

**DELAWARE STATE PARKS
ENGINEERING / ARCHITECTURAL/LANDSCAPE ARCHITECTURE
REQUEST FOR LETTERS OF INTEREST
ADDITIONAL INFORMATION**

**Professional Services Procurement
Contract # NAT 17-002-PS**

January 26, 2017

The State of Delaware, Department of Natural Resources and Environmental Control, Division of Parks and Recreation, is soliciting Letters of Interest (LOI) from Architects, Engineers, Landscape Architects for Contract #NAT 17-002-PS, Division of Parks and Recreation – Minor Capital Improvement Program.

Project Description

The selected team(s) will provide civil, geotechnical, and transportation engineering, marine engineering, environmental services, permitting, architectural services, landscape architecture and planning for Public Works Construction Projects statewide. Scope and number of projects has yet to be determined and is dependent on current and future availability of funding. Typical projects consist of new construction, renovation, historic restoration, repair or replacement of roadways, parking lots, bridges, trails, marine structures, drainage structures, stormwater controls and sewage treatment facilities. The professional team should be familiar with relevant laws, codes, approvals, permits, and regulatory requirements of Federal, State, and local agencies. Working knowledge of Delaware's Sediment and Stormwater Program is a necessity and having a Certified Construction Reviewer on staff would be advantageous. The consultant(s) selected will work under the direction of the Division of Parks and Recreation planning and design team.

Submittal & Selection Process

Submit Letters of Interest in accordance with Public Notice (attached). Interested firms shall submit six (6) copies and (1) electronic copy of their replies on or before **3:00 p.m. on Tuesday, February 28, 2017** to Cynthia A. Todd, RLA, Construction Project Administrator, Division of Parks and Recreation, 89 Kings Highway, Dover, DE 19901. (Phone No. 302-739-9231) Applicant bears the risk of timely delivery. Any proposals received after the stated time will be returned unopened.

Responses shall include the following information which will be utilized by the selection committee to determine qualifications and rankings:

- 1) demonstrated experience with projects of a similar nature,
- 2) organizational structure established for the project(s) (personnel),
- 3) defined approach the firm/ team will take on the project(s),
- 4) knowledge of site(s) and project requirements,
- 5) geographical location of firm(s),

- 6) familiarity with public works (including work in Delaware), its requirements and systems,
- 7) distribution of work to individuals and/or firms (economic considerations, and to broaden the base from which selections are to be made),
- 8) appropriate professional registration.

Letters of Interest shall be concise, not to exceed 20 pages, 8.5" x 11", printed on one side. The 20 page limit does not include the cover, tabs or the Federal Standard Forms. Work experience listed on GSA Standard Forms 330, or equivalent, shall be no older than 10 years.

The above criteria will be considered in selecting a firm/ team to perform these services. Qualifications and rankings will be based on criteria listed on attached form "Architect/Engineer Shortlisting/Interview Rating Criteria." Information should be accompanied by GSA Standard Forms 330, or equivalent. Respondents are reminded that the Project Architect/Engineer for this work must be registered in the State of Delaware. Selected firms/ teams will be given notice of times and dates for scheduled interviews. Facsimile or electronic submittals will not be accepted.

Each response shall be ranked by committee; the list of qualified candidates will then be narrowed to the top five highest ranking firms. The number of top firms interviewed may vary depending on categories submittals. Those firms will be interviewed individually after which a final ranking will be made based on the interview. Negotiations will begin with the firm having the highest final ranking and will proceed until a selection or selections are made. All respondents will receive notice of contract award. The selection of the firms(s) will be made in accordance with the Professional Services procurement process, Delaware Code Annotated, Title 29, Chapter 69.

The awarded professional will be required to enter into an AIA Document B101 - 2007 Owner Architect Agreement. This document is edited per State amendments. Attachments A and B (error and omissions).

The Division of Parks and Recreation reserves the right to negotiate and award any or all of the projects named in this LOI, to amend and/or reissue this request for LOI, to award contracts to two or more firms as determined to be in the best interest of the State and will retain the option to renew the contract annually for up to five (5) years.

Scope of Services

- Site Investigation to assess existing conditions.
- Engineering Report of findings and recommendations.
- Teamwork the selected firm(s) will be expected to work with other consultants that the Owner has selected.
- Subcontracting Services may include landscape architecture, structural, mechanical, and electrical engineering. The Owner has the right to individually approve or select consultants.

- Design Development with preliminary construction cost estimates.
- Construction Documents and final cost estimates. Edit Owner-provided administrative specifications. Provide technical specifications in *Microsoft Word and Drawings* in electronic media, *AutoCAD 2015* or later version.
- Permits and Approvals as required, to include preparation and submittal of applications, and monitoring and responses, as required to obtain permits and approvals in accordance with all Federal, State, County, and City requirements.
- Bidding Phase, to include attending a pre-bid meeting, answering questions, preparing addenda, and bid award.
- Contract Administration, including review of contractor's submittals and periodic site visits to review for conformance to contract documents.
- As-built Drawings to be developed from contractor's mark-ups.

Licenses & Insurance: Upon notification of the Owner's intent to enter into a contract, the Consultant will be required to submit copies of the following:

- Applicable Professional Licenses (State of Delaware)
- Current Certificate of Insurance
- Current Delaware Business License

Attachments:

Public Notice
 Architect/Engineer Shortlisting/Interview Rating Criteria
 AIA Document B101 – 200
 Attachment “A”(Amendment to B101)
 Errors and Omissions Policy (Attachment to B(101))

Advertise: January 26, 2017

PUBLIC NOTICE

Public Notice is hereby given that the State of Delaware, Department of Natural Resources and Environmental Control (DNREC), is soliciting Letters of Interest (LOI) for the design and preparation of specifications and bid documents and contract administration necessary for **Division of Parks and Recreation - Public Works Construction Projects statewide for Architect, Engineer, Landscape Architect Services for Contract # NAT 17- 002-PS**

Multiple firm(s) will be selected in the following categories:

- Civil engineering (geotechnical, water resources, environmental)
- Transportation engineering (planning)
- Marine engineering
- Sanitary engineering (including subsurface utility)
- Site survey (including 3D laser scanners)
- Landscape architecture
- Architectural services

Clearly identify on LOI which category(s) to be considered. Firms cannot submit for both team and individual services. As a condition of the contract, the selected firms will be expected to work cooperatively with separately-contracted firms on multi-disciplinary projects. Scope and number of projects has yet to be determined. Projects may include, but are not limited to, planning and design for new construction and rehabilitation of structures, parking lots, roads, trails and utilities. Selection of the professional will be based on similar projects completed by the firm. DNREC, Division of Parks and Recreation reserves the right to amend and/or reissue this request for LOI, to award contracts to two or more firms in each category or combined categories as determined to be in the best interest of the State and will retain the option to renew the contract annually for up to five (5) years.

Interested firms shall submit six (6) copies and (1) electronic copy of their replies on or before **3:00 p.m. on Tuesday, February 28, 2017** to Cynthia A. Todd, RLA, Construction Project Administrator, Division of Parks and Recreation, 89 Kings Highway, Dover, DE 19901. Questions regarding this solicitation must be submitted in writing to dnrec_ask@state.de.us by Tuesday – February 7, 2017. Respondent bears the risk of timely delivery. Any proposals received after the stated time will be returned unopened. Responses shall include:

- demonstrated experience with projects of a similar nature
- organizational structure established for the projects (personnel)
- defined approach firm/ team took on those projects

- knowledge of site and project requirements
- geographical location of firm(s)
- familiarity with public works (including work in Delaware) and its requirements and systems.
- fees received by the firm for State of Delaware public works projects in the last five years (include breakdown)

The above criteria and distribution of work to individuals and/or firms (economic considerations, and to broaden the base from which selections are to be made) will be considered in selecting a firm/ team to perform these services. Information should be accompanied by GSA Forms 254/255, SF 330, or equivalent. The selection will be in accordance with the Delaware Professional Services Negotiation Act, Title 29, Chapter 69, of the Delaware Code. Respondents are reminded that the Project Manager for this work must be registered in the State of Delaware. Selected firms/ teams will be given notice of times and dates for scheduled interviews. Facsimile or electronic submittals will not be accepted. Additional information is available by calling (302) 739-9231.

Letters of Interest shall be concise, not to exceed 20 pages, 8.5" x 11", printed on one side. The 20 page limit does not include the cover, tabs or the Federal Standard Forms. Work experience listed on GSA Standard Forms 330, or equivalent, shall be no older than 10 years.

END OF PUBLIC NOTICE

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
ARCHITECT/ENGINEER SHORTLISTING/INTERVIEW FORM**

PROJECT NAME: _____

CONTRACT NUMBER: _____

FIRM: _____

RATER: _____

RATER'S SIGNATURE: _____

PART I GENERAL EXPERIENCE & REPUTATION	Point Range		Rater Score
	Low	High	
Demonstrated experience with projects of similar nature and/or scope	1	20	
Experience with public works projects within the State of Delaware	1	10	
Quality of prior work and overall character of firm	1	10	
PART II ORGANIZATION/CAPACITY	Point Range		Rater Score
	Low	High	
Defined approach firm/team will take on this project	1	20	
Size and discipline composition of firm relative to its capacity to complete the project	1	15	
Familiarity with site and understanding of project	1	10	

***** TO BE COMPLETED BY CEO/DESIGNEE *****

PART III OTHER CRITERIA	Point Range		Rater Score
	Low	High	
Recent contract work with the State of Delaware	0	5	
Experience working as a team/venture	1	5	
Firm's location relative to project sites	0	5	
TOTAL SCORE (Possible 100)			

PROFESSIONAL SERVICES CONSULTANT SELECTION

PROPOSAL EVALUATORS

Use the following point values following a review of the applicable information contained in the Letter of Interest. The evaluation scoring may be adjusted due to special project circumstances.

Recent Contract Work with the State of Delaware

(within last five years)

Firms will be assigned a score from 0 to 5 points based on amount of recent work. Firms with no work within the last five years will receive a score of 0 points while firms with a lot of work will receive 5 points.

Experience Working as a Team/Venture; Office Stability

	<u>POINTS</u>
First time working together	= 1
Have worked together previously	= 3
Worked extensively together on numerous projects	= 5

Firms's Location Relative to Project Sites; Location of Office

	<u>POINTS</u>
Main office and any branch offices beyond 1 hour response time or 35 miles	= 0
Main office beyond 1 hour response time or 35 miles with branch office responsible for work within 1 hour response time or 35 miles	= 1
Main office within 1 hour response time or 35 miles	= 3
Main office within 30 minutes response time or 15 miles	= 5

DRAFT AIA[®] Document B101[™] - 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

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

« »
« »
« »
« »

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

« »
« »
« »
« »

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

« »
« »
« »

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.

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

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or 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.)

<< >>

§ 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:

<< >>

- .2 Substantial Completion date:

<< >>

§ 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. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

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

.1 General Liability

« »

.2 Automobile Liability

« »

.3 Workers' Compensation

« »

.4 Professional Liability

« »

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, 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 the Architect's approval.

§ 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 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 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.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 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 outline 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.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 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.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect 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.

§ 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

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 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.

§ 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 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for 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.

§ 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.

§ 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, but only for the limited purpose of checking for conformance with information given and the design concept expressed 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 Subject to the provisions of Section 4.3, 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. 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. Subject to the provisions of Section 4.3, 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 one year 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)		

§ 4.3.2 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:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .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;
- .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 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 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 « » (« ») reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 « » (« ») visits to the site by the Architect over the duration of the Project during construction
- .3 « » (« ») 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 « » (« ») inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within « » (« ») months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall 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 shall 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 shall 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 the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 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.

§ 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.

§ 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 judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 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 current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 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 proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 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. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 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, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. 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)

§ 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

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, 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, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 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.

§ 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 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.)

<< >>

§ 11.2 For Additional Services designated in Section 4.1, 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.)

<< >>

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

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

<< >>

§ 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 <> percent (<> %), 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	<>	percent (<> %)
Design Development Phase	<>	percent (<> %)
Construction Documents Phase	<>	percent (<> %)
Bidding or Negotiation Phase	<>	percent (<> %)
Construction Phase	<>	percent (<> %)
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.

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect’s and Architect’s consultants’ normal review practices.

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

<< >>

Employee or Category

Rate

[Redacted table content]

§ 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-town travel and subsistence;

- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .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;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .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 « » percent (« » %) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

« »

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of « » (\$ « ») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 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. Amounts unpaid « » (« ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

« » % « »

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 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:

« »

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

2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

<< >>

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.)

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

OWNER

ARCHITECT

(Signature)

<< >>< >>

(Printed name and title)

(Signature)

<< >>< >>

(Printed name and title)



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. 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."

3. Amend Article 2.5 by striking the second sentence in its entirety.

4. 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

5. 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.

6. 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.

7. 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.

8. Amend Article 3.1 by adding the word "civil" after "mechanical," and before "and".

9. Amend Article 3.1.4 by striking "the Architect's approval" and replacing it with "prior notice to the Architect."

10. 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".

11. 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".

12. Amend Article 3.2.6 by striking "prepared in accordance with Section 6.3."

13. Amend Article 3.3.1 by striking the word "outline" before "specifications".

14. 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."

15. 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.”
16. Amend Article 3.4.5 by adding after the last sentence “After Owner's review, incorporate Owner's comments into final construction documents.”
17. Amend Article 3.5.1 by striking the first sentence in its entirety and add to the end of the second sentence “in accordance with the laws of the State of Delaware.”
18. Amend Article 3.5.3 by striking it in its entirety.
19. Amend Article 3.6.1.1 by adding “as well as the Owner's Supplementary General Conditions and the Owner's General Requirements.”
20. 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.”
21. 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.”
22. 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.”
23. 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.”
24. 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.”

25. 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”.
26. Amend Article 3.6.6.5 by changing “one year” to “two years”.
27. 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
 - 4.1.7 - 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.

28. 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.”
29. Amend Article 4.3.1.2 by inserting “except for Life Cycle Cost Analysis” after “energy modeling” and before “or”.
30. 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.”
31. Strike Article 4.3.1.5 in its entirety.
32. Strike Article 4.3.1.6 in its entirety.
33. Strike Article 4.3.1.7 in its entirety.
34. Strike Article 4.3.1.9 in its entirety.
35. Strike Article 4.3.2.1 in its entirety.
36. Amend Article 4.3.2.3 to add at the end “as outlined in Article 12 E & O policy.”
37. 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”.
38. Amend Article 4.3.3.1 by adding the number two before “reviews”.

39. Amend Article 4.3.3.2 by adding “the equivalent of 2 visits per month for the duration of the project.”
40. Amend Article 4.3.3.3 by adding the number two before “inspections”.
41. Amend Article 4.3.3.4 by adding the number two before “inspections”.
42. Amend Article 4.3.4 by changing “shall” to “may”.
43. Amend Article 5.2 by striking the word “shall” in the last sentence and replacing it with “may”.
44. 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.”

45. Amend Article 5.8 by adding the following to the end of the Article: “These services are not provided directly to the Architect.”
46. 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.”
47. Amend Article 6.2 by inserting “best” before “judgment” in the second sentence. Also, strike the third and fourth sentences in their entirety.
48. 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.”
49. 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.”

50. 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.”

51. Amend Article 8.1.1 by striking the last sentence in its entirety.
52. Amend Article 8.1.2 by striking it in its entirety.
53. Amend Article 8.1.3 by striking it in its entirety.
54. Amend Article 8.2.1 by striking it in its entirety.
55. 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
56. Amend Article 8.2.4 by checking the box marked “Other” and insert the following: “The choice is left to the parties.”
57. Amend Article 8.3 by striking it in its entirety.
58. Amend Article 9.3 by adding the following to the first sentence after “fault of the Architect”: “or except for funding purposes,”.
59. Amend Article 9.7 by striking the following from the end of the sentence: “plus an amount ...by the Architect.”
60. Amend Article 9.8 by striking it in its entirety.

61. Amend Article IO.I by striking the following from the end of the sentence:
“except that
if...govern Section 8.3.”
62. 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.”
63. 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,”.
64. Amend Article 11.2 by adding the following after “Section 4.1“: “as amended by Owner's Attachment A.”
65. Amend Article 11.3 by adding the following after “Section 4.3“: “as amended by Owner's Attachment A.”
66. 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.”
67. 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.”
68. 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.”
69. Amend Article 11.8.1.2 by striking it in its entirety.
70. Amend Article 11.8.1.8 by striking it in its entirety
71. Amend Article 11.8.1.9 by striking it in its entirety.
71. Amend Article 11.9 by striking it in its entirety.
72. Amend Article 11.10.1 by striking it in its entirety.
73. 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.”

74. Amend Article 11.10.3 by striking it in its entirety.
75. Amend Article 12 to include reference to the “Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy.”
76. 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.”

March 24, 2010

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.