

ATTACHMENT A

Supplement To
Architectural Services Agreement
Between
Delaware Technical and Community College
And
(Insert Vendor Name)

The parties hereby agree that the attached AIA Document B101 – 2017 shall be supplemented as set forth herein. The parties hereby further expressly agree that the terms of this supplement shall govern in the event of a conflict between the terms of the attached agreement or any document referenced therein, including, but not limited to, any document identified in Article 13 thereof, and that any contrary provision of any such document shall be superseded hereby.

1. By signing this Agreement, the Architect 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. All civil engineering services for basic site design shall be included within the scope of Basic Services under Article 3;
3. The Architect shall prepare a detailed construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit, which shall be included within the scope of Basic Services under Article 3;
4. 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, which shall be included within the scope of Basic Services under Article 3. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate Contractors, while allowing sufficient time in the Owner's judgment to permit adequate review;
5. The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect, shall be subject to other remedies available to Owner at law or in equity;
6. Architect shall provide services in connection with the evaluation of substitutions proposed by the Contractor and making subsequent revisions to Drawing, Specifications

and other documentation resulting therefrom, which shall be included within the scope of Basic Services under Article 3;

7. The Architect's responsibility to provide Basic 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 or 60 days after the date of Substantial Completion of the Work;
8. The Architect shall prepare and distribute meeting minutes during the design and construction phases of the Project, which shall be included within the scope of Basic Services under Article 3;
9. Architect shall cause archival quality (mylars) "as-built" drawings to be deposited in the State Archives. Providing such record drawings will be considered a Basic Service of the Architect. 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. Providing all such documents shall be considered a Basic Service. Architect shall not be entitled to receive final payment under this Agreement until all obligations under this paragraph have been fully performed;
10. Architects involvement in providing services of consultants for architectural, civil, structural, mechanical and engineering portions of the Project included as a part of Basic Services shall not be Supplemental Services under Article 4;
11. The Owner may elect to transfer its responsibility under §5.4 to the Architect as a Supplemental Service under Article 4;
12. A fixed limit of construction cost shall be determined by the Owner prior to commencement of the design. The Architect shall be permitted, with Owner approval, to determine materials, equipment, component systems and types of construction necessary to keep the construction cost within the fixed limit. A contingency amount of 5% of the fixed limit will be included for bidding. If the lowest responsible and responsive base bid exceeds the project fixed limit plus the 5% contingency, the Owner shall proceed as outlined in §6.6. If the Owner chooses to proceed under §6.6.4, 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;
13. 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;

14. 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;
15. The rights afforded to Architect under §9.1 shall not apply in the event payment is withheld by Owner pending resolution of a bona fide dispute involving Architect's performance under the Agreement, or has been set-off against other sums lawfully owed to Owner by Architect;
16. Owner shall not be liable for costs attributable to termination, including the costs attributable to the Architect's termination of consultant's agreements, as provided in §9.6.
17. Owner shall not be liable for any termination fees or licensing fees as provided in §9.7 and in no manner shall anticipated profit on value of services be included in any reimbursable expenses in the Agreement.
18. Reimbursable Expenses for transportation and subsistence shall be limited to authorized out-of-state travel. Reimbursable Expense shall not include any transportation or subsistence incurred by Architect or any of its consultants to travel to or within the State of Delaware;
19. 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;
20. Architect shall provide life-cycle cost analysis as a Basic Service;
21. Value engineering shall be completed as a Basic Service before proceeding to the Construction Document phase;
22. Owner or any of its duly authorized representatives shall have access to any documents, books, papers, and records of Architect for the purpose of making an audit, examination,

excerpts, and transcriptions. Architect shall maintain all required records for at least three years after Owner makes final payment and all pending matters are closed.

23. Architect shall adhere to the timetable established for any individual project under the Agreement.
24. Architect shall provide surveillance of project construction to assure compliance with plans, specifications, and all other contract documents.
25. Architect shall be responsible for any damages arising from any defects in design or negligence in the performance of the construction inspector, if the inspector is furnished by the A/E;
26. Architect shall supervise any required subsurface explorations such as borings, soil tests, and the like, to determine amounts of rock excavation or foundation conditions, no matter whether they are performed by the A/E or by others paid by the Owner;
27. Architect shall attend bid openings, prepare and submit tabulation of bids, and make a recommendation as to contract award;
28. Architect shall review proof of bidder's qualifications and recommend approval or disapproval;
29. Architect shall submit a report not less frequently than quarterly to the Owner covering the general progress of the job and describing any problems or factors contributing to delay;
30. All fees for Basic and Additional Services are hourly at the rates set forth in §11.1, not to exceed the amount specified for each service or phase;
31. Owner and Architect each hereby agree to indemnify and hold the other party and their officers, directors, agents, employees, servants and contractors free and harmless from any and all loss, cost, damage, action, or liability whatsoever, or any claim therefor, resulting from any negligent or intentional act or omission by the indemnifying party arising out of the performance of this agreement. Provided, however, that Owner, as an instrumentality of the State of Delaware, has no obligation, nor will it assume any liability, to indemnify Architect or any person, firm or entity claiming thereunder for any act or omission by Owner where such claims are protected from suit, liability, damages or costs, at law or equity, under federal or state law providing immunity therefor. The indemnification for liability, loss or expense as required and qualified by the above, includes settlements, judgments, court costs, expenses of defense and attorney fees incurred by the indemnified party in connection with a suit arising out of the agreement. Owner's obligation to indemnify, if any, shall be restricted solely to the general or professional liability insurance procured by or on behalf of Owner, and no other funds or assets of Owner shall be subject to any claim for indemnity hereunder.
32. Architect shall integrate the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") practices into project design, with a particular focus on

integrating technologies and design/material/construction elements that generate lower long-term operating expenses. Architect and engineers working on the design and construction of capital projects to design projects to meet or exceed LEED Silver standards. All projects will pursue that standard and third party certification unless it is determined that such certification cannot be done at a reasonable cost. To meet this goal, architects and engineers working on the design and construction of capital projects shall consider incorporation of the following goals into each project:

a. Maximize the incorporation of design elements and technologies to increase energy efficiency, improve indoor air quality, and reduce potable water usage.

b. Maximize the integration of renewable resources, as geothermal, solar, and wind, into new construction.

c. Manage storm water on-site through green infrastructure best practices to prevent flooding, reduce water pollution, and promote aquifer recharge.

d. Reduce solid waste generation during construction and integrate recycled content materials.

e. Protect and enhance biodiversity, restore and preserve natural habitats, wetlands and agricultural lands, and withstand and adapt to climate change effects, including sea-level rise.

f. Integrate best land use practices into project design by modeling smart growth approaches to development, including supporting walkable and cycleable communities, prioritizing infill development close to existing infrastructure, ensuring access to public transit, and reducing urban heat island effects.

33. The parties agree that this agreement shall be governed by and construed pursuant to the laws of The State of Delaware, and that the Delaware courts shall have sole and exclusive jurisdiction of any dispute arising under this agreement. Architect consents to the personal jurisdiction of the Delaware courts for any action instituted pursuant to the terms of this agreement and hereby irrevocable appoints the Delaware Secretary of State as it's agent for the acceptance of service of process.

IN WITNESS WHEREOF, the parties have set their hand and seal on this indenture on this DATE.

DELAWARE TECHNICAL AND COMMUNITY COLLEGE _____(Seal) Mark T. Brainard, President Date:	INSERT FIRM NAME _____ Name, Title Date:
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