

ATTACHMENT "A"

Owner and Architect Agreement B101

This attachment amends AIA Document B101-2007 as follows:

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

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

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

3. Amend Article 1.1 by adding the following sentence to the end of the Article:

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

4. Amend Article 2.5 by striking the second sentence in its entirety.
5. Amend Article 2.5 by striking subsection 2.5.1 through 2.5.4 and inserting the following:
 - 2.5.1 Comprehensive General Liability: \$1,000,000 and
 - 2.5.2 Medical/Professional Liability: \$1,000,000/\$3,000,000 or
 - 2.5.3 Misc. Errors or Omissions: \$1,000,000/\$3,000,000 or
 - 2.5.4 Product Liability: \$1,000,000/\$3,000,000

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

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

- 2.5.4 Automotive Liability (Bodily Injury): \$100,000/\$300,000
 - 2.5.6 Automotive Property Damage (to others): \$25,000
6. Add a new Article 2.6 which shall read as follows:

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

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

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

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

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

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

22. Amend Article 3.6.2.4 by adding the following to the end of the paragraph: "The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity."
23. Amend 3.6.4.1 by inserting the following after the first sentence: "The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents."

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

24. Amend Article 3.6.4.2 by striking the first sentence in its entirety and replacing it with the following: "In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with information given and the design concepts in the Contract Documents."
25. Amend Article 3.6.4.4 by striking "Subject to the provisions of Section 4.3," and starting the sentence with "The".

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

26. Amend Article 3.6.5.1 by striking the following at the beginning of the second sentence: "Subject to the provision of Section 4.3" and starting the sentence with "The".
27. Amend Article 3.6.6.5 by changing "one year" to "two years".
28. Amend Article 4.1 by striking the following subparagraphs from additional services as they are considered Basic Services:
 - 4.1.2 - Multiple Preliminary Drawings
 - 4.1.7 - Civil Engineering
 - 4.1.8 - Landscape Design
 - 4.1.10 - Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.
 - 4.1.11 - Detailed Cost Estimating

4.1.13 - Conformed Construction Documents

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

4.1.19 - Coordination of Owner's consultants

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

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

4.1.23 - Is a Basic Service as required in Article 3.2.5.1

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

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

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

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

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

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

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

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

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

32. Strike Article 4.3.1.5 in its entirety.

33. Strike Article 4.3.1.6 in its entirety.

34. Strike Article 4.3.1.7 in its entirety.

35. Strike Article 4.3.1.9 in its entirety.

36. Strike Article 4.3.2.1 in its entirety.

37. Amend Article 4.3.2.3 to add at the end “as outlined in Article 12 E & O policy.”

38. Strike Article 4.3.2.6 in its entirety and replace with the following: “Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of Work.”

39. Amend Article 4.3.3.1 by adding the number two before “reviews”.

40. Amend Article 4.3.3.2 by adding “the equivalent of 2 visits per month for the duration of the project.”

41. Amend Article 4.3.3.3 by adding the number two before “inspections”.

42. Amend Article 4.3.3.4 by adding the number two before “inspections”.

43. Amend Article 4.3.4 by changing “shall” to “may”.

44. Amend Article 5.2 by striking the word “shall” in the last sentence and replacing it with “may”.

45. Amend Article 5.6 by striking the last portion of the third sentence that reads “the Architect requests such services....scope of the Project” and replace with “reviewed and approved by the Owner.”

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

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

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

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

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

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

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

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

July 3, 2013