

## ATTACHMENT A

### Revisions to the Owner and Architect Agreement B101

This Attachment A amends AIA Document B101-2017 as follows:

#### **Article 1 Initial Information**

1.1.9.2 Strike in its entirety.

1.1.11.1 Add a new subsection "1.1.11.1.4 Civil Engineer."

1.2 Insert "reasonably" between "may" and "rely" in the first sentence thereof.

#### **Article 2 Architect's Responsibilities**

2.2 Strike Section 2.2 in its entirety and replace with the following:

"The Architect shall be responsible for the performance of the Architect's Services as an independent contractor and in a good and workmanlike manner (i) consistent this Agreement; (ii) consistent with the instructions, guidance and direction of the Owner; (iii) consistent with the highest prevailing applicable professional or industry standards; (iv) consistent with sound architectural practices; and (v) as expeditiously as is consistent with such professional skill and care, the orderly progress of the Project, the instructions of the Owner and this Agreement (the standards of this Section § 2.2 shall be referred to herein as the "Architect's Standard of Care")."

2.2.1 Add a new subsection 2.2.1 containing the following:

"The Architect shall exercise the Architect's Standard of Care in performing all aspects of the Architect's Services. All references in this Agreement or in the Contract Documents to the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or discovery of the Architect or reference to any similar term shall include the constructive knowledge, inference, reliance, awareness, determination, belief, observation, recognition attributed to the Architect ("constructive knowledge"). Such constructive knowledge shall include the knowledge, inference, reliance, awareness, determination, belief, observation and recognition the Architect would have obtained upon the exercise of the Architect's Standard of Care."

2.5 Strike the second sentence in its entirety.

2.5.1 through 2.5.8 Strike in their entirety and replace with the following:

##### **"2.5.1 Insurance Requirements**

- .1. Comprehensive General Liability: \$1,000,000 per occurrence and \$ 3,000,000 per aggregate and, at least, one of the next three:
- .2. Medical/Professional Liability: \$1,000,000 per occurrence and \$3,000,000 per aggregate or

.3. Misc. Errors or Omissions: \$1,000,000 per occurrence and \$3,000,000 per aggregate or

.4. Product Liability: \$1,000,000 per occurrence and \$3,000,000 per aggregate.

All architects must carry coverage listed in 2.5.1.1 and at least one of the coverages listed in 2.5.1.2 or 2.5.1.3 or 2.5.1.4, depending on the type of service or product being delivered. If the contractual service requires the transportation of State of Delaware employees, including school districts, agency clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

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

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

2.5.2 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 associated with this contract as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract."

2.6 Add a new Section 2.6 which shall read as follows:

"The Architect understands that performance of the Architect's Services will require communication with various entities involved in the completion of the Work, and the Architect will, at no additional cost to the Owner, so communicate and take all steps necessary to ensure compliance with the Conditions."

2.7 Add a new Section 2.7 which shall read as follows:

"The Architect hereby agrees, to the extent permitted by law, to indemnify and hold harmless the Owner and its officials, employees and representatives against and from any claims, suits and/or legal actions of any type by third parties, including without limitation claims for loss of or damage to property, personal or bodily injury, including death, and claims for losses of any type, and from all judgments or decrees recovered therefore and from all expenses for defending such claims, suits or legal actions, including without limitation court costs and attorney's fees, to the extent caused by the negligent acts or omissions, breaches, errors, torts or other improper unauthorized and/or unlawful acts or omissions of the Architect, its employees, agents, contractors or representatives, and/or design defects or breaches of warranty in, caused by, or related to the Project documents. The Architect shall properly correct or remedy any defects or problems caused by or related to any of the above, to the extent possible at no cost to the Owner."

### **Article 3 Scope of Architect's Basic Services**

3.1 Add the word "civil," after "mechanical," and before "and".

3.1.2 Insert the word "reasonably" in between the words "to" and "rely" in the second sentence thereof.

3.1.4 Strike "the Architect's written approval" and replace it with "prior notice to the Architect."

3.1.7 Add a new subsection 3.1.7 to read as follows:

"Basic Services shall include:

3.1.7.1 - Multiple preliminary drawings

3.1.7.2 - Civil engineering

3.1.7.3 - Landscape design

3.1.7.4 - Detailed cost estimating

3.1.7.5 - Conformed documents for Construction

3.1.7.6 - As-designed record drawings to be complied with in the following manner. 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 both PDF/A standard (ISO 19005-1:2005) format and .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.

3.1.7.7 - As constructed record drawings

3.1.7.8 - Architects coordination of the Owner's consultants

3.1.7.9 - Telecommunications/data design - Note: 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.

3.1.7.10 - Commissioning Note: Incorporation of design and review comments from Owner's commissioning agent, is considered a Basic Service

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

3.2.1.1 Add new subsection 3.2.1.1 to read as follows:

"The Architect shall perform life cycle cost analysis as required by 29 Del. C. §6909A prior to a preliminary evaluation of Owner's requirements to be submitted for Owner's review at the pre-Schematic Phase. Owner approval of the life cycle cost analysis shall occur during Schematic Phase."

3.2.5 Add in the first sentence "the mutually agreed-upon program, schedule and construction budget requirement as well as" after "Based on" and before "the Owner's approval". Add in the second sentence", outline specifications," after "drawings".

3.2.5.2 Add the following sentence at the end of the subsection:

"The Architect shall perform life cycle cost analysis as required by 29 Del. C. §6909A."

3.2.6 Strike "prepared in accordance with Section 6.3."

3.3.1 Strike the word "outline" before "specifications".

3.4.3 Add the following sentence to the end of the subsection:

"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."

3.4.4 Strike in its entirety and replace with the following:

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

3.4.5 Add the following sentence after the last sentence:

"After Owner's review, the Architect shall incorporate Owner's comments into final Construction Documents."

3.4.6 Add a new subsection 3.4.6 which shall read as follows:

"Any design errors or omissions in the Construction Documents furnished by the Architect will be promptly corrected by the Architect at no cost to the Owner, and the Architect will indemnify, hold harmless, and defend the Owner from all third party claims, suits and damages, if any, resulting from the Architect's negligent acts, errors or omissions. The Owner's approval, acceptance, use of, or payment for, all or any part of the Architect's Services hereunder or of the Project itself shall in no way alter the Architect's obligations or the Owner's rights hereunder. If, due to the Architect's negligence, omission or failure to perform in accordance with the terms of this Agreement, a required item or component of the Project is omitted from the Construction Documents or if, due to such negligence, omission or failure, the Construction Documents must be modified through a Change Order, the Architect shall be responsible for paying the cost required to add or modify such item or component to the Project, excluding the reasonable cost that would have been incurred by the Owner at the time of the original bid for such Project item or component to the extent that such item or component would have been required and included in the original Construction Documents. In no event shall the Owner pay more than once for an item or component of the Project. "

3.5.1 Insert in the first and second sentences "if requested" before "the Architect". In the second sentence, strike "and," before (4) and add a new subsection after (4) which shall read as follows:

"(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."

3.5.1 Add the following sentence at the end of the subsection to read as follows:

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

3.5.2.3 Strike", as an Additional Service," after "the Architect shall".

3.5.3 Strike the subsection in its entirety.

3.6.1.1 Add at the end of the first sentence "as well as the Owner's Supplementary General Conditions and the Owner's General Requirements."

3.6.1.2 Delete the last sentence thereof and replace it with the following:

"The Architect shall be responsible for the Architect's negligent acts or omissions and for the negligent acts or omissions of the Architect's consultants and subcontractors and for the failure of the Architect, and the Architect's consultants and subcontractors to comply with the requirements of this Agreement, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of any other persons or entities performing portions of the Work, including the Contractor and the Contractor's subcontractors."

3.6.1.3 Strike the subsection in its entirety and replace 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 or the Owner's receipt and approval of final closeout documents."

3.6.2.1 Add the following sentence at the end of the paragraph:

"The Architect shall keep the Owner informed of the progress and quality of the Work by a written report each month until time of Substantial Completion."

3.6.2.2 Insert the phrase "Upon the approval of the Owner," before the phrase "The Architect" at the beginning of the first sentence.

3.6.2.4 Add the following sentence 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."

3.6.4.1 Insert the following sentence 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."

3.6.4.1 Insert the following to the end of the last sentence of the subsection: ", but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner."

3.6.4.2 Strike the first sentence in its entirety and replace 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."

3.6.4.4 Strike "Subject to Section 4.2," and start the sentence with "The Architect".

3.6.4.4 Add to the end of the fourth sentence "as to cause no delay in the work" immediately after "reasonable promptness".

3.6.5.1 Strike the following at the beginning of the second sentence: "Subject to Section 4.2" and start the sentence with "The Architect".

3.6.5.3 Add a new subsection 3.6.5.3 to read as follows:

"Where changes are proposed in which the contractor identifies that additional cost or time may be merited, whether initiated by the Owner or Contractor, the Architect shall review the associated contractor proposals for compliance with the Contract Documents, the intended scope of the direction provided, and to determine whether costs proposed by the contractor associated with the change are generally equitable."

3.6.6.5 Add "and two years" after "one year".

3.6.6.6 Add a new subsection 3.6.6.6 which shall read as follows:

"Subsequent to meetings with the Owner as indicated in 3.6.6.5, the Architect shall conduct a walkthrough with the Owner and Contractor to review any open warranty issues for the purpose of developing a final list of items to be corrected prior to the expiration of the final warranty period."

#### **Article 4 Supplemental and Additional Services**

4.1 Strike the following subparagraphs from Additional Services as they are considered Basic Services as defined in Article 3 above, or amend as indicated:

4.1.1.2 - Multiple preliminary drawings

4.1.1.8 - Civil engineering

4.1.1.9 - Landscape design

4.1.1.12 - Detailed cost estimating beyond that required in Section 6.3

4.1.1.14 - Conformed documents for construction

4.1.1.15 - As-designed records drawings

4.1.1.16 - As constructed record drawings

4.1.1.20 - Architects coordination of the Owner's consultants

4.1.1.21 - Telecommunications/data design

4.1.1.23 - Commissioning

4.1.1.27 - Historic preservation Note: If required by local government including municipalities, Historic Preservation services will be considered Basic Services.

4.2.1.1 Strike in its entirety and replace with the following:

"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."

4.2.1.12 Add new subsection 4.2.1.12 to read as follows:

"Making revisions in drawings, specifications, or other documents, when such revisions are inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget"

4.2.1.5 Strike in its entirety.

4.2.1.7 Strike in its entirety.

4.2.1.9 Strike in its entirety.

4.2.2 Strike in its entirety, including each of the associated subsections.

4.2.3.1 Add the number "2" in the parentheses before "reviews".

4.2.3.2 Add the number "1" in the parentheses; and insert "bi-weekly" before "during construction".

4.2.3.3 Add the number "2" in the parentheses before "inspections".

4.2.3.3 Add at the end of the sentence "as outlined in Section 12.3 E & O policy."

4.2.3.4 Add the number "2" in the parentheses before "inspections".

## **Article 5      Owner's Responsibilities**

5.2      Strike the word "shall" in the last sentence and replace it with "may".

5.8      Add 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 4 of this Agreement."

5.10 Add the following to the end of the section:

"These services are not provided directly to the Architect or for the Architect's benefit."

5.11 Add the following at the end of the sentence after "Service":

"provided, however, that the Owner shall have no obligation to investigate for the purpose of becoming aware of faults, defects, errors, omissions, or inconsistencies."

5.12 Add a fourth sentence to read as follows: "The Architect shall prepare and distribute meeting minutes within 3 business days of the meeting, during the design and construction phases of the Project."

5.15 Strike in its entirety.

## **Article 6 Cost of the Work**

6.1 Strike the second sentence in its entirety.

6.2 Insert "best" before "judgment" in the second sentence. And, strike the remainder of the section in its entirety.

6.3 Strike 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."

6.5 Strike the section in its entirety and replace with the following:

"If at any time during any phase of the Architect's Services the Architect's estimate of the Cost of the Work deviates from the Cost of the Work most recently approved by the Owner, the Owner may terminate this Agreement, such termination being a termination for cause. If the Owner does not so terminate the Agreement upon such deviation, the Architect shall, upon the Owner's request, provide a written explanation of the deviation and propose design changes that would bring the Project cost within the Cost of the Work."

6.7 Strike 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."

## **Article 7 Copyrights and Licenses**

Article 7 Strike Article 7 in its entirety and replace 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 in connection with different projects only to the extent the Architect and/or engineer has not reviewed and approved such different use. 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."

## **Article 8 Claims and Disputes**

8.1.1 Strike the last sentence in its entirety.

8.1.2 Strike in its entirety.

8.1.3 Strike in its entirety.

8.2.1 Strike in its entirety.

8.2.2 Strike in its entirety and replace with the following:

"The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation. A request for mediation shall be made in writing and delivered to the other party to this Agreement. The request may be made concurrently with the filing of a complaint."

8.2.4 Check the box marked "Other".

8.2.4 Strike the sentence following "Other: (Specify)" and replace with the following:  
"The choice is left to the parties."

8.3 Strike the section in its entirety, including all subsections.

## **Article 9 Termination or Suspension**

9.3 Add "or for funding purposes" to the first sentence after "fault of the Architect"

9.6 Strike the following from the end of the first sentence: "Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's

termination of consultant agreements."

9.7 Strike in its entirety and replace with the following:

"In the event of a termination for convenience or a suspension of the Agreement, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Architect shall be entitled to receive compensation for any satisfactory work completed that is supported by documentation, which is usable to the State and is work within the Phase that was being performed at the time of the termination for convenience or suspension..

9.8 Strike in its entirety.

9.9 Strike in its entirety

#### **Article 10 Miscellaneous Provisions**

10.1 Strike the following from the end of the first sentence: "excluding that jurisdiction's choice of law rules."

10.1 Strike the second sentence in its entirety.

10.2 Add to the following to the end of the sentence: "as amended by the Owner's General Requirements and the Owner's Supplemental Conditions."

10.7 Add at the beginning of the paragraph the following: "After Owner's approval of a request to use any photographic or architectural representations of the design,"

10.8 Add the following to the beginning of the first sentence: "Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100,".

10.8.2 Add a new subsection 10.8.2 which shall read as follows:

"It is understood that the definition of the terms "confidential" and "business proprietary" as used here will be determined by the application of the State of Delaware Freedom of Information Act, and that this Contract and records generated or received by either party pursuant to this Contract are subject to the State of Delaware Freedom of Information Act and may, therefore, be open to the public upon request."

#### **Article 11 Compensation**

11.2 Add the following after "Section 4.1.1": "as amended by Owner's Attachment A."

11.3 Add the following after "Section 4.2": "as amended by Owner's Attachment A."

11.4 Add the following after "Compensation for" "previously approved"

11.6 Strike in its entirety.

11.6.1 Renumber 11.6.1 to 11.6 and add the following sentence at the end: "Design Work for Alternates may be included for consideration in the cost of work."

11.6.1 Add a new subsection 11.6.1 that shall read as follows:

"The Architect is permitted to bill only based on the approved Purchase Order. If the Cost of Work increases, the Architect may not bill on any increase until such time as it has been approved and added to the Purchase Order for the Project. Any billing that included any increase not in compliance with this subsection will be considered a breach of this Agreement."

11.7 Strike the second sentence in its entirety and replace it with the following: "The rates may be adjusted subject to negotiation."

11.8.1 Insert "Unless prohibited by Paragraph 2.6," at the beginning of the sentence before "Reimbursable".

11.8.1.1 Strike the phrase "out-of-town" and replace it with "out-of-state". (The State only reimburses "out-of-state" transportation and living expenses directly related to a project.)

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

11.8.1.2 Strike it in its entirety.

11.8.1.8 Strike it in its entirety.

11.8.1.9 Strike it in its entirety.

11.8.1.12 Strike it in its entirety.

11.9 Architect's Insurance. Strike section in its entirety.

11.10.1 Strike in its entirety.

11.10.1.1 Strike in its entirety.

11.10.1.2 Strike in its entirety and replace with the following:

"If a Sustainability Certification is part of the Sustainable Objective, the Architect may submit an invoice detailing necessary registration fees and other fees payable to the Certifying Authority and necessary to archive the Sustainability Certification in advance of any required payment to any Certifying Authority."

11.10.2.1 Strike 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."

11.10.2.2 Strike in its entirety.

## **Article 12 Special Terms and Conditions**

12.1 Add a new Section 12.1 that shall read as follows:

"By signing the B101-2017 as revised, the Architect hereby represents that (a) it has not employed or retained any company or person, working primarily for the Architect, to solicit or secure this agreement by improperly influencing the agency or any of its employees in any

professional service procurement process; (b) it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for the Architect, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement; and (c) it understands that for the violation of this provision, the Owner shall have the right to terminate the agreement without liability and, at its discretion , to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration."

12.2 Add a new Section 12.2 that shall read as follows:

"By signing the B101-2017 as revised, the Architect hereby represents that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Architect 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 Architect 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."

12.3 Add a new Section 12.3 that shall read as follows:

"The Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy applies to this Agreement."

### **Article 13 Scope of the Agreement**

13.2 Strike in its entirety and replace with the following:

"All attachments including Owner's Attachment A and all related exhibits."

REV December 2, 2020