paragraphs Deleted)

- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

(Paragraph Deleted)

- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

(Paragraph Deleted)

- .2 Responding to the Contractor’s requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor’s proposals and supporting data, or the preparation or revision of Instruments of Service as outlined in Article 12 E & O policy;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate of Payment, more than 60 days after the date of Substantial Completion.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 (Two) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 (Two) visits per Month to the site by the Architect over the duration of the Project during construction
- .3 (Two) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 (Two) inspections for any portion of the Work to determine final completion

§ 4.3.3 If the services covered by this Agreement have not been completed within (60) months of the date of this Agreement, through no fault of the Architect, extension of the Architect’s services beyond that time may be compensated as Additional Services.

ARTICLE 5 OWNER’S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request

from the Architect, the Owner may furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect may thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize reviewed and approved by the Owner. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided. The Owner may elect to transfer this responsibility to the Architect as an additional service in Article 3 of this Agreement.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. These services are not provided directly to the Architect.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. The Architect shall prepare and distribute meeting minutes during the design and construction phase of the Project.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's best judgment as a design professional.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WSB) format. If the lowest responsible and responsive bid exceeds the estimate Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all the discrepancies at no additional cost to the Owner.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to cooperate in the revising of the Project scope and the quality as required to reduce the Construction Cost, The Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for the bidding phase costs due to the modifications.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without approval of, or additional compensation to the Architect. The Contractor, Subcontractors, Subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for the use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of Work without specific written consent of the Owner, Architect and the Architect's consultants.

This stipulation shall not prohibit the Architect from reuse of all instruments of service noted above for any other project or clients. The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specification if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a

Project in which the Architect is not involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

(Paragraphs Deleted)

§ 8.2 MEDIATION

(Paragraph Deleted)

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise. In accordance with Delaware Law, A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of

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filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

The choice is left to the parties.

(Paragraphs Deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect or except for funding purposes, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 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 and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

(Paragraph Deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction as amended by the Owner's General Requirements and the Owner's Supplemental Conditions.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, 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 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 Except in accordance with Delaware Freedom of Information Act (FOIA), 29 DEL.C.ch. 100, if the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Compensation shall be based upon a negotiated stipulated sum or DFM's architectural & engineering fee schedule based on the lowest bona fide bid plus alternates. Refer to 12.4 for further clarification.

§ 11.2 For Additional Services designated in Section 4.1 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Compensation shall be based upon negotiated stipulated sum prior to proceeding with additional services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Compensation shall be based upon service performed on an hourly basis utilizing the attached Schedule of Rates (Attachment C).

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Fifteen	percent (	15	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	One Hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. Design work for Alternates may be included for consideration in the cost of the work

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates may be adjusted subject to negotiation.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

(see "Attachment C" for rates) ^{NET}

Employee or Category

Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-state travel and subsistence based on Delaware's Office of Management and Budget's policy regarding such reimbursement;

(Paragraph Deleted)

- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;

- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

(Paragraphs Deleted)

- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

(Paragraphs Deleted)

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Payments are due and payable within 30 days after the Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one (1) percent per month not to exceed twelve (12) percent per annum.

(Insert rate of monthly or annual interest agreed upon.)

12% *net*
Per annum

(Paragraph Deleted)

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

Office of Management and Budget Division of Facilities Management's Errors & Omission Policy - Attachment 'B' Wherever the term "Architect" is used in this agreement, it shall be interchangeable with the term "Engineer"

§ 12.2 Amend Item 10 of Attachment A by adding to the words "prior notice to the Architect" the following: "provided such directive or substitution is lawful, does not jeopardize the standard of care required of the architect and does not increase the established scope without equitable compensation."

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect

(Paragraph Deleted)

- .3 Other documents:

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(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Attachment 'A' - Amendments to AIA Document B101 007
Attachment 'B' - State of Delaware Division of Facilities Management Errors & Omissions Policy
Attachment 'C' - Schedule of Rates

This Agreement entered into as of the day and year first written above.

OWNER

Original On File

(Signature)

Shawn M. Garvin, Cabinet Secretary - DNREC,
State of Delaware

(Printed name and title)

ARCHITECT

Original On File

(Signature)

William E. Holloway, AIA, LEED AP. Principle,
Bernardon LLC.

(Printed name and title)

Init.

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ATTACHMENT "A"

Owner and Architect Agreement B101

This attachment amends AIA Document B101-2007 as follows:

1. Section 6903, Chapter 69, Title 29 of the Delaware Code requires a "prohibition against contingency fees" statement. An acceptable statement would be as follows:

"By signing this Agreement, the Professional swears that he has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he has not been paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement."

2. The Professional will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Professional will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

3. Amend Article I.1 by adding the following sentence to the end of the Article:

"At the Owner's request, the Architect shall produce all subcontractor agreements, including consultants, or any other agreement related to the Architect's performance on the project."

4. Amend Article 2.5 by striking the second sentence in its entirety.
5. Amend Article 2.5 by striking subsection 2.5.1 through 2.5.4 and inserting the following:

2.5.1 Comprehensive General Liability: \$1,000,000 and

2.5.2 Medical/Professional Liability: \$1,000,000/\$3,000,000 or

2.5.3 Misc. Errors or Omissions: \$1,000,000/\$3,000,000 or

2.5.4 Product Liability: \$1,000,000/\$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered.

If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

2.5.4 Automotive Liability (Bodily Injury): \$100,000/\$300,000

2.5.6 Automotive Property Damage (to others): \$25,000

6. Add a new Article 2.6 which shall read as follows:

Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

7. Add a new Article 2.7 which shall read as follows:

The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

8. Add a new Article 2.8 which shall read as follows:

The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.

9. Amend Article 3.1 by adding the word "civil" after "mechanical," and before "and".
10. Amend Article 3.1.4 by striking "the Architect's approval" and replacing it with "prior notice to the Architect."
11. Amend Article 3.2.5 by adding "the mutually agreed-upon program, schedule and construction budget requirement as well as" after "Based on" and before "the Owner's approval" in the first sentence. In the second sentence add ",outline specifications," after "drawings".
12. Amend Article 3.2.5.2 by adding the following sentence to the end of the Article: "The Architect shall perform life cycle cost analysis as required by 29 Del. C. §6909A."
13. Amend Article 3.2.6 by striking "prepared in accordance with Section 6.3."
14. Amend Article 3.3.1 by striking the word "outline" before "specifications".
15. Amend Article 3.4.3 by adding the following sentence to the end of the Article: "The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local government including municipality in which the project is located."
16. Amend Article 3.4.4 by striking the Article in its entirety and replacing it with the following: "The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit."
17. Amend Article 3.4.5 by adding after the last sentence "After Owner's review, incorporate Owner's comments into final construction documents."
18. Amend Article 3.5.1 by inserting in the first and second sentences "if requested" before Architect. In the second sentence after "(4) awarding and", insert "(5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship to Owner within 48 hours of receipt of official notification from Owner. If mailed, documents shall be sent using a delivery service that can track the shipment."
19. Amend Article 3.5.3 by striking it in its entirety.
20. Amend Article 3.6.1.1 by adding "as well as the Owner's Supplementary General Conditions and the Owner's General Requirements."
21. Amend Article 3.6.1.3 by striking it in its entirety and replacing it with the following: "The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment."

22. Amend Article 3.6.2.4 by adding the following to the end of the paragraph: "The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity."

23. Amend 3.6.4.1 by inserting the following after the first sentence: "The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents."

Also, amend by striking the final period in the last sentence and inserting the following: ", but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner."

24. Amend Article 3.6.4.2 by striking the first sentence in its entirety and replacing it with the following: "In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with information given and the design concepts in the Contract Documents."

25. Amend Article 3.6.4.4 by striking "Subject to the provisions of Section 4.3," and starting the sentence with "The".

Also amend by adding to the end of the fourth sentence the following immediately after "reasonable promptness": "as to cause no delay in the work."

26. Amend Article 3.6.5.1 by striking the following at the beginning of the second sentence: "Subject to the provision of Section 4.3" and starting the sentence with "The".

27. Amend Article 3.6.6.5 by changing "one year" to "two years".

28. Amend Article 4.1 by striking the following subparagraphs from additional services as they are considered Basic Services:

4.1.2 - Multiple Preliminary Drawings

4.1.7 - Civil Engineering

4.1.8 - Landscape Design

4.1.10 - Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.

4.1.11 - Detailed Cost Estimating

4.1.13 - Conformed Construction Documents

4.1.15 - Strike this section in its entirety and replace with the following: Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) "as-built" drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-Rom. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.

4.1.19 - Coordination of Owner's consultants

4.1.20 - In addition to Telecommunications and data design being a Basic Service, the design must comply with the State of Delaware's Department of Technology and Information's standards.

4.1.22 - Incorporate design and review comments from Owner's commissioning agent.

4.1.23 - Is a Basic Service as required in Article 3.2.5.1

4.1.26 - If required by local government including municipalities, Historic Preservation services will be considered Basic Services.

29. Amend Article 4.3.1.1 by striking it in its entirety and replacing it with the following:

"Making revisions in drawings, specifications or other documents, when such revisions are:

.1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget;

Providing services required because of significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contract for construction except for services required under Section 6.7."

30. Amend Article 4.3.1.2 by inserting "except for Life Cycle Cost Analysis" after "energy modeling" and before "or".

31. Amend Article 4.3.1.4 by striking in its entirety and replacing it with the following:

“Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner’s failure to render decisions in a timely manner.

Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”
32. Strike Article 4.3.1.5 in its entirety.
33. Strike Article 4.3.1.6 in its entirety.
34. Strike Article 4.3.1.7 in its entirety.
35. Strike Article 4.3.1.9 in its entirety.
36. Strike Article 4.3.2.1 in its entirety.
37. Amend Article 4.3.2.3 to add at the end “as outlined in Article 12 E & O policy.”
38. Strike Article 4.3.2.6 in its entirety and replace with the following: “Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of Work.”
39. Amend Article 4.3.3.1 by adding the number two before “reviews”.
40. Amend Article 4.3.3.2 by adding “the equivalent of 2 visits per month for the duration of the project.”
41. Amend Article 4.3.3.3 by adding the number two before “inspections”.
42. Amend Article 4.3.3.4 by adding the number two before “inspections”.
43. Amend Article 4.3.4 by changing “shall” to “may”.
44. Amend Article 5.2 by striking the word “shall” in the last sentence and replacing it with “may”.
45. Amend Article 5.6 by striking the last portion of the third sentence that reads “the Architect requests such services...scope of the Project” and replace with “reviewed and approved by the Owner.”

Also amend by adding the following at the end of the paragraph: "The Owner may elect to transfer this responsibility to the Architect as an Additional Service in Article 3 of this Agreement."

46. Amend Article 5.8 by adding the following to the end of the Article: "These services are not provided directly to the Architect."
47. Amend Article 5.10 by adding a third sentence to read as follows: "The Architect shall prepare and distribute meeting minutes during the design and construction phases of the Project."
48. Amend Article 6.2 by inserting "best" before "judgment" in the second sentence. Also, strike the third and fourth sentences in their entirety.
49. Amend Article 6.3 by deleting the second and third sentences and replace with the following: "The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WBS) format. If the lowest responsible and responsive bid exceeds the estimated Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all discrepancies at no additional cost to the Owner."
50. Delete Article 6.7 in its entirety and replace with the following:

"If the Owner chooses to cooperate in the revising the Project scope and quality as required to reduce the Construction Cost, the Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for bidding phase costs due to the modifications."
51. Amend Article 7 by striking it in its entirety and replacing it with the following:

"All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this Agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Architect. The Contractor, Subcontractors, Sub-subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the Architect from the reuse of all instruments of service noted above for any other projects or clients."

The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specifications if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a Project in which the Architect is not also involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp."

52. Amend Article 8.1.1 by striking the last sentence in its entirety.
53. Amend Article 8.1.2 by striking it in its entirety.
54. Amend Article 8.1.3 by striking it in its entirety.
55. Amend Article 8.2.1 by striking it in its entirety.
56. Amend Article 8.2.2 by striking the end of the first sentence "shall be administered ...the date of the Agreement." Also add the following to the beginning of the second sentence: "In accordance with Delaware law,"
57. Amend Article 8.2.4 by checking the box marked "Other" and insert the following: "The choice is left to the parties."
58. Amend Article 8.3 by striking it in its entirety.
59. Amend Article 9.3 by adding the following to the first sentence after "fault of the Architect": "or except for funding purposes,"
60. Amend Article 9.7 by striking the following from the end of the sentence: "plus an amount...by the Architect."
61. Amend Article 9.8 by striking it in its entirety.
62. Amend Article 10.1 by striking the following from the end of the sentence: "except that if... govern Section 8.3."
63. Amend Article 10.2 by adding the following to the end of the sentence: "as amended by the Owner's General Requirements and the Owner's Supplemental Conditions."
64. Amend Article 10.8 by adding the following to the beginning of the first sentence: "Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100,".
65. Amend Article 11.2 by adding the following after "Section 4.1": "as amended by Owner's Attachment A."
66. Amend Article 11.3 by adding the following after "Section 4.3": "as amended by Owner's Attachment A."

67. Amend Article 11.6 by adding the following sentence at the end: "Design Work for Alternates may be included for consideration in the cost of work."
68. Amend Article 11.7 by striking the second sentence in its entirety and replacing it with the following: "The rates may be adjusted subject to negotiation."
69. Amend 11.8.1.1 by striking the phrase "out-of-town" and replacing it with "out-of-state". Normally the State only reimburses "out-of-state" transportation and living expenses directly related to a project.

Also, insert the following at the end of the sentence: "based on Delaware's Office of Management and Budget's policy regarding such reimbursement."

70. Amend Article 11.8.1.2 by striking it in its entirety.
71. Amend Article 11.8.1.8 by striking it in its entirety.
72. Amend Article 11.8.1.9 by striking it in its entirety.
73. Amend Article 11.9 by striking it in its entirety.
74. Amend Article 11.10.1 by striking it in its entirety.
75. Amend Article 11.10.2 by striking the second sentence in its entirety and replace with: "Payments are due and payable within 30 days after Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one percent per month not to exceed twelve percent per annum."
76. Amend Article 11.10.3 by striking it in its entirety.
77. Amend Article 12 to include reference to the "Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy."
78. Amend Article 13.2 by striking it in its entirety and replacing with the following: "All attachments including Owner's Attachment A and all related exhibits."

July 3, 2013

ATTACHMENT "B"

STATE OF DELAWARE

DIVISION OF FACILITIES MANAGEMENT

Article 12

Errors and Omissions Policy

Table of Contents

- 1. Insurance**
- 2. Assignment of Responsibility**
- 3. Error and/or Omission Discovery**
- 4. Resolution and Appeal**

This document includes a general discussion on errors and/or omissions occurring during project implementation, how to initiate a correction for an error or omission, and what each party's responsibilities are in making the correction. The Division intends to seek reimbursement for additional costs (defined below) associated with correcting errors and omissions during planning, design and construction, including but not limited to, multiple report rewrites, construction costs, and construction engineering.

1. INSURANCE

This article does not address the types of liability insurance a firm may need to carry. Insurance usually carried by consultants includes Comprehensive General Liability, Comprehensive Automobile Liability, Workers' Compensation and Employers' Liability, Professional Liability, and other specialty insurance required in an agreement or that a firm may consider prudent based on the scope of work. The actual agreement covering the work will specify the minimum insurance requirements.

2. ASSIGNMENT OF RESPONSIBILITY

Services procured under the auspices of this document are considered "Professional Services". This in itself infers that, no matter what the scope of work entails, there are associated, industry professional, standards which are expected to be met. For projects involving public safety, meeting these standards takes on even more significance. Firms selected through the Division's professional services procurement process are the best technically qualified, with a proven history of meeting similar contract obligations. Such designation carries with it an acknowledgement of the firm's responsibility to know the accepted standards for doing business in Delaware.

Because of the Division's review process and the involvement of internal support sections as well as other state agencies, utility companies, public groups, municipalities, and the like, acceptance of the responsibility for an error and/or omission in a professional manner will depend on good project monitoring. Complete review and comment records are to be kept by both the Consultant and the Division. It is required that an office copy of each marked or edited review submission and comments be prepared and retained for future reference. Detailed minutes of project review meetings are also required. In projects that involve existing facilities, the Division will normally compensate at Consultant to perform a "pre-design survey" of the facility to determine the existing conditions and how the proposed work will be incorporated into the design. Firms are encouraged to exercise the utmost professional care during these surveys in order to complete full and complete construction drawings and specifications.

Because of the underlying expectation that a firm will comply with established standards throughout project development, there are occasions when a Project Manager and the Construction Projects Administrator will determine that a firm may not have met this obligation. When discovered, the error and/or omission should be reported immediately to the Consultant for resolution. While invoices should annotate the time and associated costs for correcting the lapse, the Division shall not be charged to correct errors and/or omissions.

3. ERROR AND/OR OMISSION DISCOVERY

Definitions:

Errors are defined as unknown, ignorant, or unintentional deviations from accuracy or correctness. Errors may arise from mistaken judgment, misplaced confidence, incorrect belief as to the existence or effect of matters of fact, or other actions. Errors also include failure to meet established Delaware requirements, or design standards for that type of project, (i.e., ASHRAE, DNREC, DelDOT, ICC, NEC, NSPA, or other established government requirements or design standards).

Omissions are defined as missing or unmentioned detail or requirements through either failure to perform properly, neglect, or failure to use reasonable care. Omissions also include failure to identify and implement cost-effective solutions.

Additional costs refers to that portion of the project cost the consultant is responsible for which includes those expenses over and above the cost the Division would have incurred had the error or omission not been made.

During Project Development

Errors and/or omissions discovered during project development are relatively easy to resolve when identified early because the Consultant's Project Manager and the Division's Project Manager are both aware of the circumstances surrounding the problem. The major issue remaining involves arriving at a mutual agreement on whether full, partial or no compensation is due the Consultant to correct the problem. (See Resolution below.)

During Implementation or Construction

Most often it will be obvious if a Consultant error and/or omission truly occurred. Frequently, however, there is a time lapse between the completion of professional services to develop the project and actual implementation of the plan, project, or construction. Associated with this delay is the updating and modification of completed work because of changes in specifications, updated regulations, legislative initiatives, or additional valid comments for improving a project. In essence, the quality and content of a project become a shared responsibility. Changes of scope or specifications (owner requested), updated regulations, legislative initiatives, or comments for improving a project after acceptance of the final design, shall in no way be construed as an error/or omission.

Professional responsibility of the Consultant preparing the project does not terminate with acceptance of the product and/or final payment for its development. Failure to discover the error and/or omission during the design, review or implementation of the project does not relieve the Consultant of their responsibility to correct the effects of the error and/or omission. The extent of the responsibility of the consultant for payment for correcting any errors and/or omissions may be in question, but the active participation of the firm in resolving a problem upon request is mandatory. The level of the Consultant's participation shall be determined by the Division.

The procedure to initiate the correction of an error and/or omission lies with the person responsible for ensuring proper implementation of the plan, project, or construction. At the first indication of an error and/or omission, the Division's representative should notify the project Supervisor. All subordinates should be instructed to keep detailed documentation on the work being performed.

At this same time, the Division's Project Manager responsible for developing the project, if not the person identifying the error and/or omission, should be notified. Depending upon how critical a correction is to project scheduling, report preparation and review may be impractical. When such timing is critical, the Project Manager is verbally notified, and guidance is requested with emphasis on what additional data is needed to document and resolve the error and/or omission. The Division's Project Manager, in turn, should immediately advise the consultant, the supervisor, and up through the chain of command as necessary.

The Division holds the prime Consultant responsible for all work performed or not performed under an agreement including that of any subconsultants. When necessary, based on the opinion of the Division's Project Manager, Construction Project Administrator, Chief Engineer, Deputy Director, and/or Director, the prime consultant will be notified of the problem and requested to participate in a solution in cooperation with Division staff. There will be no compensation to either the prime or subconsultant for services related to the verification and correction of an error and/or omission unless as otherwise agreed. The primary objective is to keep the project on schedule by proposing a viable alternative. Records should be kept of any immediate action taken to correct the situation.

4. RESOLUTION AND APPEAL

Resolution

The Division's Project Manager shall document the error and/or omission that was identified, collect all supporting materials, review their findings with the Consultant, determine the required action to correct the error and/or omission and analyze the cost impact of the resolution (including but not limited to materials, overtime, and force account). All documentation shall be presented to the Construction Project Administrator. The prime Consultant is expected to participate at the appropriate level, from site visits to preparation of corrective documents. Much of this participation is mutually agreed to as solutions are developed.

The Construction Project Administrator (or Chief Engineer) will review the materials, discuss the resolution options with the Consultant and make a final recommendation to the Chief Engineer (or Deputy Director) for review. At the conclusion of the Deputy Director's review, the recommendation will be presented to the Director for approval.

Appeal

Should the Consultant not participate in the resolution process or disagree with the finding of financial responsibility as presented, the Consultant can schedule a review with the Deputy Director or Director. The Deputy Director or Director can modify the terms of the resolution or refer the appeal to the OMB Director per the Consultant's contract.

Default

Should the Consultant not honor the terms of the final resolution, the Division, for just and definable acts, has the option of filing a Consultant insurance claim, filing legal process for restitution, terminating all current agreements, or barring the firm from further work with the Division for up to five years, or any combination thereof.



ARCHITECTURE
INTERIOR DESIGN
LANDSCAPE ARCHITECTURE

Hourly Rate Schedule / Attachment C

November 2016

Principal/Associate Principal	\$196.00
Director	\$196.00
Director of Interior Design	\$176.00
Associate	\$160.00
Senior Project Director	\$150.00
Project Director	\$140.00
Project Architect/Project Manager	\$130.00
Architect/Senior Designer	\$120.00
Landscape Architect	\$112.00
Designer III	\$104.00
Designer II	\$ 94.00
Designer I	\$ 84.00
Office Assistant	\$ 72.00

Rates are subject to change annually.



State of Delaware
Department of Natural Resources and Environmental Control
Delaware Division of Parks and Recreation
89 Kings Highway
Dover, Delaware 19901

June 8, 2017

Colmcille DeAscanis
CDA Engineering Inc.
6 Larch Avenue, Suite 401.
Newport, DE. 19804

**RE: Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services**

Mr. DeAscanis:

Enclosed is the fully executed agreement between the Department of Natural Resources and Environmental Control and CDA Engineering Inc. pertaining to the above-captioned contract. This agreement will form the basis for all services you perform relative to the Department's Capital improvements program and can be renewed yearly through the Fiscal Year 2022.

Future requests will be made from the Department for written stipulated sum proposals on specific projects. Proposal will only be accepted upon the issuance of an addendum to this agreement along with a fully executed purchase order. An example of an addendum is enclosed.

We look forward to working with you on this program. Meanwhile, should you have any questions or require additional information, please contact our office at (302) 739-9231.

Sincerely,

Original On File

 Cynthia A. Todd, RLA, Construction Projects Administrator
Office of Design and Development

Attachment:

AIA B101-2007 Standard Form of Agreement Between Owner and Architect
Sample Addendum

 We're saving a place for you...

FIVE COPY



AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Twenty-Fourth day of April in the year Two Thousand Seventeen

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Department of Natural Resources and Environmental Control
Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901
TEL: 302-739-9231

and the Architect:
(Name, legal status, address and other information)

CDA Engineering Inc.
6 Larch Avenue, Suite 401,
Newport, DE. 19804
Tel: 302-998-9202

for the following Project:
(Name, location and detailed description)

State of Delaware
Department of Natural Resources and Environmental Control
Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services
The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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User Notes:

(3B9ADA2E)

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- 13 SCOPE OF THE AGREEMENT

(Paragraph Deleted)

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

(State below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

Agreement is open-ended, renewable annually at the option of the Owner, and is to encompass improvements, renovations, repairs and replacements for all properties managed by the Department of Natural Resources and Environmental Control. Compensation will be determined separately for each individual project, but consistently as outlined in Articles 11 and 12. Refer to Attachment "A" and Article 12 for amendments to the text of this Agreement.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

To be determined per individual project

- .2 Substantial Completion date:

To be determined per individual project

Init.

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User Notes:

(3B9ADA2E)

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement.
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 Comprehensive General Liability

\$1,000,000

.2 Medical / Professional Liability

\$1,000,000 / \$3,000,000

.3 Miscellaneous Errors and Omissions

\$1,000,000 / \$3,000,000

.4 Product Liability

\$1,000,000 / \$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered. If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

.5 Automotive Liability (Bodily Injury):

\$100,000/\$300,000

.6 Automotive Property Damage (to others):

\$25,000

§ 2.6 Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

§ 2.7 The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the

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Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

§ 2.8 The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the
(Paragraph Deleted)

contract.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, civil and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without prior notice to the Architect.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating

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environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the mutually agreed upon program, schedule and construction budget required as well as the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings, outline specifications and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Architect shall perform life cycle cost analysis s required by 29 DEL.C. §6909A.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms. The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local governments including municipality in which the project is located.

§ 3.4.4 The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. After Owner's review, incorporate Owner's comments into the final construction documents.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect if requested shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect if requested shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction (5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship within 48 hours of receipt of official notification from the Owner.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

(Paragraphs Deleted)

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement as well as the Owner's Supplementary General Conditions and the Owner's General Requirements.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques,

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sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate of Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review, but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner. The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the information given and the design concepts in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness as to cause no delay. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of two years from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™–2009)		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™–2007)		
§ 4.1.6 Building Information Modeling (E202™–2008)		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™–2007)		
§ 4.1.10 Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site Project Representation (B207™–2008)		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings		

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§ 4.1.15 Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) “as-built” drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-ROM. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.		
§ 4.1.16 Post occupancy evaluation		
§ 4.1.17 Facility Support Services (B210™–2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner’s consultants		
§ 4.1.20 Telecommunications/data design must comply with the State of Delaware’s Department of Technology and Information’s standards		
§ 4.1.21 Security Evaluation and Planning (B206™–2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

Except as identified as included in Architect’s Basic Services per Attachment A, Additional Services listed in 4.1 will be provided by the Architect via request of the Owner on a project by project basis.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner’s written authorization:

- .1 Making revisions in drawings, specifications or other documents, when such revisions are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustment in the Owner’s program or Project budget;
- .2 Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, except for Life Cycle Cost Analysis or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner’s failure to render decisions in a timely manner.

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Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”

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- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

(Paragraph Deleted)

- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

(Paragraph Deleted)

- .2 Responding to the Contractor’s requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor’s proposals and supporting data, or the preparation or revision of Instruments of Service as outlined in Article 12 E & O policy;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate of Payment, more than 60 days after the date of Substantial Completion.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 (Two) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 (Two) visits per Month to the site by the Architect over the duration of the Project during construction
- .3 (Two) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 (Two) inspections for any portion of the Work to determine final completion

§ 4.3.3 If the services covered by this Agreement have not been completed within (60) months of the date of this Agreement, through no fault of the Architect, extension of the Architect’s services beyond that time may be compensated as Additional Services.

ARTICLE 5 OWNER’S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request

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from the Architect, the Owner may furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect may thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize reviewed and approved by the Owner. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided. The Owner may elect to transfer this responsibility to the Architect as an additional service in Article 3 of this Agreement.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. These services are not provided directly to the Architect.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. The Architect shall prepare and distribute meeting minutes during the design and construction phase of the Project.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's best judgment as a design professional.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WSB) format. If the lowest responsible and responsive bid exceeds the estimate Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all the discrepancies at no additional cost to the Owner.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to cooperate in the revising of the Project scope and the quality as required to reduce the Construction Cost, The Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for the bidding phase costs due to the modifications.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without approval of, or additional compensation to the Architect. The Contractor, Subcontractors, Subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for the use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of Work without specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the Architect from reuse of all instruments of service noted above for any other project or clients. The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specification if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a

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Project in which the Architect is not involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

(Paragraphs Deleted)

§ 8.2 MEDIATION

(Paragraph Deleted)

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise. In accordance with Delaware Law, A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of

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filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

The choice is left to the parties.

(Paragraphs Deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect or except for funding purposes, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 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 and all Termination Expenses as defined in Section 9.7.

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§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

(Paragraph Deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction as amended by the Owner's General Requirements and the Owner's Supplemental Conditions.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, 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 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 Except in accordance with Delaware Freedom of Information Act (FOIA), 29 DEL.C.ch. 100, if the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Compensation shall be based upon a negotiated stipulated sum or DFM's architectural & engineering fee schedule based on the lowest bona fide bid plus alternates. Refer to 12.4 for further clarification.

§ 11.2 For Additional Services designated in Section 4.1 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Compensation shall be based upon negotiated stipulated sum prior to proceeding with additional services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Compensation shall be based upon service performed on an hourly basis utilizing the attached Schedule of Rates (Attachment C).

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Fifteen	percent (	15	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	One Hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. Design work for Alternates may be included for consideration in the cost of the work

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates may be adjusted subject to negotiation.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate
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§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

1 Transportation and authorized out-of-state travel and subsistence based on Delaware's Office of Management and Budget's policy regarding such reimbursement;
(Paragraph Deleted)

3 Fees paid for securing approval of authorities having jurisdiction over the Project;

- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

(Paragraphs Deleted)

- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

(Paragraphs Deleted)

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Payments are due and payable within 30 days after the Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one (1) percent per month not to exceed twelve (12) percent per annum.

(Insert rate of monthly or annual interest agreed upon.)

Per annum

(Paragraph Deleted)

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

Office of Management and Budget Division of Facilities Management's Errors & Omission Policy - Attachment 'B'
Wherever the term "Architect" is used in this agreement, it shall be interchangeable with the term "Engineer".

§ 12.2 Amend Item 10 of Attachment A by adding to the words "prior notice to the Architect" the following: "provided such directive or substitution is lawful, does not jeopardize the standard of care required of the architect and does not increase the established scope without equitable compensation."

§ 12.4 BASIC SERVICE COMPENSATION SUPPLEMENT

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect

(Paragraph Deleted)

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.3 Other documents:

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Attachment 'A' - Amendments to AIA Document B101 007

Attachment 'B' - State of Delaware Division of Facilities Management Errors & Omissions Policy

Attachment 'C' - Schedule of Rates

This Agreement entered into as of the day and year first written above.

OWNER

(Signature)

Shawn M. Garvin, Cabinet Secretary - DNREC,
State of Delaware

(Printed name and title)

ARCHITECT

(Signature)

Colmcille DeAscanis, PE, LEED AP. President,
CDA Engineering Inc.

(Printed name and title)

Original On File

Original On File

ATTACHMENT "A"

Owner and Architect Agreement B101

This attachment amends AIA Document B101-2007 as follows:

1. Section 6903, Chapter 69, Title 29 of the Delaware Code requires a "prohibition against contingency fees" statement. An acceptable statement would be as follows:

"By signing this Agreement, the Professional swears that he has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he has not been paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement."

2. The Professional will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Professional will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

3. Amend Article I.1 by adding the following sentence to the end of the Article:

"At the Owner's request, the Architect shall produce all subcontractor agreements, including consultants, or any other agreement related to the Architect's performance on the project."

4. Amend Article 2.5 by striking the second sentence in its entirety.
5. Amend Article 2.5 by striking subsection 2.5.1 through 2.5.4 and inserting the following:

2.5.1 Comprehensive General Liability: \$1,000,000 and

2.5.2 Medical/Professional Liability: \$1,000,000/\$3,000,000 or

2.5.3 Misc. Errors or Omissions: \$1,000,000/\$3,000,000 or

2.5.4 Product Liability: \$1,000,000/\$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered.

If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

2.5.4 Automotive Liability (Bodily Injury): \$100,000/\$300,000

2.5.6 Automotive Property Damage (to others): \$25,000

6. Add a new Article 2.6 which shall read as follows:

Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

7. Add a new Article 2.7 which shall read as follows:

The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

8. Add a new Article 2.8 which shall read as follows:

The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.

9. Amend Article 3.1 by adding the word "civil" after "mechanical," and before "and".
10. Amend Article 3.1.4 by striking "the Architect's approval" and replacing it with "prior notice to the Architect."
11. Amend Article 3.2.5 by adding "the mutually agreed-upon program, schedule and construction budget requirement as well as" after "Based on" and before "the Owner's approval" in the first sentence. In the second sentence add ",outline specifications," after "drawings".
12. Amend Article 3.2.5.2 by adding the following sentence to the end of the Article: "The Architect shall perform life cycle cost analysis as required by 29 Del. C. §6909A."
13. Amend Article 3.2.6 by striking "prepared in accordance with Section 6.3."
14. Amend Article 3.3.1 by striking the word "outline" before "specifications".
15. Amend Article 3.4.3 by adding the following sentence to the end of the Article: "The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local government including municipality in which the project is located."
16. Amend Article 3.4.4 by striking the Article in its entirety and replacing it with the following: "The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit."
17. Amend Article 3.4.5 by adding after the last sentence "After Owner's review, incorporate Owner's comments into final construction documents."
18. Amend Article 3.5.1 by inserting in the first and second sentences "if requested" before Architect. In the second sentence after "(4) awarding and", insert "(5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship to Owner within 48 hours of receipt of official notification from Owner. If mailed, documents shall be sent using a delivery service that can track the shipment."
19. Amend Article 3.5.3 by striking it in its entirety.
20. Amend Article 3.6.1.1 by adding "as well as the Owner's Supplementary General Conditions and the Owner's General Requirements."
21. Amend Article 3.6.1.3 by striking it in its entirety and replacing it with the following: "The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment."

22. Amend Article 3.6.2.4 by adding the following to the end of the paragraph: "The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity."

23. Amend 3.6.4.1 by inserting the following after the first sentence: "The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents."

Also, amend by striking the final period in the last sentence and inserting the following: ", but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner."

24. Amend Article 3.6.4.2 by striking the first sentence in its entirety and replacing it with the following: "In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with information given and the design concepts in the Contract Documents."

25. Amend Article 3.6.4.4 by striking "Subject to the provisions of Section 4.3," and starting the sentence with "The".

Also amend by adding to the end of the fourth sentence the following immediately after "reasonable promptness": "as to cause no delay in the work."

26. Amend Article 3.6.5.1 by striking the following at the beginning of the second sentence: "Subject to the provision of Section 4.3" and starting the sentence with "The".

27. Amend Article 3.6.6.5 by changing "one year" to "two years".

28. Amend Article 4.1 by striking the following subparagraphs from additional services as they are considered Basic Services:

4.1.2 - Multiple Preliminary Drawings

4.1.7 - Civil Engineering

4.1.8 - Landscape Design

4.1.10 - Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.

4.1.11 - Detailed Cost Estimating

4.1.13 - Conformed Construction Documents

4.1.15 - Strike this section in its entirety and replace with the following: Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) "as-built" drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-Rom. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.

4.1.19 - Coordination of Owner's consultants

4.1.20 - In addition to Telecommunications and data design being a Basic Service, the design must comply with the State of Delaware's Department of Technology and Information's standards.

4.1.22 - Incorporate design and review comments from Owner's commissioning agent.

4.1.23 - Is a Basic Service as required in Article 3.2.5.1

4.1.26 - If required by local government including municipalities, Historic Preservation services will be considered Basic Services.

29. Amend Article 4.3.1.1 by striking it in its entirety and replacing it with the following:

"Making revisions in drawings, specifications or other documents, when such revisions are:

.1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget;

Providing services required because of significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contract for construction except for services required under Section 6.7."

30. Amend Article 4.3.1.2 by inserting "except for Life Cycle Cost Analysis" after "energy modeling" and before "or".

31. Amend Article 4.3.1.4 by striking in its entirety and replacing it with the following:

“Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner’s failure to render decisions in a timely manner.

Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”
32. Strike Article 4.3.1.5 in its entirety.
33. Strike Article 4.3.1.6 in its entirety.
34. Strike Article 4.3.1.7 in its entirety.
35. Strike Article 4.3.1.9 in its entirety.
36. Strike Article 4.3.2.1 in its entirety.
37. Amend Article 4.3.2.3 to add at the end “as outlined in Article 12 E & O policy.”
38. Strike Article 4.3.2.6 in its entirety and replace with the following: “Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of Work.”
39. Amend Article 4.3.3.1 by adding the number two before “reviews”.
40. Amend Article 4.3.3.2 by adding “the equivalent of 2 visits per month for the duration of the project.”
41. Amend Article 4.3.3.3 by adding the number two before “inspections”.
42. Amend Article 4.3.3.4 by adding the number two before “inspections”.
43. Amend Article 4.3.4 by changing “shall” to “may”.
44. Amend Article 5.2 by striking the word “shall” in the last sentence and replacing it with “may”.
45. Amend Article 5.6 by striking the last portion of the third sentence that reads “the Architect requests such services...scope of the Project” and replace with “reviewed and approved by the Owner.”

Also amend by adding the following at the end of the paragraph: "The Owner may elect to transfer this responsibility to the Architect as an Additional Service in Article 3 of this Agreement."

46. Amend Article 5.8 by adding the following to the end of the Article: "These services are not provided directly to the Architect."
47. Amend Article 5.10 by adding a third sentence to read as follows: "The Architect shall prepare and distribute meeting minutes during the design and construction phases of the Project."
48. Amend Article 6.2 by inserting "best" before "judgment" in the second sentence. Also, strike the third and fourth sentences in their entirety.
49. Amend Article 6.3 by deleting the second and third sentences and replace with the following: "The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WBS) format. If the lowest responsible and responsive bid exceeds the estimated Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all discrepancies at no additional cost to the Owner."
50. Delete Article 6.7 in its entirety and replace with the following:

"If the Owner chooses to cooperate in the revising the Project scope and quality as required to reduce the Construction Cost, the Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for bidding phase costs due to the modifications."
51. Amend Article 7 by striking it in its entirety and replacing it with the following:

"All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this Agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Architect. The Contractor, Subcontractors, Sub-subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the Architect from the reuse of all instruments of service noted above for any other projects or clients."

The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specifications if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a Project in which the Architect is not also involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp."

52. Amend Article 8.1.1 by striking the last sentence in its entirety.
53. Amend Article 8.1.2 by striking it in its entirety.
54. Amend Article 8.1.3 by striking it in its entirety.
55. Amend Article 8.2.1 by striking it in its entirety.
56. Amend Article 8.2.2 by striking the end of the first sentence "shall be administered ...the date of the Agreement." Also add the following to the beginning of the second sentence: "In accordance with Delaware law,"
57. Amend Article 8.2.4 by checking the box marked "Other" and insert the following: "The choice is left to the parties."
58. Amend Article 8.3 by striking it in its entirety.
59. Amend Article 9.3 by adding the following to the first sentence after "fault of the Architect": "or except for funding purposes,"
60. Amend Article 9.7 by striking the following from the end of the sentence: "plus an amount...by the Architect."
61. Amend Article 9.8 by striking it in its entirety.
62. Amend Article 10.1 by striking the following from the end of the sentence: "except that if... govern Section 8.3."
63. Amend Article 10.2 by adding the following to the end of the sentence: "as amended by the Owner's General Requirements and the Owner's Supplemental Conditions."
64. Amend Article 10.8 by adding the following to the beginning of the first sentence: "Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100,".
65. Amend Article 11.2 by adding the following after "Section 4.1": "as amended by Owner's Attachment A."
66. Amend Article 11.3 by adding the following after "Section 4.3": "as amended by Owner's Attachment A."

67. Amend Article 11.6 by adding the following sentence at the end: "Design Work for Alternates may be included for consideration in the cost of work."
68. Amend Article 11.7 by striking the second sentence in its entirety and replacing it with the following: "The rates may be adjusted subject to negotiation."
69. Amend 11.8.1.1 by striking the phrase "out-of-town" and replacing it with "out-of-state". Normally the State only reimburses "out-of-state" transportation and living expenses directly related to a project.

Also, insert the following at the end of the sentence: "based on Delaware's Office of Management and Budget's policy regarding such reimbursement."

70. Amend Article 11.8.1.2 by striking it in its entirety.
71. Amend Article 11.8.1.8 by striking it in its entirety.
72. Amend Article 11.8.1.9 by striking it in its entirety.
73. Amend Article 11.9 by striking it in its entirety.
74. Amend Article 11.10.1 by striking it in its entirety.
75. Amend Article 11.10.2 by striking the second sentence in its entirety and replace with: "Payments are due and payable within 30 days after Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one percent per month not to exceed twelve percent per annum."
76. Amend Article 11.10.3 by striking it in its entirety.
77. Amend Article 12 to include reference to the "Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy."
78. Amend Article 13.2 by striking it in its entirety and replacing with the following: "All attachments including Owner's Attachment A and all related exhibits."

July 3, 2013

ATTACHMENT "B"

STATE OF DELAWARE

DIVISION OF FACILITIES MANAGEMENT

Article 12

Errors and Omissions Policy

Table of Contents

- 1. Insurance**
- 2. Assignment of Responsibility**
- 3. Error and/or Omission Discovery**
- 4. Resolution and Appeal**

This document includes a general discussion on errors and/or omissions occurring during project implementation, how to initiate a correction for an error or omission, and what each party's responsibilities are in making the correction. The Division intends to seek reimbursement for additional costs (defined below) associated with correcting errors and omissions during planning, design and construction, including but not limited to, multiple report rewrites, construction costs, and construction engineering.

1. INSURANCE

This article does not address the types of liability insurance a firm may need to carry. Insurance usually carried by consultants includes Comprehensive General Liability, Comprehensive Automobile Liability, Workers' Compensation and Employers' Liability, Professional Liability, and other specialty insurance required in an agreement or that a firm may consider prudent based on the scope of work. The actual agreement covering the work will specify the minimum insurance requirements.

2. ASSIGNMENT OF RESPONSIBILITY

Services procured under the auspices of this document are considered "Professional Services". This in itself infers that, no matter what the scope of work entails, there are associated, industry professional, standards which are expected to be met. For projects involving public safety, meeting these standards takes on even more significance. Firms selected through the Division's professional services procurement process are the best technically qualified, with a proven history of meeting similar contract obligations. Such designation carries with it an acknowledgement of the firm's responsibility to know the accepted standards for doing business in Delaware.

Because of the Division's review process and the involvement of internal support sections as well as other state agencies, utility companies, public groups, municipalities, and the like, acceptance of the responsibility for an error and/or omission in a professional manner will depend on good project monitoring. Complete review and comment records are to be kept by both the Consultant and the Division. It is required that an office copy of each marked or edited review submission and comments be prepared and retained for future reference. Detailed minutes of project review meetings are also required. In projects that involve existing facilities, the Division will normally compensate at Consultant to perform a "pre-design survey" of the facility to determine the existing conditions and how the proposed work will be incorporated into the design. Firms are encouraged to exercise the utmost professional care during these surveys in order to complete full and complete construction drawings and specifications.

Because of the underlying expectation that a firm will comply with established standards throughout project development, there are occasions when a Project Manager and the Construction Projects Administrator will determine that a firm may not have met this obligation. When discovered, the error and/or omission should be reported immediately to the Consultant for resolution. While invoices should annotate the time and associated costs for correcting the lapse, the Division shall not be charged to correct errors and/or omissions.

3. ERROR AND/OR OMISSION DISCOVERY

Definitions:

Errors are defined as unknown, ignorant, or unintentional deviations from accuracy or correctness. Errors may arise from mistaken judgment, misplaced confidence, incorrect belief as to the existence or effect of matters of fact, or other actions. Errors also include failure to meet established Delaware requirements, or design standards for that type of project, (i.e., ASHRAE, DNREC, DelDOT, ICC, NEC, NSPA, or other established government requirements or design standards).

Omissions are defined as missing or unmentioned detail or requirements through either failure to perform properly, neglect, or failure to use reasonable care. Omissions also include failure to identify and implement cost-effective solutions.

Additional costs refers to that portion of the project cost the consultant is responsible for which includes those expenses over and above the cost the Division would have incurred had the error or omission not been made.

During Project Development

Errors and/or omissions discovered during project development are relatively easy to resolve when identified early because the Consultant's Project Manager and the Division's Project Manager are both aware of the circumstances surrounding the problem. The major issue remaining involves arriving at a mutual agreement on whether full, partial or no compensation is due the Consultant to correct the problem. (See Resolution below.)

During Implementation or Construction

Most often it will be obvious if a Consultant error and/or omission truly occurred. Frequently, however, there is a time lapse between the completion of professional services to develop the project and actual implementation of the plan, project, or construction. Associated with this delay is the updating and modification of completed work because of changes in specifications, updated regulations, legislative initiatives, or additional valid comments for improving a project. In essence, the quality and content of a project become a shared responsibility. Changes of scope or specifications (owner requested), updated regulations, legislative initiatives, or comments for improving a project after acceptance of the final design, shall in no way be construed as an error/or omission.

Professional responsibility of the Consultant preparing the project does not terminate with acceptance of the product and/or final payment for its development. Failure to discover the error and/or omission during the design, review or implementation of the project does not relieve the Consultant of their responsibility to correct the effects of the error and/or omission. The extent of the responsibility of the consultant for payment for correcting any errors and/or omissions may be in question, but the active participation of the firm in resolving a problem upon request is mandatory. The level of the Consultant's participation shall be determined by the Division.

The procedure to initiate the correction of an error and/or omission lies with the person responsible for ensuring proper implementation of the plan, project, or construction. At the first indication of an error and/or omission, the Division's representative should notify the project Supervisor. All subordinates should be instructed to keep detailed documentation on the work being performed.

At this same time, the Division's Project Manager responsible for developing the project, if not the person identifying the error and/or omission, should be notified. Depending upon how critical a correction is to project scheduling, report preparation and review may be impractical. When such timing is critical, the Project Manager is verbally notified, and guidance is requested with emphasis on what additional data is needed to document and resolve the error and/or omission. The Division's Project Manager, in turn, should immediately advise the consultant, the supervisor, and up through the chain of command as necessary.

The Division holds the prime Consultant responsible for all work performed or not performed under an agreement including that of any subconsultants. When necessary, based on the opinion of the Division's Project Manager, Construction Project Administrator, Chief Engineer, Deputy Director, and/or Director, the prime consultant will be notified of the problem and requested to participate in a solution in cooperation with Division staff. There will be no compensation to either the prime or subconsultant for services related to the verification and correction of an error and/or omission unless as otherwise agreed. The primary objective is to keep the project on schedule by proposing a viable alternative. Records should be kept of any immediate action taken to correct the situation.

4. RESOLUTION AND APPEAL

Resolution

The Division's Project Manager shall document the error and/or omission that was identified, collect all supporting materials, review their findings with the Consultant, determine the required action to correct the error and/or omission and analyze the cost impact of the resolution (including but not limited to materials, overtime, and force account). All documentation shall be presented to the Construction Project Administrator. The prime Consultant is expected to participate at the appropriate level, from site visits to preparation of corrective documents. Much of this participation is mutually agreed to as solutions are developed.

The Construction Project Administrator (or Chief Engineer) will review the materials, discuss the resolution options with the Consultant and make a final recommendation to the Chief Engineer (or Deputy Director) for review. At the conclusion of the Deputy Director's review, the recommendation will be presented to the Director for approval.

Appeal

Should the Consultant not participate in the resolution process or disagree with the finding of financial responsibility as presented, the Consultant can schedule a review with the Deputy Director or Director. The Deputy Director or Director can modify the terms of the resolution or refer the appeal to the OMB Director per the Consultant's contract.

Default

Should the Consultant not honor the terms of the final resolution, the Division, for just and definable acts, has the option of filing a Consultant insurance claim, filing legal process for restitution, terminating all current agreements, or barring the firm from further work with the Division for up to five years, or any combination thereof.

CDA Engineering Inc.

Civil/Site Engineering + Land Planning + Stormwater Management

6 Larch Avenue
Tel: 302 998 9202

Suite 401
Fax: 302 691 1314

Wilmington, DE 19804
www.cdaengineering.com

ATTACHMENT "C"

2017 Billing Rate Schedule

<u>Classification</u>	<u>Hourly Rate</u>
<u>Engineering</u>	
Senior Professional Engineer/Principal:	\$150.00
Professional Engineer:	\$130.00-\$145.00
Senior Civil Designer/Planner:	\$105.00-\$120.00
Project Engineer:	\$95.00-\$105.00
Civil Designer:	\$75.00-\$85.00
AutoCAD Technician:	\$60.00-\$75.00
Technical Assistant:	\$ 60.00
Office Administration/Clerical:	\$ 50.00
<u>Surveying</u>	
Professional Land Surveyor (PLS)	\$130.00
Survey Crew (GPS/RTS)	\$135.00
Survey Party Chief	\$ 85.00
<u>Construction Review</u>	
Certified Construction Reviewer (CCR):	\$90.00
Supervising Professional Engineer (PE):	\$140.00
<u>Reimbursable Expenses</u>	
Engineering Prints:	\$4/Sheet
Shipping Costs (FedEx, USPS, UPS):	At Cost (no markup)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/13/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER K T & D, Inc. P.O. Box 2048 1300 N Grant Ave Wilmington, DE 19899 Bruce E. Smith	CONTACT NAME: Bruce E. Smith
	PHONE (A/C, No, Ext): 302-429-8500
	FAX (A/C, No): 302-429-7657
	E-MAIL ADDRESS: yerkes@ktd-ins.com
	INSURER(S) AFFORDING COVERAGE
	INSURER A : Transportation Insurance Co.
	INSURER B : CNA Insurance Company
	INSURER C : Valley Forge Insurance Co.
	INSURER D : XL Specialty Insurance Co
	INSURER E :
	INSURER F :
INSURED	NAIC #
CDA Engineering , Inc. 6 Larch Avenue Suite 401 Wilmington, DE 19804	20494
	20443
	20508
	37885

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		B2090999821	12/01/2016	12/01/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		B2090999821	12/01/2016	12/01/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		B4026632494	12/01/2016	12/01/2017	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A	WC290999849	12/01/2016	12/01/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
D	Architects Engrs Prof Liability		DPR9806534	08/14/2016	08/14/2017	Ea. Limit 1,000,000 Aggregate 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER Evidence of Coverage	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

LICENSE NO. 2006207337 DORBL

STATE OF DELAWARE

VALID

POST CONSPICUOUSLY

DIVISION OF REVENUE

01/01/16 - 12/31/18
NOT TRANSFERABLE

DLN: 15 95426 38

BUSINESS CODE 540
GROUP CODE 007

LICENSED
ACTIVITY

PROFESSIONAL SERVICES- ENGINEER
PROFESSIONAL AND/OR PERSONAL SERVICES

DATE ISSUED: 12/30/15

****VALIDATED****

2018

LICENSE FEE: \$ 225.00

MAILING ADDRESS

BUSINESS LICENSE

BUSINESS LOCATION

CDA ENGINEERING INC
6 LARCH AVE STE 401
WILMINGTON DE 19804-2366



CDA ENGINEERING INC
6 LARCH AVE STE 401
WILMINGTON DE 19804-2366

IS HEREBY LICENSED TO PRACTICE, CONDUCT OR ENGAGE IN THE OCCUPATION
OR BUSINESS ACTIVITY INDICATED ABOVE IN ACCORDANCE WITH THE LICENSE
APPLICATION DULY FILED PURSUANT TO TITLE 30, DEL CODE

PATRICK T. CARTER

DIRECTOR OF REVENUE

IMPORTANT - TEAR AT ABOVE PERFORATION AND DISPLAY IN A PUBLIC LOCATION

Federal E.I. No. or
Social Security Number 1 20523 9044 001

Business Code 540
Group Code 007

Licensed Activity
PROFESSIONAL SERVICES- ENGINEER
PROFESSIONAL AND/OR PERSONAL SERVICES

The State of Delaware Business License printed above must be posted in a public area at the location address listed. If you have any questions regarding this license, please call (302) 577-8778.

REPLACEMENT LICENSES

Keep this portion of your license separate, in case you need a replacement for any lost, stolen or destroyed license. A \$15 fee will be charged for the replacement of a license. Send the \$15 along with a copy of this form or provide your Federal Employer Identification Number, or Social Security Number, suffix, Business Code, Business Name and address to Delaware Division of Revenue, Attn.: Business Master File, PO Box 8750, Wilmington, DE 19899-8750. You will receive your replacement license within three to four weeks.

OTHER IMPORTANT INFORMATION

Most licensees are also required to pay either gross receipts or excise taxes in addition to the license fee. You can file these taxes online or obtain a paper form from our website at www.revenue.delaware.gov. You must **submit all business tax returns** filed with the Division of Revenue **under the same identification number**. If you are a sole-proprietor, and have a federal employer identification number, use the employer identification number, not your social security number. Only sole proprietors with no employees are allowed to file under their social security number. Inquiries regarding your coupon booklets to pay withholding, corporate tentative, and Sub Chapter "S" estimated taxes, or to make changes to your name, address, or identification number, should be directed to the Business Master File Unit at **(302) 577-8778**.

INTERNET SITE

The Division of Revenue web address is: www.revenue.delaware.gov. Visit our web site for tax tips, links to telephone numbers, forms that you can download, links to other State agencies, the Delaware Code, the publication "Delaware Guide for Small Business" and lots more. Internet filing of personal income tax returns via the Division of Revenue's website is available. Internet filing for Withholding, Gross Receipts and Corporate Tentative payments is also available.



State of Delaware
Department of Natural Resources and Environmental Control
Delaware Division of Parks and Recreation
89 Kings Highway
Dover, Delaware 19901

June 8, 2017

Scott L. Rathfon
Century Engineering
4134 N. Dupont Highway.
Dover, DE. 19901

**RE: Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services**

Mr. Rathfon:

Enclosed is the fully executed agreement between the Department of Natural Resources and Environmental Control and Century Engineering pertaining to the above-captioned contract. This agreement will form the basis for all services you perform relative to the Department's Capital improvements program and can be renewed yearly through the Fiscal Year 2022.

Future requests will be made from the Department for written stipulated sum proposals on specific projects. Proposal will only be accepted upon the issuance of an addendum to this agreement along with a fully executed purchase order. An example of an addendum is enclosed.

We look forward to working with you on this program. Meanwhile, should you have any questions or require additional information, please contact our office at (302) 739-9231.

Sincerely,

Original On File

Cynthia A. Todd, RLA, Construction Projects Administrator
Office of Design and Development

Attachment:

AIA B101-2007 Standard Form of Agreement Between Owner and Architect Sample Addendum

 *We're saving a place for you...*

FUE COPY



NOTICE ENDORSEMENT - NOTICE OF CANCELLATION, NON-RENEWAL OR REDUCTION IN LIMITS
WHERE REQUIRED BY WRITTEN CONTRACT

It is understood and agreed that if the **Named Insured** has agreed in a written contract with its client to provide such client with notice of cancellation or non-renewal of this Policy, or notice of a reduction in the Limits of Liability of this Policy by endorsement during the **policy term**, the Insurer will provide such notice of cancellation, non-renewal or reduction in Limits to the client as set forth herein.

Within ten (10) business days of the Insurer's request, the **Named Insured** will deliver to the Insurer, or cause to be delivered by the broker or agent of record, a list acceptable to the Insurer containing the names and addresses of all entities entitled to receive notice. If the list is not provided to the Insurer within such time period, the Insurer will not provide notification. The Insurer will assume that the list provided to the Insurer by the **Named Insured** or the broker is a complete and accurate list of certificate holders. Only those persons or entities listed on the schedule will receive notification. The Insurer will keep no other record of any certificate holders in the Insurer's file. Such notice will be delivered to such client at the address recorded by certificate on file with the broker or agent of record and provided to the Insurer.

With respect to cancellation or non-renewal of this Policy, the Insurer will provide the **Named Insured's** client with the greater of:

- (1) thirty (30) days' notice; or
- (2) the number of days' notice set forth in the applicable State Provisions endorsement attached to this Policy in accordance with the Cancellation/Non-Renewal condition of the Policy.

With respect to a reduction in the Limits of Liability of this Policy by endorsement during the **policy term**, the Insurer will provide the **Named Insured's** client with the lesser of:

- (1) sixty (60) days' notice; or
- (2) the number of days' notice required in the **Named Insured's** contract with such client.

The Insurer's failure to provide such notification will not extend the Policy cancellation date, negate cancellation or non-renewal of the Policy, invalidate any endorsement to the Policy or be cause for legal action against the Insurer.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy.



AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Twenty-Fourth day of April in the year Two Thousand Seventeen

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Department of Natural Resources and Environmental Control
Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901
TEL: 302-739-9231

and the Architect:
(Name, legal status, address and other information)

Century Engineering
4134 N. Dupont Highway.
Dover, DE. 19901
Tel: 302-734-9188

for the following Project:
(Name, location and detailed description)

State of Delaware
Department of Natural Resources and Environmental Control
Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

(Paragraph Deleted)

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

(State below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

Agreement is open-ended, renewable annually at the option of the Owner, and is to encompass improvements, renovations, repairs and replacements for all properties managed by the Department of Natural Resources and Environmental Control. Compensation will be determined separately for each individual project, but consistently as outlined in Articles 11 and 12. Refer to Attachment "A" and Article 12 for amendments to the text of this Agreement.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

To be determined per individual project

- .2 Substantial Completion date:

To be determined per individual project

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§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement.
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 Comprehensive General Liability

\$1,000,000

.2 Medical / Professional Liability

\$1,000,000 / \$3,000,000

.3 Miscellaneous Errors and Omissions

\$1,000,000 / \$3,000,000

.4 Product Liability

\$1,000,000 / \$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered. If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

.5 Automotive Liability (Bodily Injury):

\$100,000/\$300,000

.6 Automotive Property Damage (to others):

\$25,000

§ 2.6 Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

§ 2.7 The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the

Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

§ 2.8 The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the
(Paragraph Deleted)

contract.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, civil and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without prior notice to the Architect.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating

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environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the mutually agreed upon program, schedule and construction budget required as well as the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings, outline specifications and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Architect shall perform life cycle cost analysis s required by 29 DEL.C. §6909A.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms. The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local governments including municipality in which the project is located.

§ 3.4.4 The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. After Owner's review, incorporate Owner's comments into the final construction documents.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect if requested shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect if requested shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction (5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship within 48 hours of receipt of official notification from the Owner.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

(Paragraphs Deleted)

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement as well as the Owner's Supplementary General Conditions and the Owner's General Requirements.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques,

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sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate of Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review, but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner. The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the information given and the design concepts in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness as to cause no delay. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of two years from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™–2009)		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™–2007)		
§ 4.1.6 Building Information Modeling (E202™–2008)		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™–2007)		
§ 4.1.10 Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site Project Representation (B207™–2008)		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings		

<p>§ 4.1.15 Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) “as-built” drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-ROM. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.</p>		
§ 4.1.16 Post occupancy evaluation		
§ 4.1.17 Facility Support Services (B210™-2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner’s consultants		
§ 4.1.20 Telecommunications/data design must comply with the State of Delaware’s Department of Technology and Information’s standards		
§ 4.1.21 Security Evaluation and Planning (B206™-2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

Except as identified as included in Architect’s Basic Services per Attachment A, Additional Services listed in 4.1 will be provided by the Architect via request of the Owner on a project by project basis.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner’s written authorization:

- .1 Making revisions in drawings, specifications or other documents, when such revisions are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustment in the Owner’s program or Project budget;
- .2 Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, except for Life Cycle Cost Analysis or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner's failure to render decisions in a timely manner.

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Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”

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- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

(Paragraph Deleted)

- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

(Paragraph Deleted)

- .2 Responding to the Contractor’s requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor’s proposals and supporting data, or the preparation or revision of Instruments of Service as outlined in Article 12 E & O policy;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate of Payment, more than 60 days after the date of Substantial Completion.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 (Two) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 (Two) visits per Month to the site by the Architect over the duration of the Project during construction
- .3 (Two) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 (Two) inspections for any portion of the Work to determine final completion

§ 4.3.3 If the services covered by this Agreement have not been completed within (60) months of the date of this Agreement, through no fault of the Architect, extension of the Architect’s services beyond that time may be compensated as Additional Services.

ARTICLE 5 OWNER’S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request

from the Architect, the Owner may furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect may thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize reviewed and approved by the Owner. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided. The Owner may elect to transfer this responsibility to the Architect as an additional service in Article 3 of this Agreement.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. These services are not provided directly to the Architect.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. The Architect shall prepare and distribute meeting minutes during the design and construction phase of the Project.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's best judgment as a design professional.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WSB) format. If the lowest responsible and responsive bid exceeds the estimate Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all the discrepancies at no additional cost to the Owner.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to cooperate in the revising of the Project scope and the quality as required to reduce the Construction Cost, The Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for the bidding phase costs due to the modifications.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without approval of, or additional compensation to the Architect. The Contractor, Subcontractors, Subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for the use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of Work without specific written consent of the Owner, Architect and the Architect's consultants.

This stipulation shall not prohibit the Architect from reuse of all instruments of service noted above for any other project or clients. The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specification if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a

Project in which the Architect is not involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

(Paragraphs Deleted)

§ 8.2 MEDIATION

(Paragraph Deleted)

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise. In accordance with Delaware Law, A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of

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filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

The choice is left to the parties.

(Paragraphs Deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect or except for funding purposes, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 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 and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

(Paragraph Deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction as amended by the Owner's General Requirements and the Owner's Supplemental Conditions.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, 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 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 Except in accordance with Delaware Freedom of Information Act (FOIA), 29 DEL.C.ch. 100, if the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Compensation shall be based upon a negotiated stipulated sum or DFM's architectural & engineering fee schedule based on the lowest bona fide bid plus alternates. Refer to 12.4 for further clarification.

§ 11.2 For Additional Services designated in Section 4.1 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Compensation shall be based upon negotiated stipulated sum prior to proceeding with additional services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Compensation shall be based upon service performed on an hourly basis utilizing the attached Schedule of Rates (Attachment C).

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Fifteen	percent (	15	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	One Hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. Design work for Alternates may be included for consideration in the cost of the work

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates may be adjusted subject to negotiation.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-state travel and subsistence based on Delaware's Office of Management and Budget's policy regarding such reimbursement;

(Paragraph Deleted)

- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;

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- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

(Paragraphs Deleted)

- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

(Paragraphs Deleted)

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Payments are due and payable within 30 days after the Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one (1) percent per month not to exceed twelve (12) percent per annum.

(Insert rate of monthly or annual interest agreed upon.)

Per annum

(Paragraph Deleted)

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

Office of Management and Budget Division of Facilities Management's Errors & Omission Policy - Attachment 'B' Wherever the term "Architect" is used in this agreement, it shall be interchangeable with the term "Engineer"

§ 12.2 Amend Item 10 of Attachment A by adding to the words "prior notice to the Architect" the following: "provided such directive or substitution is lawful, does not jeopardize the standard of care required of the architect and does not increase the established scope without equitable compensation."

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect

(Paragraph Deleted)

- .3 Other documents:

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(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Attachment 'A'-Amendments to AIA Document B101 007
Attachment 'B' - State of Delaware Division of Facilities Management Errors & Omissions Policy
Attachment 'C' - Schedule of Rates

This Agreement entered into as of the day and year first written above.

OWNER

Original On File

(Signature)
Shawn M. Garvin, Cabinet Secretary - DNREC,
State of Delaware
(Printed name and title)

ARCHITECT

Original On File

(Signature)
Scott L. Rathfon, P.E. Executive President, Century
Engineering Inc.
(Printed name and title)

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ATTACHMENT "A"

Owner and Architect Agreement B101

This attachment amends AIA Document B101-2007 as follows:

1. Section 6903, Chapter 69, Title 29 of the Delaware Code requires a "prohibition against contingency fees" statement. An acceptable statement would be as follows:

"By signing this Agreement, the Professional swears that he has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he has not been paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement."

2. The Professional will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Professional will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

3. Amend Article 1.1 by adding the following sentence to the end of the Article:

"At the Owner's request, the Architect shall produce all subcontractor agreements, including consultants, or any other agreement related to the Architect's performance on the project."

4. Amend Article 2.5 by striking the second sentence in its entirety.
5. Amend Article 2.5 by striking subsection 2.5.1 through 2.5.4 and inserting the following:
 - 2.5.1 Comprehensive General Liability: \$1,000,000 and
 - 2.5.2 Medical/Professional Liability: \$1,000,000/\$3,000,000 or
 - 2.5.3 Misc. Errors or Omissions: \$1,000,000/\$3,000,000 or
 - 2.5.4 Product Liability: \$1,000,000/\$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered. If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

- 2.5.4 Automotive Liability (Bodily Injury): \$100,000/\$300,000
 - 2.5.6 Automotive Property Damage (to others): \$25,000
6. Add a new Article 2.6 which shall read as follows:

Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

7. Add a new Article 2.7 which shall read as follows:

The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

8. Add a new Article 2.8 which shall read as follows:

The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.

9. Amend Article 3.1 by adding the word “civil” after “mechanical,” and before “and”.
10. Amend Article 3.1.4 by striking “the Architect’s approval” and replacing it with “prior notice to the Architect.”
11. Amend Article 3.2.5 by adding “the mutually agreed-upon program, schedule and construction budget requirement as well as” after “Based on” and before “the Owner’s approval” in the first sentence. In the second sentence add “,outline specifications,” after “drawings”.
12. Amend Article 3.2.5.2 by adding the following sentence to the end of the Article: “The Architect shall perform life cycle cost analysis as required by 29 Del. C. §6909A.
13. Amend Article 3.2.6 by striking “prepared in accordance with Section 6.3.”
14. Amend Article 3.3.1 by striking the word “outline” before “specifications”.
15. Amend Article 3.4.3 by adding the following sentence to the end of the Article: “The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local government including municipality in which the project is located.”
16. Amend Article 3.4.4 by striking the Article in its entirety and replacing it with the following: “The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit.”
17. Amend Article 3.4.5 by adding after the last sentence “After Owner’s review, incorporate Owner’s comments into final construction documents.”
18. Amend Article 3.5.1 by inserting in the first and second sentences “if requested” before Architect. In the second sentence after “(4) awarding and”, insert “(5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship to Owner within 48 hours of receipt of official notification from Owner. If mailed, documents shall be sent using a delivery service that can track the shipment.”
19. Amend Article 3.5.3 by striking it in its entirety.
20. Amend Article 3.6.1.1 by adding “as well as the Owner’s Supplementary General Conditions and the Owner’s General Requirements.”
21. Amend Article 3.6.1.3 by striking it in its entirety and replacing it with the following: “The Architect’s responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment.”

22. Amend Article 3.6.2.4 by adding the following to the end of the paragraph: "The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity."

23. Amend 3.6.4.1 by inserting the following after the first sentence: "The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents."

Also, amend by striking the final period in the last sentence and inserting the following: ", but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner."

24. Amend Article 3.6.4.2 by striking the first sentence in its entirety and replacing it with the following: "In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with information given and the design concepts in the Contract Documents."

25. Amend Article 3.6.4.4 by striking "Subject to the provisions of Section 4.3," and starting the sentence with "The".

Also amend by adding to the end of the fourth sentence the following immediately after "reasonable promptness": "as to cause no delay in the work."

26. Amend Article 3.6.5.1 by striking the following at the beginning of the second sentence: "Subject to the provision of Section 4.3" and starting the sentence with "The".

27. Amend Article 3.6.6.5 by changing "one year" to "two years".

28. Amend Article 4.1 by striking the following subparagraphs from additional services as they are considered Basic Services:

4.1.2 - Multiple Preliminary Drawings

4.1.7 - Civil Engineering

4.1.8 - Landscape Design

4.1.10 - Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.

4.1.11 - Detailed Cost Estimating

4.1.13 - Conformed Construction Documents

4.1.15 - Strike this section in its entirety and replace with the following: Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) "as-built" drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-Rom. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.

4.1.19 - Coordination of Owner's consultants

4.1.20 - In addition to Telecommunications and data design being a Basic Service, the design must comply with the State of Delaware's Department of Technology and Information's standards.

4.1.22 - Incorporate design and review comments from Owner's commissioning agent.

4.1.23 - Is a Basic Service as required in Article 3.2.5.1

4.1.26 - If required by local government including municipalities, Historic Preservation services will be considered Basic Services.

29. Amend Article 4.3.1.1 by striking it in its entirety and replacing it with the following:

"Making revisions in drawings, specifications or other documents, when such revisions are:

.1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget;

Providing services required because of significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contract for construction except for services required under Section 6.7."

30. Amend Article 4.3.1.2 by inserting "except for Life Cycle Cost Analysis" after "energy modeling" and before "or".

31. Amend Article 4.3.1.4 by striking in its entirety and replacing it with the following:

“Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner’s failure to render decisions in a timely manner.

Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”
32. Strike Article 4.3.1.5 in its entirety.
33. Strike Article 4.3.1.6 in its entirety.
34. Strike Article 4.3.1.7 in its entirety.
35. Strike Article 4.3.1.9 in its entirety.
36. Strike Article 4.3.2.1 in its entirety.
37. Amend Article 4.3.2.3 to add at the end “as outlined in Article 12 E & O policy.”
38. Strike Article 4.3.2.6 in its entirety and replace with the following: “Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of Work.”
39. Amend Article 4.3.3.1 by adding the number two before “reviews”.
40. Amend Article 4.3.3.2 by adding “the equivalent of 2 visits per month for the duration of the project.”
41. Amend Article 4.3.3.3 by adding the number two before “inspections”.
42. Amend Article 4.3.3.4 by adding the number two before “inspections”.
43. Amend Article 4.3.4 by changing “shall” to “may”.
44. Amend Article 5.2 by striking the word “shall” in the last sentence and replacing it with “may”.
45. Amend Article 5.6 by striking the last portion of the third sentence that reads “the Architect requests such services...scope of the Project” and replace with “reviewed and approved by the Owner.”

Also amend by adding the following at the end of the paragraph: "The Owner may elect to transfer this responsibility to the Architect as an Additional Service in Article 3 of this Agreement."

46. Amend Article 5.8 by adding the following to the end of the Article: "These services are not provided directly to the Architect."
47. Amend Article 5.10 by adding a third sentence to read as follows: "The Architect shall prepare and distribute meeting minutes during the design and construction phases of the Project."
48. Amend Article 6.2 by inserting "best" before "judgment" in the second sentence. Also, strike the third and fourth sentences in their entirety.
49. Amend Article 6.3 by deleting the second and third sentences and replace with the following: "The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WBS) format. If the lowest responsible and responsive bid exceeds the estimated Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all discrepancies at no additional cost to the Owner."
50. Delete Article 6.7 in its entirety and replace with the following:

"If the Owner chooses to cooperate in the revising the Project scope and quality as required to reduce the Construction Cost, the Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for bidding phase costs due to the modifications."
51. Amend Article 7 by striking it in its entirety and replacing it with the following:

"All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this Agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Architect. The Contractor, Subcontractors, Sub-subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the Architect from the reuse of all instruments of service noted above for any other projects or clients."

The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specifications if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a Project in which the Architect is not also involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp."

52. Amend Article 8.1.1 by striking the last sentence in its entirety.
53. Amend Article 8.1.2 by striking it in its entirety.
54. Amend Article 8.1.3 by striking it in its entirety.
55. Amend Article 8.2.1 by striking it in its entirety.
56. Amend Article 8.2.2 by striking the end of the first sentence "shall be administered ...the date of the Agreement." Also add the following to the beginning of the second sentence: "In accordance with Delaware law,"
57. Amend Article 8.2.4 by checking the box marked "Other" and insert the following: "The choice is left to the parties."
58. Amend Article 8.3 by striking it in its entirety.
59. Amend Article 9.3 by adding the following to the first sentence after "fault of the Architect": "or except for funding purposes."
60. Amend Article 9.7 by striking the following from the end of the sentence: "plus an amount...by the Architect."
61. Amend Article 9.8 by striking it in its entirety.
62. Amend Article 10.1 by striking the following from the end of the sentence: "except that if... govern Section 8.3."
63. Amend Article 10.2 by adding to the following to the end of the sentence: "as amended by the Owner's General Requirements and the Owner's Supplemental Conditions."
64. Amend Article 10.8 by adding the following to the beginning of the first sentence: "Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100,".
65. Amend Article 11.2 by adding the following after "Section 4.1": "as amended by Owner's Attachment A."
66. Amend Article 11.3 by adding the following after "Section 4.3": "as amended by Owner's Attachment A."

67. Amend Article 11.6 by adding the following sentence at the end: "Design Work for Alternates may be included for consideration in the cost of work."
68. Amend Article 11.7 by striking the second sentence in its entirety and replacing it with the following: "The rates may be adjusted subject to negotiation."
69. Amend 11.8.1.1 by striking the phrase "out-of-town" and replacing it with "out-of-state". Normally the State only reimburses "out-of-state" transportation and living expenses directly related to a project.

Also, insert the following at the end of the sentence: "based on Delaware's Office of Management and Budget's policy regarding such reimbursement."
70. Amend Article 11.8.1.2 by striking it in its entirety.
71. Amend Article 11.8.1.8 by striking it in its entirety.
72. Amend Article 11.8.1.9 by striking it in its entirety.
73. Amend Article 11.9 by striking it in its entirety.
74. Amend Article 11.10.1 by striking it in its entirety.
75. Amend Article 11.10.2 by striking the second sentence in its entirety and replace with: "Payments are due and payable within 30 days after Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one percent per month not to exceed twelve percent per annum."
76. Amend Article 11.10.3 by striking it in its entirety.
77. Amend Article 12 to include reference to the "Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy."
78. Amend Article 13.2 by striking it in its entirety and replacing with the following: "All attachments including Owner's Attachment A and all related exhibits."

July 3, 2013

ATTACHMENT "B"

STATE OF DELAWARE

DIVISION OF FACILITIES MANAGEMENT

Article 12

Errors and Omissions Policy

Table of Contents

- 1. Insurance**
- 2. Assignment of Responsibility**
- 3. Error and/or Omission Discovery**
- 4. Resolution and Appeal**

This document includes a general discussion on errors and/or omissions occurring during project implementation, how to initiate a correction for an error or omission, and what each party's responsibilities are in making the correction. The Division intends to seek reimbursement for additional costs (defined below) associated with correcting errors and omissions during planning, design and construction, including but not limited to, multiple report rewrites, construction costs, and construction engineering.

1. INSURANCE

This article does not address the types of liability insurance a firm may need to carry. Insurance usually carried by consultants includes Comprehensive General Liability, Comprehensive Automobile Liability, Workers' Compensation and Employers' Liability, Professional Liability, and other specialty insurance required in an agreement or that a firm may consider prudent based on the scope of work. The actual agreement covering the work will specify the minimum insurance requirements.

2. ASSIGNMENT OF RESPONSIBILITY

Services procured under the auspices of this document are considered "Professional Services". This in itself infers that, no matter what the scope of work entails, there are associated, industry professional, standards which are expected to be met. For projects involving public safety, meeting these standards takes on even more significance. Firms selected through the Division's professional services procurement process are the best technically qualified, with a proven history of meeting similar contract obligations. Such designation carries with it an acknowledgement of the firm's responsibility to know the accepted standards for doing business in Delaware.

Because of the Division's review process and the involvement of internal support sections as well as other state agencies, utility companies, public groups, municipalities, and the like, acceptance of the responsibility for an error and/or omission in a professional manner will depend on good project monitoring. Complete review and comment records are to be kept by both the Consultant and the Division. It is required that an office copy of each marked or edited review submission and comments be prepared and retained for future reference. Detailed minutes of project review meetings are also required. In projects that involve existing facilities, the Division will normally compensate at Consultant to perform a "pre-design survey" of the facility to determine the existing conditions and how the proposed work will be incorporated into the design. Firms are encouraged to exercise the utmost professional care during these surveys in order to complete full and complete construction drawings and specifications.

Because of the underlying expectation that a firm will comply with established standards throughout project development, there are occasions when a Project Manager and the Construction Projects Administrator will determine that a firm may not have met this obligation. When discovered, the error and/or omission should be reported immediately to the Consultant for resolution. While invoices should annotate the time and associated costs for correcting the lapse, the Division shall not be charged to correct errors and/or omissions.

3. ERROR AND/OR OMISSION DISCOVERY

Definitions:

Errors are defined as unknown, ignorant, or unintentional deviations from accuracy or correctness. Errors may arise from mistaken judgment, misplaced confidence, incorrect belief as to the existence or effect of matters of fact, or other actions. Errors also include failure to meet established Delaware requirements, or design standards for that type of project, (i.e., ASHRAE, DNREC, DelDOT, ICC, NEC, NSPA, or other established government requirements or design standards).

Omissions are defined as missing or unmentioned detail or requirements through either failure to perform properly, neglect, or failure to use reasonable care. Omissions also include failure to identify and implement cost-effective solutions.

Additional costs refers to that portion of the project cost the consultant is responsible for which includes those expenses over and above the cost the Division would have incurred had the error or omission not been made.

During Project Development

Errors and/or omissions discovered during project development are relatively easy to resolve when identified early because the Consultant's Project Manager and the Division's Project Manager are both aware of the circumstances surrounding the problem. The major issue remaining involves arriving at a mutual agreement on whether full, partial or no compensation is due the Consultant to correct the problem. (See Resolution below.)

During Implementation or Construction

Most often it will be obvious if a Consultant error and/or omission truly occurred. Frequently, however, there is a time lapse between the completion of professional services to develop the project and actual implementation of the plan, project, or construction. Associated with this delay is the updating and modification of completed work because of changes in specifications, updated regulations, legislative initiatives, or additional valid comments for improving a project. In essence, the quality and content of a project become a shared responsibility. Changes of scope or specifications (owner requested), updated regulations, legislative initiatives, or comments for improving a project after acceptance of the final design, shall in no way be construed as an error/or omission.

Professional responsibility of the Consultant preparing the project does not terminate with acceptance of the product and/or final payment for its development. Failure to discover the error and/or omission during the design, review or implementation of the project does not relieve the Consultant of their responsibility to correct the effects of the error and/or omission. The extent of the responsibility of the consultant for payment for correcting any errors and/or omissions may be in question, but the active participation of the firm in resolving a problem upon request is mandatory. The level of the Consultant's participation shall be determined by the Division.

The procedure to initiate the correction of an error and/or omission lies with the person responsible for ensuring proper implementation of the plan, project, or construction. At the first indication of an error and/or omission, the Division's representative should notify the project Supervisor. All subordinates should be instructed to keep detailed documentation on the work being performed.

At this same time, the Division's Project Manager responsible for developing the project, if not the person identifying the error and/or omission, should be notified. Depending upon how critical a correction is to project scheduling, report preparation and review may be impractical. When such timing is critical, the Project Manager is verbally notified, and guidance is requested with emphasis on what additional data is needed to document and resolve the error and/or omission. The Division's Project Manager, in turn, should immediately advise the consultant, the supervisor, and up through the chain of command as necessary.

The Division holds the prime Consultant responsible for all work performed or not performed under an agreement including that of any subconsultants. When necessary, based on the opinion of the Division's Project Manager, Construction Project Administrator, Chief Engineer, Deputy Director, and/or Director, the prime consultant will be notified of the problem and requested to participate in a solution in cooperation with Division staff. There will be no compensation to either the prime or subconsultant for services related to the verification and correction of an error and/or omission unless as otherwise agreed. The primary objective is to keep the project on schedule by proposing a viable alternative. Records should be kept of any immediate action taken to correct the situation.

4. RESOLUTION AND APPEAL

Resolution

The Division's Project Manager shall document the error and/or omission that was identified, collect all supporting materials, review their findings with the Consultant, determine the required action to correct the error and/or omission and analyze the cost impact of the resolution (including but not limited to materials, overtime, and force account). All documentation shall be presented to the Construction Project Administrator. The prime Consultant is expected to participate at the appropriate level, from site visits to preparation of corrective documents. Much of this participation is mutually agreed to as solutions are developed.

The Construction Project Administrator (or Chief Engineer) will review the materials, discuss the resolution options with the Consultant and make a final recommendation to the Chief Engineer (or Deputy Director) for review. At the conclusion of the Deputy Director's review, the recommendation will be presented to the Director for approval.

Appeal

Should the Consultant not participate in the resolution process or disagree with the finding of financial responsibility as presented, the Consultant can schedule a review with the Deputy Director or Director. The Deputy Director or Director can modify the terms of the resolution or refer the appeal to the OMB Director per the Consultant's contract.

Default

Should the Consultant not honor the terms of the final resolution, the Division, for just and definable acts, has the option of filing a Consultant insurance claim, filing legal process for restitution, terminating all current agreements, or barring the firm from further work with the Division for up to five years, or any combination thereof.

ATTACHMENT "C"

SCHEDULE OF RATES

CENTURY ENGINEERING, INC.

Below rates are effective through December 31, 2017

<u>CLASSIFICATION</u>	<u>BILLING RATE</u>
PRINCIPAL-IN-CHARGE	\$200.00
SENIOR PROJECT ENGINEER	\$150.00
PROJECT MANAGER	\$159.00
PROJECT ENGINEER	\$121.50
ENGINEER	\$111.00
SENIOR DESIGNER	\$95.00
DESIGNER	\$81.00
SENIOR ROW AGENT	\$100.00
ROW AGENT	\$70.00
CADD TECHNICIAN	\$69.00
ENVIRONMENTAL SCIENTIST	\$77.50
TECHNICIAN	\$52.00
SURVEY MANAGER	\$150.00
PARTY CHIEF	\$70.00
INSTRUMENT PERSON	\$45.00
ROD PERSON	\$35.00
SENIOR INSPECTOR	\$96.00
INSPECTOR	\$70.50
JUNIOR INSPECTOR / OFFICE MANAGER	\$51.00

(Above rates are marked up to include Overhead and Profit.)



State of Delaware
Department of Natural Resources and Environmental Control
Delaware Division of Parks and Recreation
89 Kings Highway
Dover, Delaware 19901

June 8, 2017

Mark Lapointe
GWWO Inc. Architects
800 Wyman Park Drive, Suite 300
Baltimore, MD. 21211

**RE: Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services**

Mr. Lapointe:

Enclosed is the fully executed agreement between the Department of Natural Resources and Environmental Control and GWWO Inc. Architects pertaining to the above-captioned contract. This agreement will form the basis for all services you perform relative to the Department's Capital improvements program and can be renewed yearly through the Fiscal Year 2022.

Future requests will be made from the Department for written stipulated sum proposals on specific projects. Proposal will only be accepted upon the issuance of an addendum to this agreement along with a fully executed purchase order. An example of an addendum is enclosed.

We look forward to working with you on this program. Meanwhile, should you have any questions or require additional information, please contact our office at (302) 739-9231.

Sincerely,

Original On File

Cynthia A. Todd, RLA, Construction Projects Administrator
Office of Design and Development

Attachment:
AIA B101-2007 Standard Form of Agreement Between Owner and Architect
Sample Addendum

 We're saving a place for you...

FILE COPY

 **AIA** Document B101™ – 2007**Standard Form of Agreement Between Owner and Architect**

AGREEMENT made as of the Twenty-Fourth day of April in the year Two Thousand Seventeen

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:

(Name, legal status, address and other information)

Department of Natural Resources and Environmental Control
Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901
Tel: 302-739-9231

and the Architect:

(Name, legal status, address and other information)

GWWO Inc. Architects
800 Wyman Park Drive, Suite 300
Baltimore, MD. 21211
Tel: 410-332-1009

for the following Project:

(Name, location and detailed description)

State of Delaware
Department of Natural Resources and Environmental Control
Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

(Paragraph Deleted)

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

(State below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

Agreement is open-ended, renewable annually at the option of the Owner, and is to encompass improvements, renovations, repairs and replacements for all properties managed by the Department of Natural Resources and Environmental Control. Compensation will be determined separately for each individual project, but consistently as outlined in Articles 11 and 12. Refer to Attachment "A" and Article 12 for amendments to the text of this Agreement.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

To be determined per individual project

- .2 Substantial Completion date:

To be determined per individual project

Init.

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User Notes:

(3B9ADA29)

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement.

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 Comprehensive General Liability

\$1,000,000

.2 Medical / Professional Liability

\$1,000,000 / \$3,000,000

.3 Miscellaneous Errors and Omissions

\$1,000,000 / \$3,000,000

.4 Product Liability

\$1,000,000 / \$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered. If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

.5 Automotive Liability (Bodily Injury):

\$100,000/\$300,000

.6 Automotive Property Damage (to others):

\$25,000

§ 2.6 Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

§ 2.7 The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the

Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

§ 2.8 The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the
(Paragraph Deleted)

contract.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, civil and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without prior notice to the Architect.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating

environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the mutually agreed upon program, schedule and construction budget required as well as the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings, outline specifications and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Architect shall perform life cycle cost analysis s required by 29 DEL.C. §6909A.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

Init.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms. The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local governments including municipality in which the project is located.

§ 3.4.4 The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. After Owner's review, incorporate Owner's comments into the final construction documents.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect if requested shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect if requested shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction (5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship within 48 hours of receipt of official notification from the Owner.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

(Paragraphs Deleted)

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement as well as the Owner's Supplementary General Conditions and the Owner's General Requirements.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques,

sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate of Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review, but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner. The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the information given and the design concepts in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness as to cause no delay. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of two years from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™–2009)		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™–2007)		
§ 4.1.6 Building Information Modeling (E202™–2008)		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™–2007)		
§ 4.1.10 Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site Project Representation (B207™–2008)		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings		

<p>§ 4.1.15 Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) “as-built” drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-ROM. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.</p>		
<p>§ 4.1.16 Post occupancy evaluation</p>		
<p>§ 4.1.17 Facility Support Services (B210™–2007)</p>		
<p>§ 4.1.18 Tenant-related services</p>		
<p>§ 4.1.19 Coordination of Owner’s consultants</p>		
<p>§ 4.1.20 Telecommunications/data design must comply with the State of Delaware’s Department of Technology and Information’s standards</p>		
<p>§ 4.1.21 Security Evaluation and Planning (B206™–2007)</p>		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

Except as identified as included in Architect’s Basic Services per Attachment A, Additional Services listed in 4.1 will be provided by the Architect via request of the Owner on a project by project basis.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner’s written authorization:

1. Making revisions in drawings, specifications or other documents, when such revisions are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustment in the Owner’s program or Project budget;
2. Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, except for Life Cycle Cost Analysis or LEED® certification;
3. Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
4. Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner’s failure to render decisions in a timely manner.

Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”

(Paragraphs Deleted)

- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

(Paragraph Deleted)

- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

(Paragraph Deleted)

- .2 Responding to the Contractor’s requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor’s proposals and supporting data, or the preparation or revision of Instruments of Service as outlined in Article 12 E & O policy;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate of Payment, more than 60 days after the date of Substantial Completion.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 (Two) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 (Two) visits per Month to the site by the Architect over the duration of the Project during construction
- .3 (Two) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 (Two) inspections for any portion of the Work to determine final completion

§ 4.3.3 If the services covered by this Agreement have not been completed within (60) months of the date of this Agreement, through no fault of the Architect, extension of the Architect’s services beyond that time may be compensated as Additional Services.

ARTICLE 5 OWNER’S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request

from the Architect, the Owner may furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect may thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize reviewed and approved by the Owner. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided. The Owner may elect to transfer this responsibility to the Architect as an additional service in Article 3 of this Agreement.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. These services are not provided directly to the Architect.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. The Architect shall prepare and distribute meeting minutes during the design and construction phase of the Project.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's best judgment as a design professional.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WSB) format. If the lowest responsible and responsive bid exceeds the estimate Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all the discrepancies at no additional cost to the Owner.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to cooperate in the revising of the Project scope and the quality as required to reduce the Construction Cost, The Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for the bidding phase costs due to the modifications.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without approval of, or additional compensation to the Architect. The Contractor, Subcontractors, Subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for the use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of Work without specific written consent of the Owner, Architect and the Architect's consultants.

This stipulation shall not prohibit the Architect from reuse of all instruments of service noted above for any other project or clients. The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specification if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a

Project in which the Architect is not involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

(Paragraphs Deleted)

§ 8.2 MEDIATION

(Paragraph Deleted)

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise. In accordance with Delaware Law, A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of

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filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

The choice is left to the parties.

(Paragraphs Deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect or except for funding purposes, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 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 and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

(Paragraph Deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction as amended by the Owner's General Requirements and the Owner's Supplemental Conditions.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, 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 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 Except in accordance with Delaware Freedom of Information Act (FOIA), 29 DEL.C.ch. 100, if the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Compensation shall be based upon a negotiated stipulated sum or DFM's architectural & engineering fee schedule based on the lowest bona fide bid plus alternates. Refer to 12.4 for further clarification.

Init.

§ 11.2 For Additional Services designated in Section 4.1 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Compensation shall be based upon negotiated stipulated sum prior to proceeding with additional services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Compensation shall be based upon service performed on an hourly basis utilizing the attached Schedule of Rates No. 45 (Attachment B).

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Fifteen	percent (	15	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	One Hundred	percent	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. Design work for Alternates may be included for consideration in the cost of the work

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates may be adjusted subject to negotiation.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate
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§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-state travel and subsistence based on Delaware's Office of Management and Budget's policy regarding such reimbursement;

(Paragraph Deleted)

- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

(Paragraphs Deleted)

- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

(Paragraphs Deleted)

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Payments are due and payable within 30 days after the Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one (1) percent per month not to exceed twelve (12) percent per annum.

(Insert rate of monthly or annual interest agreed upon.)

Per annum

(Paragraph Deleted)

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

Office of Management and Budget Division of Facilities Management's Errors & Omission Policy -Attachment 'B'
Wherever the term "Architect" is used in this agreement. it shall be interchangeable with the term "Engineer".

§ 12.2 Amend Item 10 of Attachment A by adding to the words "prior notice to the Architect" the following:
"provided such directive or substitution is lawful, does not jeopardize the standard of care required of the architect and does not increase the established scope without equitable compensation."

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect

(Paragraph Deleted)

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 11:52:19 on 04/24/2017 under Order No. 0539366887 which expires on 02/27/2018, and is not for resale.

User Notes:

(3B9ADA2A)

.3 Other documents:

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Attachment 'A' - Amendments to AIA Document B101 007

Attachment 'B' - State of Delaware Division of Facilities Management Errors & Omissions Policy

Attachment 'C' - Schedule of Rates

This Agreement entered into as of the day and year first written above.

OWNER

Original On File

ARCHITECT

Original On File

(Signature)

Shawn M. Garvin, Cabinet Secretary - DNREC,
State of Delaware

(Printed name and title)

(Signature)

Mark Lapointe, AIA Principal, GWWO, Inc.
Architects

(Printed name and title)

Init.

User Notes:

(3B9ADA2A)

ATTACHMENT "A"

Owner and Architect Agreement B101

This attachment amends AIA Document B101-2007 as follows:

1. Section 6903, Chapter 69, Title 29 of the Delaware Code requires a "prohibition against contingency fees" statement. An acceptable statement would be as follows:

"By signing this Agreement, the Professional swears that he has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he has not been paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement."

2. The Professional will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Professional will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

3. Amend Article 1.1 by adding the following sentence to the end of the Article:

"At the Owner's request, the Architect shall produce all subcontractor agreements, including consultants, or any other agreement related to the Architect's performance on the project."

4. Amend Article 2.5 by striking the second sentence in its entirety.
5. Amend Article 2.5 by striking subsection 2.5.1 through 2.5.4 and inserting the following:
 - 2.5.1 Comprehensive General Liability: \$1,000,000 and
 - 2.5.2 Medical/Professional Liability: \$1,000,000/\$3,000,000 or
 - 2.5.3 Misc. Errors or Omissions: \$1,000,000/\$3,000,000 or
 - 2.5.4 Product Liability: \$1,000,000/\$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered. If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

- 2.5.4 Automotive Liability (Bodily Injury): \$100,000/\$300,000
 - 2.5.6 Automotive Property Damage (to others): \$25,000
6. Add a new Article 2.6 which shall read as follows:

Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

7. Add a new Article 2.7 which shall read as follows:

The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

8. Add a new Article 2.8 which shall read as follows:

The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.

9. Amend Article 3.1 by adding the word “civil” after “mechanical,” and before “and”.
10. Amend Article 3.1.4 by striking “the Architect’s approval” and replacing it with “prior notice to the Architect.”
11. Amend Article 3.2.5 by adding “the mutually agreed-upon program, schedule and construction budget requirement as well as” after “Based on” and before “the Owner’s approval” in the first sentence. In the second sentence add “,outline specifications,” after “drawings”.
12. Amend Article 3.2.5.2 by adding the following sentence to the end of the Article: “The Architect shall perform life cycle cost analysis as required by 29 Del. C. §6909A.
13. Amend Article 3.2.6 by striking “prepared in accordance with Section 6.3.”
14. Amend Article 3.3.1 by striking the word “outline” before “specifications”.
15. Amend Article 3.4.3 by adding the following sentence to the end of the Article: “The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local government including municipality in which the project is located.”
16. Amend Article 3.4.4 by striking the Article in its entirety and replacing it with the following: “The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit.”
17. Amend Article 3.4.5 by adding after the last sentence “After Owner’s review, incorporate Owner’s comments into final construction documents.”
18. Amend Article 3.5.1 by inserting in the first and second sentences “if requested” before Architect. In the second sentence after “(4) awarding and”, insert “(5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship to Owner within 48 hours of receipt of official notification from Owner. If mailed, documents shall be sent using a delivery service that can track the shipment.”
19. Amend Article 3.5.3 by striking it in its entirety.
20. Amend Article 3.6.1.1 by adding “as well as the Owner’s Supplementary General Conditions and the Owner’s General Requirements.”
21. Amend Article 3.6.1.3 by striking it in its entirety and replacing it with the following: “The Architect’s responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment.”

22. Amend Article 3.6.2.4 by adding the following to the end of the paragraph: "The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity."

23. Amend 3.6.4.1 by inserting the following after the first sentence: "The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents."

Also, amend by striking the final period in the last sentence and inserting the following: ", but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner."

24. Amend Article 3.6.4.2 by striking the first sentence in its entirety and replacing it with the following: "In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with information given and the design concepts in the Contract Documents."

25. Amend Article 3.6.4.4 by striking "Subject to the provisions of Section 4.3," and starting the sentence with "The".

Also amend by adding to the end of the fourth sentence the following immediately after "reasonable promptness": "as to cause no delay in the work."

26. Amend Article 3.6.5.1 by striking the following at the beginning of the second sentence: "Subject to the provision of Section 4.3" and starting the sentence with "The".

27. Amend Article 3.6.6.5 by changing "one year" to "two years".

28. Amend Article 4.1 by striking the following subparagraphs from additional services as they are considered Basic Services:

4.1.2 - Multiple Preliminary Drawings

4.1.7 - Civil Engineering

4.1.8 - Landscape Design

4.1.10 - Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.

4.1.11 - Detailed Cost Estimating

4.1.13 - Conformed Construction Documents

4.1.15 - Strike this section in its entirety and replace with the following: Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) "as-built" drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-Rom. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.

4.1.19 - Coordination of Owner's consultants

4.1.20 - In addition to Telecommunications and data design being a Basic Service, the design must comply with the State of Delaware's Department of Technology and Information's standards.

4.1.22 - Incorporate design and review comments from Owner's commissioning agent.

4.1.23 - Is a Basic Service as required in Article 3.2.5.1

4.1.26 - If required by local government including municipalities, Historic Preservation services will be considered Basic Services.

29. Amend Article 4.3.1.1 by striking it in its entirety and replacing it with the following:

"Making revisions in drawings, specifications or other documents, when such revisions are:

.1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget;

Providing services required because of significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contract for construction except for services required under Section 6.7."

30. Amend Article 4.3.1.2 by inserting "except for Life Cycle Cost Analysis" after "energy modeling" and before "or".

31. Amend Article 4.3.1.4 by striking in its entirety and replacing it with the following:

“Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner’s failure to render decisions in a timely manner.

Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”
32. Strike Article 4.3.1.5 in its entirety.
33. Strike Article 4.3.1.6 in its entirety.
34. Strike Article 4.3.1.7 in its entirety.
35. Strike Article 4.3.1.9 in its entirety.
36. Strike Article 4.3.2.1 in its entirety.
37. Amend Article 4.3.2.3 to add at the end “as outlined in Article 12 E & O policy.”
38. Strike Article 4.3.2.6 in its entirety and replace with the following: “Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of Work.”
39. Amend Article 4.3.3.1 by adding the number two before “reviews”.
40. Amend Article 4.3.3.2 by adding “the equivalent of 2 visits per month for the duration of the project.”
41. Amend Article 4.3.3.3 by adding the number two before “inspections”.
42. Amend Article 4.3.3.4 by adding the number two before “inspections”.
43. Amend Article 4.3.4 by changing “shall” to “may”.
44. Amend Article 5.2 by striking the word “shall” in the last sentence and replacing it with “may”.
45. Amend Article 5.6 by striking the last portion of the third sentence that reads “the Architect requests such services...scope of the Project” and replace with “reviewed and approved by the Owner.”

Also amend by adding the following at the end of the paragraph: "The Owner may elect to transfer this responsibility to the Architect as an Additional Service in Article 3 of this Agreement."

46. Amend Article 5.8 by adding the following to the end of the Article: "These services are not provided directly to the Architect."
47. Amend Article 5.10 by adding a third sentence to read as follows: "The Architect shall prepare and distribute meeting minutes during the design and construction phases of the Project."
48. Amend Article 6.2 by inserting "best" before "judgment" in the second sentence. Also, strike the third and fourth sentences in their entirety.
49. Amend Article 6.3 by deleting the second and third sentences and replace with the following: "The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WBS) format. If the lowest responsible and responsive bid exceeds the estimated Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all discrepancies at no additional cost to the Owner."
50. Delete Article 6.7 in its entirety and replace with the following:

"If the Owner chooses to cooperate in the revising the Project scope and quality as required to reduce the Construction Cost, the Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for bidding phase costs due to the modifications."
51. Amend Article 7 by striking it in its entirety and replacing it with the following:

"All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this Agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Architect. The Contractor, Subcontractors, Sub-subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the Architect from the reuse of all instruments of service noted above for any other projects or clients."

The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specifications if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a Project in which the Architect is not also involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp."

52. Amend Article 8.1.1 by striking the last sentence in its entirety.
53. Amend Article 8.1.2 by striking it in its entirety.
54. Amend Article 8.1.3 by striking it in its entirety.
55. Amend Article 8.2.1 by striking it in its entirety.
56. Amend Article 8.2.2 by striking the end of the first sentence "shall be administered ...the date of the Agreement." Also add the following to the beginning of the second sentence: "In accordance with Delaware law,"
57. Amend Article 8.2.4 by checking the box marked "Other" and insert the following: "The choice is left to the parties."
58. Amend Article 8.3 by striking it in its entirety.
59. Amend Article 9.3 by adding the following to the first sentence after "fault of the Architect": "or except for funding purposes."
60. Amend Article 9.7 by striking the following from the end of the sentence: "plus an amount...by the Architect."
61. Amend Article 9.8 by striking it in its entirety.
62. Amend Article 10.1 by striking the following from the end of the sentence: "except that if... govern Section 8.3."
63. Amend Article 10.2 by adding to the following to the end of the sentence: "as amended by the Owner's General Requirements and the Owner's Supplemental Conditions."
64. Amend Article 10.8 by adding the following to the beginning of the first sentence: "Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100,".
65. Amend Article 11.2 by adding the following after "Section 4.1": "as amended by Owner's Attachment A."
66. Amend Article 11.3 by adding the following after "Section 4.3": "as amended by Owner's Attachment A."

67. Amend Article 11.6 by adding the following sentence at the end: "Design Work for Alternates may be included for consideration in the cost of work."
68. Amend Article 11.7 by striking the second sentence in its entirety and replacing it with the following: "The rates may be adjusted subject to negotiation."
69. Amend 11.8.1.1 by striking the phrase "out-of-town" and replacing it with "out-of-state". Normally the State only reimburses "out-of-state" transportation and living expenses directly related to a project.

Also, insert the following at the end of the sentence: "based on Delaware's Office of Management and Budget's policy regarding such reimbursement."
70. Amend Article 11.8.1.2 by striking it in its entirety.
71. Amend Article 11.8.1.8 by striking it in its entirety.
72. Amend Article 11.8.1.9 by striking it in its entirety.
73. Amend Article 11.9 by striking it in its entirety.
74. Amend Article 11.10.1 by striking it in its entirety.
75. Amend Article 11.10.2 by striking the second sentence in its entirety and replace with: "Payments are due and payable within 30 days after Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one percent per month not to exceed twelve percent per annum."
76. Amend Article 11.10.3 by striking it in its entirety.
77. Amend Article 12 to include reference to the "Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy."
78. Amend Article 13.2 by striking it in its entirety and replacing with the following: "All attachments including Owner's Attachment A and all related exhibits."

July 3, 2013

ATTACHMENT "B"

STATE OF DELAWARE

DIVISION OF FACILITIES MANAGEMENT

Article 12

Errors and Omissions Policy

Table of Contents

- 1. Insurance**
- 2. Assignment of Responsibility**
- 3. Error and/or Omission Discovery**
- 4. Resolution and Appeal**

This document includes a general discussion on errors and/or omissions occurring during project implementation, how to initiate a correction for an error or omission, and what each party's responsibilities are in making the correction. The Division intends to seek reimbursement for additional costs (defined below) associated with correcting errors and omissions during planning, design and construction, including but not limited to, multiple report rewrites, construction costs, and construction engineering.

1. INSURANCE

This article does not address the types of liability insurance a firm may need to carry. Insurance usually carried by consultants includes Comprehensive General Liability, Comprehensive Automobile Liability, Workers' Compensation and Employers' Liability, Professional Liability, and other specialty insurance required in an agreement or that a firm may consider prudent based on the scope of work. The actual agreement covering the work will specify the minimum insurance requirements.

2. ASSIGNMENT OF RESPONSIBILITY

Services procured under the auspices of this document are considered "Professional Services". This in itself infers that, no matter what the scope of work entails, there are associated, industry professional, standards which are expected to be met. For projects involving public safety, meeting these standards takes on even more significance. Firms selected through the Division's professional services procurement process are the best technically qualified, with a proven history of meeting similar contract obligations. Such designation carries with it an acknowledgement of the firm's responsibility to know the accepted standards for doing business in Delaware.

Because of the Division's review process and the involvement of internal support sections as well as other state agencies, utility companies, public groups, municipalities, and the like, acceptance of the responsibility for an error and/or omission in a professional manner will depend on good project monitoring. Complete review and comment records are to be kept by both the Consultant and the Division. It is required that an office copy of each marked or edited review submission and comments be prepared and retained for future reference. Detailed minutes of project review meetings are also required. In projects that involve existing facilities, the Division will normally compensate at Consultant to perform a "pre-design survey" of the facility to determine the existing conditions and how the proposed work will be incorporated into the design. Firms are encouraged to exercise the utmost professional care during these surveys in order to complete full and complete construction drawings and specifications.

Because of the underlying expectation that a firm will comply with established standards throughout project development, there are occasions when a Project Manager and the Construction Projects Administrator will determine that a firm may not have met this obligation. When discovered, the error and/or omission should be reported immediately to the Consultant for resolution. While invoices should annotate the time and associated costs for correcting the lapse, the Division shall not be charged to correct errors and/or omissions.

3. ERROR AND/OR OMISSION DISCOVERY

Definitions:

Errors are defined as unknown, ignorant, or unintentional deviations from accuracy or correctness. Errors may arise from mistaken judgment, misplaced confidence, incorrect belief as to the existence or effect of matters of fact, or other actions. Errors also include failure to meet established Delaware requirements, or design standards for that type of project, (i.e., ASHRAE, DNREC, DelDOT, ICC, NEC, NSPA, or other established government requirements or design standards).

Omissions are defined as missing or unmentioned detail or requirements through either failure to perform properly, neglect, or failure to use reasonable care. Omissions also include failure to identify and implement cost-effective solutions.

Additional costs refers to that portion of the project cost the consultant is responsible for which includes those expenses over and above the cost the Division would have incurred had the error or omission not been made.

During Project Development

Errors and/or omissions discovered during project development are relatively easy to resolve when identified early because the Consultant's Project Manager and the Division's Project Manager are both aware of the circumstances surrounding the problem. The major issue remaining involves arriving at a mutual agreement on whether full, partial or no compensation is due the Consultant to correct the problem. (See Resolution below.)

During Implementation or Construction

Most often it will be obvious if a Consultant error and/or omission truly occurred. Frequently, however, there is a time lapse between the completion of professional services to develop the project and actual implementation of the plan, project, or construction. Associated with this delay is the updating and modification of completed work because of changes in specifications, updated regulations, legislative initiatives, or additional valid comments for improving a project. In essence, the quality and content of a project become a shared responsibility. Changes of scope or specifications (owner requested), updated regulations, legislative initiatives, or comments for improving a project after acceptance of the final design, shall in no way be construed as an error/or omission.

Professional responsibility of the Consultant preparing the project does not terminate with acceptance of the product and/or final payment for its development. Failure to discover the error and/or omission during the design, review or implementation of the project does not relieve the Consultant of their responsibility to correct the effects of the error and/or omission. The extent of the responsibility of the consultant for payment for correcting any errors and/or omissions may be in question, but the active participation of the firm in resolving a problem upon request is mandatory. The level of the Consultant's participation shall be determined by the Division.

The procedure to initiate the correction of an error and/or omission lies with the person responsible for ensuring proper implementation of the plan, project, or construction. At the first indication of an error and/or omission, the Division's representative should notify the project Supervisor. All subordinates should be instructed to keep detailed documentation on the work being performed.

At this same time, the Division's Project Manager responsible for developing the project, if not the person identifying the error and/or omission, should be notified. Depending upon how critical a correction is to project scheduling, report preparation and review may be impractical. When such timing is critical, the Project Manager is verbally notified, and guidance is requested with emphasis on what additional data is needed to document and resolve the error and/or omission. The Division's Project Manager, in turn, should immediately advise the consultant, the supervisor, and up through the chain of command as necessary.

The Division holds the prime Consultant responsible for all work performed or not performed under an agreement including that of any subconsultants. When necessary, based on the opinion of the Division's Project Manager, Construction Project Administrator, Chief Engineer, Deputy Director, and/or Director, the prime consultant will be notified of the problem and requested to participate in a solution in cooperation with Division staff. There will be no compensation to either the prime or subconsultant for services related to the verification and correction of an error and/or omission unless as otherwise agreed. The primary objective is to keep the project on schedule by proposing a viable alternative. Records should be kept of any immediate action taken to correct the situation.

4. RESOLUTION AND APPEAL

Resolution

The Division's Project Manager shall document the error and/or omission that was identified, collect all supporting materials, review their findings with the Consultant, determine the required action to correct the error and/or omission and analyze the cost impact of the resolution (including but not limited to materials, overtime, and force account). All documentation shall be presented to the Construction Project Administrator. The prime Consultant is expected to participate at the appropriate level, from site visits to preparation of corrective documents. Much of this participation is mutually agreed to as solutions are developed.

The Construction Project Administrator (or Chief Engineer) will review the materials, discuss the resolution options with the Consultant and make a final recommendation to the Chief Engineer (or Deputy Director) for review. At the conclusion of the Deputy Director's review, the recommendation will be presented to the Director for approval.

Appeal

Should the Consultant not participate in the resolution process or disagree with the finding of financial responsibility as presented, the Consultant can schedule a review with the Deputy Director or Director. The Deputy Director or Director can modify the terms of the resolution or refer the appeal to the OMB Director per the Consultant's contract.

Default

Should the Consultant not honor the terms of the final resolution, the Division, for just and definable acts, has the option of filing a Consultant insurance claim, filing legal process for restitution, terminating all current agreements, or barring the firm from further work with the Division for up to five years, or any combination thereof.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
4/25/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Klein Agency, LLC. P.O. Box 219 Timonium MD 21094		CONTACT NAME: PHONE (A/C, No, Ext): (410) 832-7600 FAX (A/C, No): (410) 832-1849 E-MAIL ADDRESS: ADDRESS:	
INSURED GWWO, Inc. 800 Wyman Park Drive, Suite 300 Baltimore MD 21211-2838		INSURER(S) AFFORDING COVERAGE INSURER A: The American Ins. Co. INSURER B: American Automobile Ins. Co. INSURER C: Hartford Fire Insurance Co INSURER D: INSURER E: INSURER F:	
		NAIC #	

COVERAGES **CERTIFICATE NUMBER: 16-17** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			AZC80911650	7/1/2016	7/1/2017	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 Employee Benefits \$ 1,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			MZA80319381	7/1/2016	7/1/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			AZC80911650	7/1/2016	7/1/2017	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	30WECLG0057	7/1/2016	7/1/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Auto Physical Damage			MZA80319381	7/1/2016	7/1/2017	Comprehensive \$250 Collision \$500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 See attached for additional insured wording.

CERTIFICATE HOLDER *Evidence of Coverage*	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Justin Klein/LISA 

LICENSE NO. S7-0000275

STATE OF DELAWARE
DIVISION OF PROFESSIONAL REGULATION
861 Silver Lake Blvd.
Cannon Building, Suite 203
Dover, DE 19904-2467

NOT TRANSFERABLE

PROFESSION: Certificate of Authorization-Architect

EXPIRATION DATE: 01/31/2018

ISSUED TO: GWWO Inc



MAILING ADDRESS

GWWO Inc
800 Wyman Park Drive
Suite 300
Attn: Lisa Juranic
Baltimore MD 21211

PROFESSIONAL LICENSE

LICENSEE SIGNATURE

438982

THIS CERTIFIES THAT THE PERSON NAMED IS HEREBY LICENSED TO CONDUCT OR ENGAGE IN THE PROFESSION INDICATED ABOVE. THIS DOCUMENT IS DULY ISSUED UNDER THE LAWS OF THE STATE OF DELAWARE.



Department of State
Division of Professional Regulation

Our mission is to credential qualified professionals to ensure the protection of the public's health, safety, and welfare.

Online Services

The Division of Professional Regulation is proud of our professional and responsive customer service. Visit our web site at www.dpr.delaware.gov for essential reference information and 24/7 access to online license services.

To sign up for online license services, you will need this Registration Code.

Your Registration Code is: **21524324**

To receive renewal notices and other critical information, be sure to keep your professional license contact information up-to-date. Go to www.dpr.delaware.gov and click *Update Contact Information* on the left.

Can't find what you need online? Send an email to customerservice.dpr@state.de.us and let us know what you need.

STATE OF DELAWARE
DIVISION OF PROFESSIONAL REGULATION
PROFESSIONAL LICENSE

PROFESSION: Certificate of Authorization-Architect

LICENSE NO. S7-0000275

EXPIRATION DATE: 01/31/2018

ISSUED TO: GWWO Inc



THIS IS YOUR LICENSE CARD.
CUT THIS PORTION TO
FIT IN YOUR WALLET.

LICENSEE SIGNATURE

NOT TRANSFERABLE

THIS CERTIFIES THAT THE PERSON NAMED IS HEREBY LICENSED TO CONDUCT OR ENGAGE IN THE PROFESSION

STATE BOARD OF ARCHITECTS

21 06 8860 GWWO INC
MESSAGE(S) :

6127 11-04-2015



LICENSE * REGISTRATION * CERTIFICATION * PERMIT

STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

Lawrence J. Hogan, Governor
Boyd K. Rutherford, Lt. Governor
Kelly M. Schultz, Secretary

STATE BOARD OF ARCHITECTS
CERTIFIES THAT:
GWWO INC

IS AN AUTHORIZED: 06 - ARCHITECT - - CORPORATION

LIC/REG/CERT 8860 EXPIRATION 12-23-2017 EFFECTIVE N/A CONTROL NO 4768396

Signature of Bearer

Secretary DLLR

WHERE REQUIRED BY LAW THIS MUST BE CONSPICUOUSLY DISPLAYED IN OFFICE TO WHICH IT APPLIES

21 06 8860

4,768,396

STATE BOARD OF ARCHITECTS
500 N. CALVERT STREET
BALTIMORE, MD 21202-3651

21 06 8860

GWWO, INC
800 WYMAN PARK DRIVE
SUITE 300

BALTIMORE

MD 21211



LICENSE * REGISTRATION * CERTIFICATION * PERMIT
STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION

Lawrence J. Hogan, Jr. Governor
Boyd K. Rutherford Lt. Governor
Kelly M. Schultz Secretary

STATE BOARD OF ARCHITECTS
CERTIFIES THAT:
GWWO INC

IS AN AUTHORIZED: 06 - ARCHITECT - CORPORATION

LIC/REG/CERT 8860 EXPIRATION 12-23-2017 EFFECTIVE N/A CONTROL NO 4768396

Signature of Bearer

Secretary DLLR

LICENSE NO. 2001106251 DORBL

STATE OF DELAWARE

VALID

POST CONSPICUOUSLY

DIVISION OF REVENUE

01/01/17 - 12/31/19
NOT TRANSFERABLE

DLN: 16 98737 34 BUSINESS CODE 001
GROUP CODE 007

LICENSED ACTIVITY PROFESSIONAL SERVICES - ARCHITECT
PROFESSIONAL AND/OR PERSONAL SERVICES

DATE ISSUED: 11/11/16

VALIDATED

2019

LICENSE FEE: \$ 225.00

MAILING ADDRESS

BUSINESS LICENSE

BUSINESS LOCATION

GWWO INC / ARCHITECTS
800 WYMAN PARK DR STE 300
BALTIMORE MD 21211-2838



GWWO INC / ARCHITECTS
800 WYMAN PARK DR STE 300
BALTIMORE MD 21211-2838

IS HEREBY LICENSED TO PRACTICE, CONDUCT OR ENGAGE IN THE OCCUPATION
OR BUSINESS ACTIVITY INDICATED ABOVE IN ACCORDANCE WITH THE LICENSE
APPLICATION DULY FILED PURSUANT TO TITLE 30, DEL CODE.

PATRICK T. CARTER

DIRECTOR OF REVENUE

IMPORTANT - TEAR AT ABOVE PERFORATION AND DISPLAY IN A PUBLIC LOCATION

Federal E.I. No. or
Social Security Number 1 52170 6101 001

Business Code 001
Group Code 007

Licensed Activity PROFESSIONAL SERVICES - ARCHITECT
PROFESSIONAL AND/OR PERSONAL SERVICES

The State of Delaware Business License printed above must be posted in a public area at the location address listed. If you have any questions regarding this license, please call (302) 577-8778.

REPLACEMENT LICENSES

Keep this portion of your license separate, in case you need a replacement for any lost, stolen or destroyed license. A \$15 fee will be charged for the replacement of a license. Send the \$15 along with a copy of this form or provide your Federal Employer Identification Number, or Social Security Number, suffix, Business Code, Business Name and address to Delaware Division of Revenue, Attn.: Business Master File, PO Box 8750, Wilmington, DE 19899-8750. You will receive your replacement license within three to four weeks.

OTHER IMPORTANT INFORMATION

Most licensees are also required to pay either gross receipts or excise taxes in addition to the license fee. You can file these taxes online or obtain a paper form from our website at www.revenue.delaware.gov. You must submit all business tax returns filed with the Division of Revenue under the same identification number. If you are a sole-proprietor, and have a federal employer identification number, use the employer identification number, not your social security number. Only sole proprietors with no employees are allowed to file under their social security number. Inquiries regarding your coupon booklets to pay withholding, corporate tentative, and Sub Chapter "S" estimated taxes, or to make changes to your name, address, or identification number, should be directed to the Business Master File Unit at (302) 577-8778.

INTERNET SITE

The Division of Revenue web address is: www.revenue.delaware.gov. Visit our web site for tax tips, links to telephone numbers, forms that you can download, links to other State agencies, the Delaware Code, the publication "Delaware Guide for Small Business" and lots more. Internet filing of personal income tax returns via the Division of Revenue's website is available. Internet filing for Withholding, Gross Receipts and Corporate Tentative payments is also available.

Attachment C

GWWO, Inc./Architects

Hourly Rates

May 2017-May 2018

Principal	\$207.85
Team Leader/Sr. Project Manager	\$186.29
Project Manager	\$163.87
Project Architect	\$130.23
Architect Intern 3	\$89.70
Architect Intern 2	\$81.93
Architect Intern 1	\$73.31
Graphics Specialist	\$95.00
Construction Administrator	\$154.38
Administrative	\$60.37



State of Delaware
Department of Natural Resources and Environmental Control
Delaware Division of Parks and Recreation
89 Kings Highway
Dover, Delaware 19901

June 8, 2017

Kevin Orndorf
Orndorf & Associates, Inc.
8600 West Chester Pike
Suite 201
Upper Darby, PA. 19082

**RE: Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services**

Mr. Orndorf:

Enclosed is the fully executed agreement between the Department of Natural Resources and Environmental Control and Orndorf & Associates, Inc. pertaining to the above-captioned contract. This agreement will form the basis for all services you perform relative to the Department's Capital improvements program and can be renewed yearly through the Fiscal Year 2022.

Future requests will be made from the Department for written stipulated sum proposals on specific projects. Proposal will only be accepted upon the issuance of an addendum to this agreement along with a fully executed purchase order. An example of an addendum is enclosed.

We look forward to working with you on this program. Meanwhile, should you have any questions or require additional information, please contact our office at (302) 739-9231.

Sincerely,
Original On File

Cynthia A. Todd, RLA, Construction Projects Administrator
Office of Design and Development

Attachment:
AIA B101-2007 Standard Form of Agreement Between Owner and Architect
Sample Addendum

 We're saving a place for you...

FILE COPY

AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Twenty-Fourth day of April in the year Two Thousand Seventeen
(*In words, indicate day, month and year.*)

BETWEEN the Architect's client identified as the Owner:
(*Name, legal status, address and other information*)

Department of Natural Resources and Environmental Control
Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901
Tel: 302-739-9231

and the Architect:
(*Name, legal status, address and other information*)

Orndorf & Associates, Inc.
8600 West Chester Pike
Suite 201
Upper Darby, PA. 19082
Tel: 610-896-4500

for the following Project:
(*Name, location and detailed description*)

State of Delaware
Department of Natural Resources and Environmental Control
Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION**
- 2 ARCHITECT'S RESPONSIBILITIES**
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES**
- 4 ADDITIONAL SERVICES**
- 5 OWNER'S RESPONSIBILITIES**
- 6 COST OF THE WORK**
- 7 COPYRIGHTS AND LICENSES**
- 8 CLAIMS AND DISPUTES**
- 9 TERMINATION OR SUSPENSION**
- 10 MISCELLANEOUS PROVISIONS**
- 11 COMPENSATION**
- 12 SPECIAL TERMS AND CONDITIONS**
- 13 SCOPE OF THE AGREEMENT**

(Paragraph Deleted)

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

(State below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

Agreement is open-ended, renewable annually at the option of the Owner, and is to encompass improvements, renovations, repairs and replacements for all properties managed by the Department of Natural Resources and Environmental Control. Compensation will be determined separately for each individual project, but consistently as outlined in Articles 11 and 12. Refer to Attachment "A" and Article 12 for amendments to the text of this Agreement.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1** Commencement of construction date:

To be determined per individual project

- .2** Substantial Completion date:

To be determined per individual project

Init.

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement.
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 Comprehensive General Liability

\$1,000,000

.2 Medical / Professional Liability

\$1,000,000 / \$3,000,000

.3 Miscellaneous Errors and Omissions

\$1,000,000 / \$3,000,000

.4 Product Liability

\$1,000,000 / \$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered. If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

.5 Automotive Liability (Bodily Injury):

\$100,000/\$300,000

.6 Automotive Property Damage (to others):

\$25,000

§ 2.6 Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

§ 2.7 The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the

Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

§ 2.8 The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the
(Paragraph Deleted)

contract.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, civil and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without prior notice to the Architect.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating

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User Notes:

(3B9ADA26)

environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the mutually agreed upon program, schedule and construction budget required as well as the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings, outline specifications and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Architect shall perform life cycle cost analysis s required by 29 DEL.C. §6909A.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of drawings and specifications setting forth in detail the quality levels of materials and systems to be used in the construction of the Work. The Owner and Architect acknowledge that in order to complete the Work the Contractor will provide additional information, including Shop Drawings, Product Data, and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

Init.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms. The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local governments including municipality in which the project is located.

§ 3.4.4 The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. After Owner's review, incorporate Owner's comments into the final construction documents.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect if requested shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect if requested shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction (5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship within 48 hours of receipt of official notification from the Owner.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

(Paragraphs Deleted)

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement as well as the Owner's Supplementary General Conditions and the Owner's General Requirements.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques,

sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate of Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

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§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review, but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner. . The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the information given and the design concepts in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness as to cause no delay. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of two years from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™–2009)		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™–2007)		
§ 4.1.6 Building Information Modeling (E202™–2008)		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™–2007)		
§ 4.1.10 Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site Project Representation (B207™–2008)		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings		

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<p>§ 4.1.15 Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) “as-built” drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-ROM. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.</p>		
<p>§ 4.1.16 Post occupancy evaluation</p>		
<p>§ 4.1.17 Facility Support Services (B210™–2007)</p>		
<p>§ 4.1.18 Tenant-related services</p>		
<p>§ 4.1.19 Coordination of Owner’s consultants</p>		
<p>§ 4.1.20 Telecommunications/data design must comply with the State of Delaware’s Department of Technology and Information’s standards</p>		
<p>§ 4.1.21 Security Evaluation and Planning (B206™–2007)</p>		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

Except as identified as included in Architect’s Basic Services per Attachment A, Additional Services listed in 4.1 will be provided by the Architect via request of the Owner on a project by project basis.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner’s written authorization:

- .1 Making revisions in drawings, specifications or other documents, when such revisions are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustment in the Owner’s program or Project budget;
- .2 Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, except for Life Cycle Cost Analysis or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner’s failure to render decisions in a timely manner.

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Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”

(Paragraphs Deleted)

- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

(Paragraph Deleted)

- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

(Paragraph Deleted)

- .2 Responding to the Contractor’s requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor’s proposals and supporting data, or the preparation or revision of Instruments of Service as outlined in Article 12 E & O policy;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate of Payment, more than 60 days after the date of Substantial Completion.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 (Two) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 (Two) visits per Month to the site by the Architect over the duration of the Project during construction
- .3 (Two) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 (Two) inspections for any portion of the Work to determine final completion

§ 4.3.3 If the services covered by this Agreement have not been completed within (60) months of the date of this Agreement, through no fault of the Architect, extension of the Architect’s services beyond that time may be compensated as Additional Services.

ARTICLE 5 OWNER’S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request

from the Architect, the Owner may furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect may thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize reviewed and approved by the Owner. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided. The Owner may elect to transfer this responsibility to the Architect as an additional service in Article 3 of this Agreement.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. These services are not provided directly to the Architect.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. The Architect shall prepare and distribute meeting minutes during the design and construction phase of the Project.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's best judgment as a design professional.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WSB) format. If the lowest responsible and responsive bid exceeds the estimate Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all the discrepancies at no additional cost to the Owner.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to cooperate in the revising of the Project scope and the quality as required to reduce the Construction Cost, The Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for the bidding phase costs due to the modifications.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without approval of, or additional compensation to the Architect. The Contractor, Subcontractors, Subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for the use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of Work without specific written consent of the Owner, Architect and the Architect's consultants.

This stipulation shall not prohibit the Architect from reuse of all instruments of service noted above for any other project or clients. The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specification if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a

Project in which the Architect is not involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

(Paragraphs Deleted)

§ 8.2 MEDIATION

(Paragraph Deleted)

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise. In accordance with Delaware Law, A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of

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filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

The choice is left to the parties.

(Paragraphs Deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect or except for funding purposes, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 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 and all Termination Expenses as defined in Section 9.7.

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User Notes:

(3B9ADA26)

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

(Paragraph Deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction as amended by the Owner's General Requirements and the Owner's Supplemental Conditions.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, 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 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 Except in accordance with Delaware Freedom of Information Act (FOIA), 29 DEL.C.ch. 100, if the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Compensation shall be based upon a negotiated stipulated sum or DFM's architectural & engineering fee schedule based on the lowest bona fide bid plus alternates. Refer to 12.4 for further clarification.

§ 11.2 For Additional Services designated in Section 4.1 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Compensation shall be based upon negotiated stipulated sum prior to proceeding with additional services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Compensation shall be based upon service performed on an hourly basis utilizing the attached Schedule of Rates(Attachment C).

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Fifteen	percent (	15	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	One Hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. Design work for Alternates may be included for consideration in the cost of the work

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates may be adjusted subject to negotiation.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate
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§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-state travel and subsistence based on Delaware's Office of Management and Budget's policy regarding such reimbursement;

(Paragraph Deleted)

- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;

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- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

(Paragraphs Deleted)

- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

(Paragraphs Deleted)

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Payments are due and payable within 30 days after the Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one (1) percent per month not to exceed twelve (12) percent per annum.
(Insert rate of monthly or annual interest agreed upon.)

Per annum

(Paragraph Deleted)

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

Office of Management and Budget Division of Facilities Management's Errors & Omissions Policy - Attachment 'B'
Wherever the term "Architect" is used in this agreement, it shall be interchangeable with the term "Engineer"

§ 12.2 Amend Item 10 of Attachment A by adding to the words "prior notice to the Architect" the following:
"provided such directive or substitution is lawful, does not jeopardize the standard of care required of the architect and does not increase the established scope without equitable compensation."

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect

(Paragraph Deleted)

3 Other documents:

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Attachment 'A' Amendments to AIA Document B101

Attachment 'B' State of Delaware Division of Facilities Management Errors & Omissions Policy

Attachemnt 'C' - Schedule of Rates

This Agreement entered into as of the day and year first written above.

Original On File

Original On File

OWNER

ARCHITECT

(Signature)

Shawn M. Garvin, Cabinet Secretary - DNREC,
State of Delaware

(Printed name and title)

(Signature)

Kevin R. Orndorf, P. E., Orndorf & Associates, Inc.

KEVIN R. ORNDORF PRESIDENT

(Printed name and title)

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ATTACHMENT "A"

Owner and Architect Agreement B101

This attachment amends AIA Document B101-2007 as follows:

1. Section 6903, Chapter 69, Title 29 of the Delaware Code requires a "prohibition against contingency fees" statement. An acceptable statement would be as follows:

"By signing this Agreement, the Professional swears that he has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he has not been paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement."

2. The Professional will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Professional will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

3. Amend Article 1.1 by adding the following sentence to the end of the Article:

"At the Owner's request, the Architect shall produce all subcontractor agreements, including consultants, or any other agreement related to the Architect's performance on the project."

4. Amend Article 2.5 by striking the second sentence in its entirety.
5. Amend Article 2.5 by striking subsection 2.5.1 through 2.5.4 and inserting the following:
 - 2.5.1 Comprehensive General Liability: \$1,000,000 and
 - 2.5.2 Medical/Professional Liability: \$1,000,000/\$3,000,000 or
 - 2.5.3 Misc. Errors or Omissions: \$1,000,000/\$3,000,000 or
 - 2.5.4 Product Liability: \$1,000,000/\$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered. If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

- 2.5.4 Automotive Liability (Bodily Injury): \$100,000/\$300,000
 - 2.5.6 Automotive Property Damage (to others): \$25,000
6. Add a new Article 2.6 which shall read as follows:

Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

7. Add a new Article 2.7 which shall read as follows:

The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

8. Add a new Article 2.8 which shall read as follows:

The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.

9. Amend Article 3.1 by adding the word “civil” after “mechanical,” and before “and”.
10. Amend Article 3.1.4 by striking “the Architect’s approval” and replacing it with “prior notice to the Architect.”
11. Amend Article 3.2.5 by adding “the mutually agreed-upon program, schedule and construction budget requirement as well as” after “Based on” and before “the Owner’s approval” in the first sentence. In the second sentence add “,outline specifications,” after “drawings”.
12. Amend Article 3.2.5.2 by adding the following sentence to the end of the Article: “The Architect shall perform life cycle cost analysis as required by 29 Del. C. §6909A.
13. Amend Article 3.2.6 by striking “prepared in accordance with Section 6.3.”
14. Amend Article 3.3.1 by striking the word “outline” before “specifications”.
15. Amend Article 3.4.3 by adding the following sentence to the end of the Article: “The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local government including municipality in which the project is located.”
16. Amend Article 3.4.4 by striking the Article in its entirety and replacing it with the following: “The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit.”
17. Amend Article 3.4.5 by adding after the last sentence “After Owner’s review, incorporate Owner’s comments into final construction documents.”
18. Amend Article 3.5.1 by inserting in the first and second sentences “if requested” before Architect. In the second sentence after “(4) awarding and”, insert “(5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship to Owner within 48 hours of receipt of official notification from Owner. If mailed, documents shall be sent using a delivery service that can track the shipment.”
19. Amend Article 3.5.3 by striking it in its entirety.
20. Amend Article 3.6.1.1 by adding “as well as the Owner’s Supplementary General Conditions and the Owner’s General Requirements.”
21. Amend Article 3.6.1.3 by striking it in its entirety and replacing it with the following: “The Architect’s responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment.”

22. Amend Article 3.6.2.4 by adding the following to the end of the paragraph: "The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity."

23. Amend 3.6.4.1 by inserting the following after the first sentence: "The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents."

Also, amend by striking the final period in the last sentence and inserting the following: ", but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner."

24. Amend Article 3.6.4.2 by striking the first sentence in its entirety and replacing it with the following: "In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with information given and the design concepts in the Contract Documents."

25. Amend Article 3.6.4.4 by striking "Subject to the provisions of Section 4.3," and starting the sentence with "The".

Also amend by adding to the end of the fourth sentence the following immediately after "reasonable promptness": "as to cause no delay in the work."

26. Amend Article 3.6.5.1 by striking the following at the beginning of the second sentence: "Subject to the provision of Section 4.3" and starting the sentence with "The".

27. Amend Article 3.6.6.5 by changing "one year" to "two years".

28. Amend Article 4.1 by striking the following subparagraphs from additional services as they are considered Basic Services:

4.1.2 - Multiple Preliminary Drawings

4.1.7 - Civil Engineering

4.1.8 - Landscape Design

4.1.10 - Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.

4.1.11 - Detailed Cost Estimating

4.1.13 - Conformed Construction Documents

4.1.15 - Strike this section in its entirety and replace with the following: Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) "as-built" drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-Rom. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.

4.1.19 - Coordination of Owner's consultants

4.1.20 - In addition to Telecommunications and data design being a Basic Service, the design must comply with the State of Delaware's Department of Technology and Information's standards.

4.1.22 - Incorporate design and review comments from Owner's commissioning agent.

4.1.23 - Is a Basic Service as required in Article 3.2.5.1

4.1.26 - If required by local government including municipalities, Historic Preservation services will be considered Basic Services.

29. Amend Article 4.3.1.1 by striking it in its entirety and replacing it with the following:

"Making revisions in drawings, specifications or other documents, when such revisions are:

.1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget;

Providing services required because of significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contract for construction except for services required under Section 6.7."

30. Amend Article 4.3.1.2 by inserting "except for Life Cycle Cost Analysis" after "energy modeling" and before "or".

31. Amend Article 4.3.1.4 by striking in its entirety and replacing it with the following:

“Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner’s failure to render decisions in a timely manner.

Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”
32. Strike Article 4.3.1.5 in its entirety.
33. Strike Article 4.3.1.6 in its entirety.
34. Strike Article 4.3.1.7 in its entirety.
35. Strike Article 4.3.1.9 in its entirety.
36. Strike Article 4.3.2.1 in its entirety.
37. Amend Article 4.3.2.3 to add at the end “as outlined in Article 12 E & O policy.”
38. Strike Article 4.3.2.6 in its entirety and replace with the following: “Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of Work.”
39. Amend Article 4.3.3.1 by adding the number two before “reviews”.
40. Amend Article 4.3.3.2 by adding “the equivalent of 2 visits per month for the duration of the project.”
41. Amend Article 4.3.3.3 by adding the number two before “inspections”.
42. Amend Article 4.3.3.4 by adding the number two before “inspections”.
43. Amend Article 4.3.4 by changing “shall” to “may”.
44. Amend Article 5.2 by striking the word “shall” in the last sentence and replacing it with “may”.
45. Amend Article 5.6 by striking the last portion of the third sentence that reads “the Architect requests such services...scope of the Project” and replace with “reviewed and approved by the Owner.”

Also amend by adding the following at the end of the paragraph: "The Owner may elect to transfer this responsibility to the Architect as an Additional Service in Article 3 of this Agreement."

46. Amend Article 5.8 by adding the following to the end of the Article: "These services are not provided directly to the Architect."
47. Amend Article 5.10 by adding a third sentence to read as follows: "The Architect shall prepare and distribute meeting minutes during the design and construction phases of the Project."
48. Amend Article 6.2 by inserting "best" before "judgment" in the second sentence. Also, strike the third and fourth sentences in their entirety.
49. Amend Article 6.3 by deleting the second and third sentences and replace with the following: "The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WBS) format. If the lowest responsible and responsive bid exceeds the estimated Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all discrepancies at no additional cost to the Owner."
50. Delete Article 6.7 in its entirety and replace with the following:

"If the Owner chooses to cooperate in the revising the Project scope and quality as required to reduce the Construction Cost, the Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for bidding phase costs due to the modifications."
51. Amend Article 7 by striking it in its entirety and replacing it with the following:

"All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this Agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Architect. The Contractor, Subcontractors, Sub-subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the Architect from the reuse of all instruments of service noted above for any other projects or clients."

The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specifications if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a Project in which the Architect is not also involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp."

52. Amend Article 8.1.1 by striking the last sentence in its entirety.
53. Amend Article 8.1.2 by striking it in its entirety.
54. Amend Article 8.1.3 by striking it in its entirety.
55. Amend Article 8.2.1 by striking it in its entirety.
56. Amend Article 8.2.2 by striking the end of the first sentence "shall be administered ...the date of the Agreement." Also add the following to the beginning of the second sentence: "In accordance with Delaware law,"
57. Amend Article 8.2.4 by checking the box marked "Other" and insert the following: "The choice is left to the parties."
58. Amend Article 8.3 by striking it in its entirety.
59. Amend Article 9.3 by adding the following to the first sentence after "fault of the Architect": "or except for funding purposes."
60. Amend Article 9.7 by striking the following from the end of the sentence: "plus an amount...by the Architect."
61. Amend Article 9.8 by striking it in its entirety.
62. Amend Article 10.1 by striking the following from the end of the sentence: "except that if... govern Section 8.3."
63. Amend Article 10.2 by adding to the following to the end of the sentence: "as amended by the Owner's General Requirements and the Owner's Supplemental Conditions."
64. Amend Article 10.8 by adding the following to the beginning of the first sentence: "Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100,".
65. Amend Article 11.2 by adding the following after "Section 4.1": "as amended by Owner's Attachment A."
66. Amend Article 11.3 by adding the following after "Section 4.3": "as amended by Owner's Attachment A."

67. Amend Article 11.6 by adding the following sentence at the end: "Design Work for Alternates may be included for consideration in the cost of work."
68. Amend Article 11.7 by striking the second sentence in its entirety and replacing it with the following: "The rates may be adjusted subject to negotiation."
69. Amend 11.8.1.1 by striking the phrase "out-of-town" and replacing it with "out-of-state". Normally the State only reimburses "out-of-state" transportation and living expenses directly related to a project.

Also, insert the following at the end of the sentence: "based on Delaware's Office of Management and Budget's policy regarding such reimbursement."
70. Amend Article 11.8.1.2 by striking it in its entirety.
71. Amend Article 11.8.1.8 by striking it in its entirety.
72. Amend Article 11.8.1.9 by striking it in its entirety.
73. Amend Article 11.9 by striking it in its entirety.
74. Amend Article 11.10.1 by striking it in its entirety.
75. Amend Article 11.10.2 by striking the second sentence in its entirety and replace with: "Payments are due and payable within 30 days after Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one percent per month not to exceed twelve percent per annum."
76. Amend Article 11.10.3 by striking it in its entirety.
77. Amend Article 12 to include reference to the "Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy."
78. Amend Article 13.2 by striking it in its entirety and replacing with the following: "All attachments including Owner's Attachment A and all related exhibits."

July 3, 2013

ATTACHMENT "B"

STATE OF DELAWARE

DIVISION OF FACILITIES MANAGEMENT

Article 12

Errors and Omissions Policy

Table of Contents

- 1. Insurance**
- 2. Assignment of Responsibility**
- 3. Error and/or Omission Discovery**
- 4. Resolution and Appeal**

This document includes a general discussion on errors and/or omissions occurring during project implementation, how to initiate a correction for an error or omission, and what each party's responsibilities are in making the correction. The Division intends to seek reimbursement for additional costs (defined below) associated with correcting errors and omissions during planning, design and construction, including but not limited to, multiple report rewrites, construction costs, and construction engineering.

1. INSURANCE

This article does not address the types of liability insurance a firm may need to carry. Insurance usually carried by consultants includes Comprehensive General Liability, Comprehensive Automobile Liability, Workers' Compensation and Employers' Liability, Professional Liability, and other specialty insurance required in an agreement or that a firm may consider prudent based on the scope of work. The actual agreement covering the work will specify the minimum insurance requirements.

2. ASSIGNMENT OF RESPONSIBILITY

Services procured under the auspices of this document are considered "Professional Services". This in itself infers that, no matter what the scope of work entails, there are associated, industry professional, standards which are expected to be met. For projects involving public safety, meeting these standards takes on even more significance. Firms selected through the Division's professional services procurement process are the best technically qualified, with a proven history of meeting similar contract obligations. Such designation carries with it an acknowledgement of the firm's responsibility to know the accepted standards for doing business in Delaware.

Because of the Division's review process and the involvement of internal support sections as well as other state agencies, utility companies, public groups, municipalities, and the like, acceptance of the responsibility for an error and/or omission in a professional manner will depend on good project monitoring. Complete review and comment records are to be kept by both the Consultant and the Division. It is required that an office copy of each marked or edited review submission and comments be prepared and retained for future reference. Detailed minutes of project review meetings are also required. In projects that involve existing facilities, the Division will normally compensate at Consultant to perform a "pre-design survey" of the facility to determine the existing conditions and how the proposed work will be incorporated into the design. Firms are encouraged to exercise the utmost professional care during these surveys in order to complete full and complete construction drawings and specifications.

Because of the underlying expectation that a firm will comply with established standards throughout project development, there are occasions when a Project Manager and the Construction Projects Administrator will determine that a firm may not have met this obligation. When discovered, the error and/or omission should be reported immediately to the Consultant for resolution. While invoices should annotate the time and associated costs for correcting the lapse, the Division shall not be charged to correct errors and/or omissions.

3. ERROR AND/OR OMISSION DISCOVERY

Definitions:

Errors are defined as unknown, ignorant, or unintentional deviations from accuracy or correctness. Errors may arise from mistaken judgment, misplaced confidence, incorrect belief as to the existence or effect of matters of fact, or other actions. Errors also include failure to meet established Delaware requirements, or design standards for that type of project, (i.e., ASHRAE, DNREC, DelDOT, ICC, NEC, NSPA, or other established government requirements or design standards).

Omissions are defined as missing or unmentioned detail or requirements through either failure to perform properly, neglect, or failure to use reasonable care. Omissions also include failure to identify and implement cost-effective solutions.

Additional costs refers to that portion of the project cost the consultant is responsible for which includes those expenses over and above the cost the Division would have incurred had the error or omission not been made.

During Project Development

Errors and/or omissions discovered during project development are relatively easy to resolve when identified early because the Consultant's Project Manager and the Division's Project Manager are both aware of the circumstances surrounding the problem. The major issue remaining involves arriving at a mutual agreement on whether full, partial or no compensation is due the Consultant to correct the problem. (See Resolution below.)

During Implementation or Construction

Most often it will be obvious if a Consultant error and/or omission truly occurred. Frequently, however, there is a time lapse between the completion of professional services to develop the project and actual implementation of the plan, project, or construction. Associated with this delay is the updating and modification of completed work because of changes in specifications, updated regulations, legislative initiatives, or additional valid comments for improving a project. In essence, the quality and content of a project become a shared responsibility. Changes of scope or specifications (owner requested), updated regulations, legislative initiatives, or comments for improving a project after acceptance of the final design, shall in no way be construed as an error/or omission.

Professional responsibility of the Consultant preparing the project does not terminate with acceptance of the product and/or final payment for its development. Failure to discover the error and/or omission during the design, review or implementation of the project does not relieve the Consultant of their responsibility to correct the effects of the error and/or omission. The extent of the responsibility of the consultant for payment for correcting any errors and/or omissions may be in question, but the active participation of the firm in resolving a problem upon request is mandatory. The level of the Consultant's participation shall be determined by the Division.

The procedure to initiate the correction of an error and/or omission lies with the person responsible for ensuring proper implementation of the plan, project, or construction. At the first indication of an error and/or omission, the Division's representative should notify the project Supervisor. All subordinates should be instructed to keep detailed documentation on the work being performed.

At this same time, the Division's Project Manager responsible for developing the project, if not the person identifying the error and/or omission, should be notified. Depending upon how critical a correction is to project scheduling, report preparation and review may be impractical. When such timing is critical, the Project Manager is verbally notified, and guidance is requested with emphasis on what additional data is needed to document and resolve the error and/or omission. The Division's Project Manager, in turn, should immediately advise the consultant, the supervisor, and up through the chain of command as necessary.

The Division holds the prime Consultant responsible for all work performed or not performed under an agreement including that of any subconsultants. When necessary, based on the opinion of the Division's Project Manager, Construction Project Administrator, Chief Engineer, Deputy Director, and/or Director, the prime consultant will be notified of the problem and requested to participate in a solution in cooperation with Division staff. There will be no compensation to either the prime or subconsultant for services related to the verification and correction of an error and/or omission unless as otherwise agreed. The primary objective is to keep the project on schedule by proposing a viable alternative. Records should be kept of any immediate action taken to correct the situation.

4. RESOLUTION AND APPEAL

Resolution

The Division's Project Manager shall document the error and/or omission that was identified, collect all supporting materials, review their findings with the Consultant, determine the required action to correct the error and/or omission and analyze the cost impact of the resolution (including but not limited to materials, overtime, and force account). All documentation shall be presented to the Construction Project Administrator. The prime Consultant is expected to participate at the appropriate level, from site visits to preparation of corrective documents. Much of this participation is mutually agreed to as solutions are developed.

The Construction Project Administrator (or Chief Engineer) will review the materials, discuss the resolution options with the Consultant and make a final recommendation to the Chief Engineer (or Deputy Director) for review. At the conclusion of the Deputy Director's review, the recommendation will be presented to the Director for approval.

Appeal

Should the Consultant not participate in the resolution process or disagree with the finding of financial responsibility as presented, the Consultant can schedule a review with the Deputy Director or Director. The Deputy Director or Director can modify the terms of the resolution or refer the appeal to the OMB Director per the Consultant's contract.

Default

Should the Consultant not honor the terms of the final resolution, the Division, for just and definable acts, has the option of filing a Consultant insurance claim, filing legal process for restitution, terminating all current agreements, or barring the firm from further work with the Division for up to five years, or any combination thereof.



CERTIFICATE OF LIABILITY INSURANCE

ORND0-1

OP ID: TS

DATE (MM/DD/YYYY)

02/21/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Wortley/Poole Professional, Ltd 1 Penn Center 1617 JFK Boulevard, Suite 880 Philadelphia, PA 19103 Kenneth R. Wortley	CONTACT NAME: PHONE (A/C, No, Ext): 215-564-6970		FAX (A/C, No): 215-564-6975
	E-MAIL ADDRESS:		
INSURED Orndorf & Associates, Inc. 8600 W. Chester Pike, Ste 201 Upper Darby, PA 19082	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Travelers Property Casualty Co		25674
	INSURER B : Travelers Indemnity Co.		25658
	INSURER C : Travelers Indemnity Co of CT		25682
	INSURER D : Travelers Casualty and Surety		19038
	INSURER E :		
INSURER F :			

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			6804H174201	11/05/2016	11/05/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			6804H174201-NO OWNED AUTO	11/05/2016	11/05/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP7631Y151	11/05/2016	11/05/2017	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	UB5922Y966	05/01/2016	05/01/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
D	Professional Liability E&O			106337761	08/01/2016	08/01/2017	Ea Claim 2,000,000 Pol Agg 3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

For professional liability coverage, the aggregate limit is the total insurance available for all covered claims presented within the policy period. The limit will be reduced by payments of indemnity & expense.

CERTIFICATE HOLDER**CANCELLATION**

STDEL-2 State of Delaware	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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LICENSES

LICENSE NO. 1999207505 <small>DORAL</small>		STATE OF DELAWARE		VALID	
POST CONSPICUOUSLY		DIVISION OF REVENUE		01/01/17 - 12/31/17 NOT TRANSFERABLE	
DLN 17 93103 20	BUSINESS CODE 540 GROUP CODE 007	LICENSED ACTIVITY	PROFESSIONAL SERVICES- ENGINEER PROFESSIONAL AND/OR PERSONAL SERVICES		
DATE ISSUED: 01/10/17	**VALIDATED**		2017		
LICENSE FEE: \$ 75.00	BUSINESS LICENSE		BUSINESS LOCATION		
MAILING ADDRESS					
ORNDORF & ASSOCIATES INC 8600 W CHESTER PIKE STE 201 UPPER DARBY PA 19082-2629		ORNDORF & ASSOCIATES INC 112 CRICKET AVE ARDMORE PA 19003-1310			
<small>IS HEREBY LICENSED TO PRACTICE, CONDUCT OR ENGAGE IN THE OCCUPATION OR BUSINESS ACTIVITY INDICATED ABOVE IN ACCORDANCE WITH THE LICENSE APPLICATION DULY FILED PURSUANT TO TITLE 30, DEL CODE</small>			DAVID GREGOR <small>DIRECTOR OF REVENUE</small>		

CITY OF WILMINGTON - BUSINESS LICENSE				
ACCOUNT NO.	LICENSE NO.	CODE		FEE PAID
025834	3246	5014	PROFESSIONAL ENGINEERS	\$181.00
BUSINESS	KEVIN ORNDORF 112 CRICKET AVE ARDMORE, PA 19003-1310		2017	Expires: 12/31/2017
KEVIN ORNDORF ORNDORF SOCKET & ASSOCIATES PO BOX 448 ARDMORE, PA 19003-0448			ISSUED BY  <small>COMMISSIONER DEPARTMENT OF LICENSES & INSPECTIONS</small>	
<small>THIS LICENSE MUST BE DISPLAYED IN A PROMINENT PLACE</small>				

Designing your vision, one detail at a time™

STATE OF DELAWARE



DELAWARE ASSOCIATION OF PROFESSIONAL ENGINEERS
92 Read's Way, Suite 208, New Castle, DE 19720

PHONE: 302-323-4588 FAX: 302-323-4590
E-mail: office@dape.org

CERTIFICATE OF AUTHORIZATION

ISSUED BY THE AUTHORITY OF
THE COUNCIL OF THE DELAWARE ASSOCIATION OF PROFESSIONAL ENGINEERS
TO

ORNDORF & ASSOCIATES, INC.
6800 West Chester Pike, Suite 201
Upper Darby, PA 19082

THIS CERTIFICATE AUTHORIZES THE AFORESAID CORPORATION OR PARTNERSHIP TO
PRACTICE OR OFFER TO PRACTICE PROFESSIONAL ENGINEERING IN THE STATE OF
DELAWARE AS PROVIDED IN THE DELAWARE LAW, TITLE 24, CHAPTER 28, SECTION 2821.

FOR THE PERIOD: 7/1/2016 to 06/30/2017

CERTIFICATE NUMBER: 2048

ANNUAL RENEWAL FEE: \$150.00

DATE OF ISSUE: June 3, 2016



APPROVED

BY: *D Barbato*
Daniel P. Barbato, P.E., President



SCHEDULE OF DIRECT PERSONNEL EXPENSE

Effective: January 1, 2017¹

Professional Staff

Executive	\$200.00/hr
Project Manager	\$150.00/hr
Project Engineer	\$125.00/hr
CAD Operator	\$ 70.00/hr

Non-technical Staff

Secretarial/Clerical/Administrative	\$45.00/hr
-------------------------------------	------------

¹ Subject to yearly change

May 10, 2017

Ms. Cynthia A. Todd, RLA
Construction Project Administrator
Planning, Preservation, Development, & Design
State of Delaware
Department of Natural Resources and Environmental Control
Delaware Division of Parks and Recreation
89 Kings Highway
Dover, Delaware 19901

Reference: Professional Services Procurement – Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services
RK&K Executed Contract

Dear Ms. Todd:

Thank you for considering and awarding RK&K the referenced contract! We are excited to continue working with you and your team!

In response to your April 24, 2017 letter, please find attached two (2) executed copies of our contract, along with Attachment "C" (Schedule of Rates), a copy of RK&K's Delaware Business License, and a copy of RK&K's Certificate of Insurance.

Also, our accounting department has completed the W-9 Form, via the Division of Accounting's website: <http://accounting.delaware.gov>.

If you have any questions or require additional information, please contact me at 800.787.3755.

Very truly yours,
RUMMEL, KLEPPER & KAHL, LLP
Original On File

Nancy R. Bergeron, P.E.
Director

Enclosures: Contract Agreement AIA B101 x2
Attachment C
Business License
Certificate of Insurance



AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Twenty- Fourth day of April in the year Two Thousand Seventeen

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Department of Natural Resources and Environmental Control
Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901
Tel: 302-739-9231

and the Architect:
(Name, legal status, address and other information)

RK&K (Rummel, Klepper & Kahl, LLP.)
81 Mosher Street
Baltimore, MD. 21217
Tel: 410-728-2900

for the following Project:
(Name, location and detailed description)

State of Delaware
Department of Natural Resources and Environmental Control
Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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User Notes:

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TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

(Paragraph Deleted)

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

(State below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

Agreement is open-ended, renewable annually at the option of the Owner, and is to encompass improvements, renovations, repairs and replacements for all properties managed by the Department of Natural Resources and Environmental Control. Compensation will be determined separately for each individual project, but consistently as outlined in Articles 11 and 12. Refer to Attachment "A" and Article 12 for amendments to the text of this Agreement.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

To be determined per individual project

- .2 Substantial Completion date:

To be determined per individual project

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§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement.
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 Comprehensive General Liability

\$1,000,000

.2 Medical / Professional Liability

\$1,000,000 / \$3,000,000

.3 Miscellaneous Errors and Omissions

\$1,000,000 / \$3,000,000

.4 Product Liability

\$1,000,000 / \$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered. If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

.5 Automotive Liability (Bodily Injury):

\$100,000/\$300,000

.6 Automotive Property Damage (to others):

\$25,000

§ 2.6 Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

§ 2.7 The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the

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Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

§ 2.8 The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the

(Paragraph Deleted)

contract.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, civil and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without prior notice to the Architect.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating

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environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the mutually agreed upon program, schedule and construction budget required as well as the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings, outline specifications and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Architect shall perform life cycle cost analysis s required by 29 DEL.C. §6909A.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

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§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms. The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local governments including municipality in which the project is located.

§ 3.4.4 The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. After Owner's review, incorporate Owner's comments into the final construction documents.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect if requested shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect if requested shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction (5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship within 48 hours of receipt of official notification from the Owner.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

(Paragraphs Deleted)

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement as well as the Owner's Supplementary General Conditions and the Owner's General Requirements.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques,

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sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate of Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review, but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner. . The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the information given and the design concepts in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness as to cause no delay. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of two years from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™–2009)		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™–2007)		
§ 4.1.6 Building Information Modeling (E202™–2008)		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™–2007)		
§ 4.1.10 Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site Project Representation (B207™–2008)		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings		

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<p>§ 4.1.15 Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) “as-built” drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-ROM. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.</p>		
<p>§ 4.1.16 Post occupancy evaluation</p>		
<p>§ 4.1.17 Facility Support Services (B210™–2007)</p>		
<p>§ 4.1.18 Tenant-related services</p>		
<p>§ 4.1.19 Coordination of Owner’s consultants</p>		
<p>§ 4.1.20 Telecommunications/data design must comply with the State of Delaware’s Department of Technology and Information’s standards</p>		
<p>§ 4.1.21 Security Evaluation and Planning (B206™–2007)</p>		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

Except as identified as included in Architect’s Basic Services per Attachment A, Additional Services listed in 4.1 will be provided by the Architect via request of the Owner on a project by project basis.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner’s written authorization:

- .1 Making revisions in drawings, specifications or other documents, when such revisions are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustment in the Owner’s program or Project budget;
- .2 Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, except for Life Cycle Cost Analysis or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner’s failure to render decisions in a timely manner.

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Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”

(Paragraphs Deleted)

- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

(Paragraph Deleted)

- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

(Paragraph Deleted)

- .2 Responding to the Contractor’s requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor’s proposals and supporting data, or the preparation or revision of Instruments of Service as outlined in Article 12 E & O policy;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate of Payment, more than 60 days after the date of Substantial Completion.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 (Two) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 (Two) visits per Month to the site by the Architect over the duration of the Project during construction
- .3 (Two) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 (Two) inspections for any portion of the Work to determine final completion

§ 4.3.3 If the services covered by this Agreement have not been completed within (60) months of the date of this Agreement, through no fault of the Architect, extension of the Architect’s services beyond that time may be compensated as Additional Services.

ARTICLE 5 OWNER’S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request

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from the Architect, the Owner may furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect may thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize reviewed and approved by the Owner. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided. The Owner may elect to transfer this responsibility to the Architect as an additional service in Article 3 of this Agreement.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. These services are not provided directly to the Architect.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. The Architect shall prepare and distribute meeting minutes during the design and construction phase of the Project.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's best judgment as a design professional.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WSB) format. If the lowest responsible and responsive bid exceeds the estimate Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all the discrepancies at no additional cost to the Owner.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to cooperate in the revising of the Project scope and the quality as required to reduce the Construction Cost, The Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for the bidding phase costs due to the modifications.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without approval of, or additional compensation to the Architect. The Contractor, Subcontractors, Subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for the use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of Work without specific written consent of the Owner, Architect and the Architect's consultants.

This stipulation shall not prohibit the Architect from reuse of all instruments of service noted above for any other project or clients. The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specification if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a

Project in which the Architect is not involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

(Paragraphs Deleted)

§ 8.2 MEDIATION

(Paragraph Deleted)

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise. In accordance with Delaware Law, A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of

filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

The choice is left to the parties.

(Paragraphs Deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect or except for funding purposes, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 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 and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

(Paragraph Deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction as amended by the Owner's General Requirements and the Owner's Supplemental Conditions.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, 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 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 Except in accordance with Delaware Freedom of Information Act (FOIA), 29 DEL.C.ch. 100, if the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Compensation shall be based upon a negotiated stipulated sum or DFM's architectural & engineering fee schedule based on the lowest bona fide bid plus alternates. Refer to 12.4 for further clarification.

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§ 11.2 For Additional Services designated in Section 4.1 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Compensation shall be based upon negotiated stipulated sum prior to proceeding with additional services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Compensation shall be based upon service performed on an hourly basis utilizing the attached Schedule of Rates (Attachment C).

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Fifteen	percent (	15	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	One Hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. Design work for Alternates may be included for consideration in the cost of the work

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates may be adjusted subject to negotiation.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-state travel and subsistence based on Delaware's Office of Management and Budget's policy regarding such reimbursement;

(Paragraph Deleted)

- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;

- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

(Paragraphs Deleted)

- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

(Paragraphs Deleted)

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Payments are due and payable within 30 days after the Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one (1) percent per month not to exceed twelve (12) percent per annum.

(Insert rate of monthly or annual interest agreed upon.)

Per annum

(Paragraph Deleted)

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

Office of Management and Budget Division of Facilities Management's Errors & Omission Policy - Attachment 'C'
Wherever th term "Architect" is used in this agreement, it shall be interchangeable with the term "Engineer".

§ 12.2 Amend Item 10 of Attachment A by adding to the words "prior notice to the Architect" the following:
"provided such directive or substitution is lawful, does not jeopardize the standard of care required of the architect and does not increase the established scope without equitable compensation."

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect

(Paragraph Deleted)

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3 Other documents:

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Attachment 'A' - Amendments to AIA Document B101

Attachment 'B' - State of Delaware Division of Facilities Management Errors & Omissions Policy

Attachment 'C' - Schedule of Rates

This Agreement entered into as of the day and year first written above.

OWNER Original On File

(Signature)

Shawn M. Garvin, Cabinet Secretary - DNREC,
State of Delaware

(Printed name and title)

ARCHITECT
Original On File

(Signature)

Nancy Bergeron, P. E., Director, Rummel, Klepper
& Kahl, LLP. (RK&K)

(Printed name and title)

Melinda B Peters, PE
Partner

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ATTACHMENT C

Schedule of Hourly Rates

Position Classification	Hourly Rate
Director/ Senior Manager	\$ 197
Manager	\$ 182
Design Manager	\$ 156
Senior Project Engineer	\$ 138
Project Engineer	\$ 127
Engineer	\$ 115
Senior Designer	\$ 100
Designer	\$ 81
Cadd Coordinator	\$ 89
Cadd Operator	\$ 77
3-D Graphics	\$ 110
Project Scientist	\$ 122
Environmental Scientist	\$ 81
Architect	\$ 136
Survey Party Chief	\$ 76
Survey Instrument Operator	\$ 58

LICENSE NO. 1989035466 DORBL

STATE OF DELAWARE

VALID

POST CONSPICUOUSLY

DIVISION OF REVENUE

01/01/15 - 12/31/17
NOT TRANSFERABLE

DLN: 14 98583 68

BUSINESS CODE 540
GROUP CODE 007

LICENSED PROFESSIONAL SERVICES- ENGINEER
ACTIVITY PROFESSIONAL AND/OR PERSONAL SERVICES

DATE ISSUED: 12/19/14

VALIDATED

2017

LICENSE FEE: \$ 225.00

MAILING ADDRESS

BUSINESS LICENSE

BUSINESS LOCATION

RUMMEL KLEPPER & KAHL LLP
110 S POPLAR ST STE 102
WILMINGTON DE 19801-5034



RUMMEL KLEPPER & KAHL LLP
110 S POPLAR ST STE 102
WILMINGTON DE 19801-5034

IS HEREBY LICENSED TO PRACTICE, CONDUCT OR ENGAGE IN THE OCCUPATION
OR BUSINESS ACTIVITY INDICATED ABOVE IN ACCORDANCE WITH THE LICENSE
APPLICATION DULY FILED PURSUANT TO TITLE 30, DEL CODE.

PATRICK T. CARTER
DIRECTOR OF REVENUE

IMPORTANT - TEAR AT ABOVE PERFORATION AND DISPLAY IN A PUBLIC LOCATION

Federal E.I. No. or
Social Security Number 1 52059 9112 002

Business Code 540
Group Code 007

Licensed PROFESSIONAL SERVICES- ENGINEER
Activity PROFESSIONAL AND/OR PERSONAL SERVICES

The State of Delaware Business License printed above must be posted in a public area at the location address listed. If you have any questions regarding this license, please call (302) 577-8778.

REPLACEMENT LICENSES

Keep this portion of your license separate, in case you need a replacement for any lost, stolen or destroyed license. A \$15 fee will be charged for the replacement of a license. Send the \$15 along with a copy of this form or provide your Federal Employer Identification Number, or Social Security Number, suffix, Business Code, Business Name and address to Delaware Division of Revenue, Attn.: Business Master File, PO Box 8750, Wilmington, DE 19899-8750. You will receive your replacement license within three to four weeks.

OTHER IMPORTANT INFORMATION

Most licensees are also required to pay either gross receipts or excise taxes in addition to the license fee. You can file these taxes online or obtain a paper form from our website at www.revenue.delaware.gov. You must submit all business tax returns filed with the Division of Revenue under the same identification number. If you are a sole-proprietor, and have a federal employer identification number, use the employer identification number, not your social security number. Only sole proprietors with no employees are allowed to file under their social security number. Inquiries regarding your coupon booklets to pay withholding, corporate tentative, and Sub Chapter "S" estimated taxes, or to make changes to your name, address, or identification number, should be directed to the Business Master File Unit at (302) 577-8778.

INTERNET SITE

The Division of Revenue web address is: www.revenue.delaware.gov. Visit our web site for tax tips, links to telephone numbers, forms that you can download, links to other State agencies, the Delaware Code, the publication "Delaware Guide for Small Business" and lots more. Internet filing of personal income tax returns via the Division of Revenue's website is available. Internet filing for Withholding, Gross Receipts and Corporate Tentative payments is also available.



AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Twenty- Fourth day of April in the year Two Thousand Seventeen

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Department of Natural Resources and Environmental Control
Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901
Tel: 302-739-9231

and the Architect:
(Name, legal status, address and other information)

Wallace, Roberts & Todd, LLC.
1700 Market Street, Suite 2800
Philadelphia, PA. 19103
Tel: 215-732-5216

for the following Project:
(Name, location and detailed description)

State of Delaware
Department of Natural Resources and Environmental Control
Professional Services Procurement - Contract # NAT 17-002-PS
Engineering, Architecture, and Landscape Architecture A&E Services

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

(Paragraph Deleted)

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

(State below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

Agreement is open-ended, renewable annually at the option of the Owner, and is to encompass improvements, renovations, repairs and replacements for all properties managed by the Department of Natural Resources and Environmental Control. Compensation will be determined separately for each individual project, but consistently as outlined in Articles 11 and 12. Refer to Attachment "A" and Article 12 for amendments to the text of this Agreement.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

To be determined per individual project

- .2 Substantial Completion date:

To be determined per individual project

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§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement.
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 Comprehensive General Liability

\$1,000,000

.2 Medical / Professional Liability

\$1,000,000 / \$3,000,000

.3 Miscellaneous Errors and Omissions

\$1,000,000 / \$3,000,000

.4 Product Liability

\$1,000,000 / \$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered. If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

.5 Automotive Liability (Bodily Injury):

\$100,000/\$300,000

.6 Automotive Property Damage (to others):

\$25,000

§ 2.6 Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

§ 2.7 The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the

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Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

§ 2.8 The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the
(Paragraph Deleted)

contract.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, civil and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without prior notice to the Architect.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating

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environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the mutually agreed upon program, schedule and construction budget required as well as the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings, outline specifications and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Architect shall perform life cycle cost analysis s required by 29 DEL.C. §6909A.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms. The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local governments including municipality in which the project is located.

§ 3.4.4 The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. After Owner's review, incorporate Owner's comments into the final construction documents.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect if requested shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect if requested shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction (5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship within 48 hours of receipt of official notification from the Owner.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

(Paragraphs Deleted)

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement as well as the Owner's Supplementary General Conditions and the Owner's General Requirements.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques,

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sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate of Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

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§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review, but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner. The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the information given and the design concepts in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness as to cause no delay. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of two years from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™–2009)		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™–2007)		
§ 4.1.6 Building Information Modeling (E202™–2008)		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™–2007)		
§ 4.1.10 Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site Project Representation (B207™–2008)		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings		

§ 4.1.15 Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) “as-built” drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-ROM. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.		
§ 4.1.16 Post occupancy evaluation		
§ 4.1.17 Facility Support Services (B210™–2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner’s consultants		
§ 4.1.20 Telecommunications/data design must comply with the State of Delaware's Department of Technology and Information's standards		
§ 4.1.21 Security Evaluation and Planning (B206™–2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

Except as identified as included in Architect’s Basic Services per Attachment A, Additional Services listed in 4.1 will be provided by the Architect via request of the Owner on a project by project basis.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner’s written authorization:

- .1 Making revisions in drawings, specifications or other documents, when such revisions are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustment in the Owner’s program or Project budget;
- .2 Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, except for Life Cycle Cost Analysis or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner's failure to render decisions in a timely manner.

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Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”

(Paragraphs Deleted)

- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

(Paragraph Deleted)

- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

(Paragraph Deleted)

- .2 Responding to the Contractor’s requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor’s proposals and supporting data, or the preparation or revision of Instruments of Service as outlined in Article 12 E & O policy;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate of Payment, more than 60 days after the date of Substantial Completion.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 (Two) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 (Two) visits per Month to the site by the Architect over the duration of the Project during construction
- .3 (Two) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 (Two) inspections for any portion of the Work to determine final completion

§ 4.3.3 If the services covered by this Agreement have not been completed within (60) months of the date of this Agreement, through no fault of the Architect, extension of the Architect’s services beyond that time may be compensated as Additional Services.

ARTICLE 5 OWNER’S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request

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from the Architect, the Owner may furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect may thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize reviewed and approved by the Owner. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided. The Owner may elect to transfer this responsibility to the Architect as an additional service in Article 3 of this Agreement.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. These services are not provided directly to the Architect.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. The Architect shall prepare and distribute meeting minutes during the design and construction phase of the Project.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's best judgment as a design professional.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WSB) format. If the lowest responsible and responsive bid exceeds the estimate Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all the discrepancies at no additional cost to the Owner.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to cooperate in the revising of the Project scope and the quality as required to reduce the Construction Cost, The Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for the bidding phase costs due to the modifications.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without approval of, or additional compensation to the Architect. The Contractor, Subcontractors, Subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for the use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of Work without specific written consent of the Owner, Architect and the Architect's consultants.

This stipulation shall not prohibit the Architect from reuse of all instruments of service noted above for any other project or clients. The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specification if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a

Project in which the Architect is not involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

(Paragraphs Deleted)

§ 8.2 MEDIATION

(Paragraph Deleted)

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise. In accordance with Delaware Law, A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of

filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

(Paragraphs Deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect or except for funding purposes, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 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 and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated

(Paragraph Deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction as amended by the Owner's General Requirements and the Owner's Supplemental Conditions.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, 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 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 Except in accordance with Delaware Freedom of Information Act (FOIA), 29 DEL.C.ch. 100, if the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Compensation shall be based upon a negotiated stipulated sum or DFM's architectural & engineering fee schedule based on the lowest bona fide bid plus alternates. Refer to 12.4 for further clarification. Written stipulated sum proposals will be required from the Architect and will be accepted only upon the issuance of an addendum to this Agreement and a fully executed purchase order.

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§ 11.2 For Additional Services designated in Section 4.1 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Compensation shall be based upon negotiated stipulated sum prior to proceeding with additional services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3 as amended by the Owner's Attachment A, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Compensation shall be based upon service performed on an hourly basis utilizing the attached Schedule of Rates(Attachment).

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Fifteen	percent (	15	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	One Hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. Design work for Alternates may be included for consideration in the cost of the work

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates may be adjusted subject to negotiation.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-state travel and subsistence based on Delaware's Office of Management and Budget's policy regarding such reimbursement;

(Paragraph Deleted)

- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;

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- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

(Paragraphs Deleted)

- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

(Paragraphs Deleted)

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Payments are due and payable within 30 days after the Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one (1) percent per month not to exceed twelve (12) percent per annum.

(Insert rate of monthly or annual interest agreed upon.)

Per annum

(Paragraph Deleted)

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

Office of Management and Budget Division of Facilities Management's Errors & Omission Policy - Attachment 'B'
Wherever the term "Architect" is used in this agreement, it shall be interchangeable with the term "Engineer"

§ 12.2 Amend Item 10 of Attachment A by adding to the words "prior notice to the Architect" the following:
"provided such directive or substitution is lawful, does not jeopardize the standard of care required of the architect and does not increase the established scope without equitable compensation."

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect

(Paragraph Deleted)

- .3 Other documents:

.3 Other documents:

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Attachment 'A'- Amendments to AIA Document B101

Attachment 'B' - State of Delaware Division of Facilities Management Errors & Omissions Policy

Attachment 'C' - Schedule of Rates

This Agreement entered into as of the day and year first written above. **Original On File**

OWNER

(Signature)
Shawn M. Garvin, Cabinet Secretary - DNREC,
State of Delaware
(Printed name and title)

ARCHITECT

(Signature)
Joseph W. Healy, AIA, LEED AP, BD+C,
Managing Principal, Wallace Roberts & Todd LLC.
(Printed name and title)

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ATTACHMENT "B"

STATE OF DELAWARE

DIVISION OF FACILITIES MANAGEMENT

Article 12

Errors and Omissions Policy

Table of Contents

- 1. Insurance**
- 2. Assignment of Responsibility**
- 3. Error and/or Omission Discovery**
- 4. Resolution and Appeal**

This document includes a general discussion on errors and/or omissions occurring during project implementation, how to initiate a correction for an error or omission, and what each party's responsibilities are in making the correction. The Division intends to seek reimbursement for additional costs (defined below) associated with correcting errors and omissions during planning, design and construction, including but not limited to, multiple report rewrites, construction costs, and construction engineering.

1. INSURANCE

This article does not address the types of liability insurance a firm may need to carry. Insurance usually carried by consultants includes Comprehensive General Liability, Comprehensive Automobile Liability, Workers' Compensation and Employers' Liability, Professional Liability, and other specialty insurance required in an agreement or that a firm may consider prudent based on the scope of work. The actual agreement covering the work will specify the minimum insurance requirements.

2. ASSIGNMENT OF RESPONSIBILITY

Services procured under the auspices of this document are considered "Professional Services". This in itself infers that, no matter what the scope of work entails, there are associated, industry professional, standards which are expected to be met. For projects involving public safety, meeting these standards takes on even more significance. Firms selected through the Division's professional services procurement process are the best technically qualified, with a proven history of meeting similar contract obligations. Such designation carries with it an acknowledgement of the firm's responsibility to know the accepted standards for doing business in Delaware.

Because of the Division's review process and the involvement of internal support sections as well as other state agencies, utility companies, public groups, municipalities, and the like, acceptance of the responsibility for an error and/or omission in a professional manner will depend on good project monitoring. Complete review and comment records are to be kept by both the Consultant and the Division. It is required that an office copy of each marked or edited review submission and comments be prepared and retained for future reference. Detailed minutes of project review meetings are also required. In projects that involve existing facilities, the Division will normally compensate at Consultant to perform a "pre-design survey" of the facility to determine the existing conditions and how the proposed work will be incorporated into the design. Firms are encouraged to exercise the utmost professional care during these surveys in order to complete full and complete construction drawings and specifications.

Because of the underlying expectation that a firm will comply with established standards throughout project development, there are occasions when a Project Manager and the Construction Projects Administrator will determine that a firm may not have met this obligation. When discovered, the error and/or omission should be reported immediately to the Consultant for resolution. While invoices should annotate the time and associated costs for correcting the lapse, the Division shall not be charged to correct errors and/or omissions.

3. ERROR AND/OR OMISSION DISCOVERY

Definitions:

Errors are defined as unknown, ignorant, or unintentional deviations from accuracy or correctness. Errors may arise from mistaken judgment, misplaced confidence, incorrect belief as to the existence or effect of matters of fact, or other actions. Errors also include failure to meet established Delaware requirements, or design standards for that type of project, (i.e., ASHRAE, DNREC, DelDOT, ICC, NEC, NSPA, or other established government requirements or design standards).

Omissions are defined as missing or unmentioned detail or requirements through either failure to perform properly, neglect, or failure to use reasonable care. Omissions also include failure to identify and implement cost-effective solutions.

Additional costs refers to that portion of the project cost the consultant is responsible for which includes those expenses over and above the cost the Division would have incurred had the error or omission not been made.

During Project Development

Errors and/or omissions discovered during project development are relatively easy to resolve when identified early because the Consultant's Project Manager and the Division's Project Manager are both aware of the circumstances surrounding the problem. The major issue remaining involves arriving at a mutual agreement on whether full, partial or no compensation is due the Consultant to correct the problem. (See Resolution below.)

During Implementation or Construction

Most often it will be obvious if a Consultant error and/or omission truly occurred. Frequently, however, there is a time lapse between the completion of professional services to develop the project and actual implementation of the plan, project, or construction. Associated with this delay is the updating and modification of completed work because of changes in specifications, updated regulations, legislative initiatives, or additional valid comments for improving a project. In essence, the quality and content of a project become a shared responsibility. Changes of scope or specifications (owner requested), updated regulations, legislative initiatives, or comments for improving a project after acceptance of the final design, shall in no way be construed as an error/or omission.

Professional responsibility of the Consultant preparing the project does not terminate with acceptance of the product and/or final payment for its development. Failure to discover the error and/or omission during the design, review or implementation of the project does not relieve the Consultant of their responsibility to correct the effects of the error and/or omission. The extent of the responsibility of the consultant for payment for correcting any errors and/or omissions may be in question, but the active participation of the firm in resolving a problem upon request is mandatory. The level of the Consultant's participation shall be determined by the Division.

The procedure to initiate the correction of an error and/or omission lies with the person responsible for ensuring proper implementation of the plan, project, or construction. At the first indication of an error and/or omission, the Division's representative should notify the project Supervisor. All subordinates should be instructed to keep detailed documentation on the work being performed.

At this same time, the Division's Project Manager responsible for developing the project, if not the person identifying the error and/or omission, should be notified. Depending upon how critical a correction is to project scheduling, report preparation and review may be impractical. When such timing is critical, the Project Manager is verbally notified, and guidance is requested with emphasis on what additional data is needed to document and resolve the error and/or omission. The Division's Project Manager, in turn, should immediately advise the consultant, the supervisor, and up through the chain of command as necessary.

The Division holds the prime Consultant responsible for all work performed or not performed under an agreement including that of any subconsultants. When necessary, based on the opinion of the Division's Project Manager, Construction Project Administrator, Chief Engineer, Deputy Director, and/or Director, the prime consultant will be notified of the problem and requested to participate in a solution in cooperation with Division staff. There will be no compensation to either the prime or subconsultant for services related to the verification and correction of an error and/or omission unless as otherwise agreed. The primary objective is to keep the project on schedule by proposing a viable alternative. Records should be kept of any immediate action taken to correct the situation.

4. RESOLUTION AND APPEAL

Resolution

The Division's Project Manager shall document the error and/or omission that was identified, collect all supporting materials, review their findings with the Consultant, determine the required action to correct the error and/or omission and analyze the cost impact of the resolution (including but not limited to materials, overtime, and force account). All documentation shall be presented to the Construction Project Administrator. The prime Consultant is expected to participate at the appropriate level, from site visits to preparation of corrective documents. Much of this participation is mutually agreed to as solutions are developed.

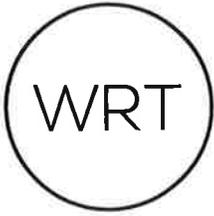
The Construction Project Administrator (or Chief Engineer) will review the materials, discuss the resolution options with the Consultant and make a final recommendation to the Chief Engineer (or Deputy Director) for review. At the conclusion of the Deputy Director's review, the recommendation will be presented to the Director for approval.

Appeal

Should the Consultant not participate in the resolution process or disagree with the finding of financial responsibility as presented, the Consultant can schedule a review with the Deputy Director or Director. The Deputy Director or Director can modify the terms of the resolution or refer the appeal to the OMB Director per the Consultant's contract.

Default

Should the Consultant not honor the terms of the final resolution, the Division, for just and definable acts, has the option of filing a Consultant insurance claim, filing legal process for restitution, terminating all current agreements, or barring the firm from further work with the Division for up to five years, or any combination thereof.



ATTACHMENT " C "
SCHEDULE OF RATES

WRT Hourly Billing Rates

Principal_____	\$240
Professional Level IV/Project Manager_____	\$185
Professional Level III_____	\$145
Professional Level II_____	\$115
Professional Level I_____	\$90
Administrative Support_____	\$80

Notes:

Rates are effective through December 31, 2017
Subsequent annual increases are assumed to be within 5%.

