

NEW YORK STATE HOMELESS HOUSING AND ASSISTANCE CORPORATION
RIDER B
for use with
AIA B102-2007: Standard Form of Agreement Between Owner and Architect
and
B201-2007: Standard Form of Architect's Services

This Rider is attached to and made a part of the STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ARCHITECT (the "Agreement") for the Architect's Services and Construction Contract Administration of City of , New York (the "Project"). The parties hereto agree that the following covenants, terms, and conditions shall be part of and shall modify or supplement the Agreement, and that in the event of any inconsistency or conflict between the covenants, terms, and conditions of the Agreement and this Rider, the covenants, terms, and conditions of this Rider shall control and prevail.

AIA DOCUMENT B102-2007

Article 1 ARCHITECT'S RESPONSIBILITIES

Modify **Article 1** by adding the following Sections:

§ **1.6** Consultant Services: The Architect may propose and engage Consultants, hereinafter referred to as Approved Design Consultants, to perform portions of the Services required under this Agreement. The Owner, HHAC and DASNY retain the right to disapprove the proposed Consultant and, in such event, the Architect shall propose another Consultant for the portion of the required services. The Architect shall be responsible to the Owner, HHAC and DASNY for the timely and efficient completion of all Services performed by said Approved Design Consultants.

§ **1.7** Prior to execution of an agreement between the Architect and proposed Consultant, the Architect shall submit a copy of the proposed Consultant agreement to the Owner, HHAC and DASNY for approval. The Owner shall not be liable for payment to the Architect for any cost incurred under any Consultant agreements unless said approvals are obtained.

§ **1.8** The Architect shall pay its Approved Design Consultants the full amount due them from the proportionate share of each requisition for payment submitted by the Architect and paid by the Owner. The Architect shall make said payment no later than seven (7) calendar days from receipt of payment from the Owner.

Article 3 COPYRIGHTS AND LICENSES

Modify entire Section **3.3** to read as follows:

§ **3.3** 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 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 Services solely and exclusively for use in performing services for the Project. The Owner has the Architect's permission, by execution of this Agreement, to use the Drawings, Specifications, and other documents to complete this project in the event that this Agreement is terminated by either party. The license is further extended to HHAC for the purposes of completing the project pursuant to the terms of the Owner's contract with HHAC. If this occurs, the Architect is to be appropriately compensated for the work completed upon approval by Owner, HHAC and DASNY.

Article 4 CLAIMS AND DISPUTES

Modify entire Section **4.1** to read as follows:

§ 4.1 Notwithstanding any provision in this Agreement to the contrary, disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, nor to mediation, but must instead be heard in a court of competent jurisdiction of the State of New York.

Also modify **Article 4** by deleting the following Sections in their entirety:

§ 4.1 GENERAL: § 4.1.1 § 4.1.2, § 4.1.3,
§ 4.2 MEDIATION: § 4.2.1, § 4.2.2, § 4.2.3, § 4.2.4,
§ 4.3 ARBITRATION: § 4.3.1, § 4.3.1.1, § 4.3.2, § 4.3.3
§ 4.3.4 CONSOLIDATION OR JOINER: § 4.3.4.1, § 4.3.4.2, § 4.3.4.3

Article 5 TERMINATION OR SUSPENSION

Modify Section **5.3** in its entirety to read as follows:

§5.3 If the owner suspends the Project after the Construction Notice To Proceed has been issued, for more than one hundred and twenty (120) cumulative days, for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving no less than seven days' written notice.

Modify Section **5.6** in its entirety to read as follows:

§5.6 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, as approved by the Owner, HHAC and DASNY.

Also modify Section **5** by deleting Section **5.7** in its entirety.

Article 6 COMPENSATION

Modify **Article 6** by deleting the following Sections:

- § 6.2,
- § 6.2.1
- § 6.2.2
- § 6.3
- § 6.4.1

Also modify **Article 6** by modifying Section **6.4.2** in its entirety to read as follows:

§ 6.4.2 Payments are made upon approval by Owner, HHAC and DASNY of each phase of submissions and by percentage of work completed during Construction.

Also modify **Article 6** by adding Section **6.5** in its entirety to read as follows:

§ 6.5 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:	Ten percent (10%)
Design Development Phase:	Twenty percent (20%)
Construction Documents Phase:	Thirty-Five percent (35%)
Bidding and Negotiation Phase:	Five percent (5%)
Construction Phase:	Twenty Five percent (25%)
Upon Issuance of the Final C of O	Five percent (5%)
Total Basic Compensation	One Hundred percent (100%)

Article 7 MISCELLANEOUS PROVISIONS

Modify **Article 7** by amending Section **7.1** to read as follows:

§ 7.1 This Agreement shall be governed by the Laws of the State of New York.

Also modify **Article 7** by modifying Section **7.3** to read as follows:

§ 7.3 The Owner and Architect respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in this Agreement. The Architect shall not assign this Agreement as a whole or in part without the written consent of the Owner. If the Architect attempts to make such an assignment without such consent, said Architect shall nevertheless remain legally responsible for all the obligations under this Agreement.

Article 8 SPECIAL TERMS AND CONDITIONS

Modify **Article 8** by adding new Section **8.1** to read as follows:

§ 8.1 The cost of Special Inspections, if required, shall be borne by the Owner, including structural stability and integrity, fire stopping, and mechanical ventilation.

Article 9 SCOPE OF AGREEMENT

Modify **Article 9** by amending Section **9.2.3** to read as follows:

§ 9.2.3 Other documents:

These documents shall include Rider A “Rider to Agreement Between Owner and Architect” and Rider B to “AIA B102-2007 Standard Form Agreement Between Owner and Architect” and “AIA B201-2007 Standard Form of Architect’s Services”.

AIA DOCUMENT B201-2007

Article 1 INITIAL INFORMATION

Modify **Article 1** by amending Section **1.1** to read as follows:

§ 1.1 The Architect shall provide professional services as outlined in the herein provided “Exhibit A”.

Article 2 SCOPE OF ARCHITECT’S BASIC SERVICES

Modify **Article 2** by adding the following new Sections:

§ 2.1.7 The following services shall be provided within Basic Services:

§ 2.1.7.1 Prepare and submit necessary drawings and any other documents or applications with the local municipal authorities for approvals, in order to obtain a Building Permit and Certificate of Occupancy.

§ 2.1.7.2 Prepare documents for review by funding and approving agencies and authorities at each stage of design and before bidding.

§ 2.1.7.3 Prepare a zoning and code analysis of the building, both existing and proposed.

§ 2.1.7.4 All printing costs necessary for the submission of documents to the Owner, DASNY, HHAC, State Historic Preservation Office (SHPO) and all funding and approving agencies and authorities for review.

§ 2.1.7.5 The cost of normal postage, telephone communication and transportation between the Architect’s office and the Owner’s office and the project site and all funding and approving agencies or authorities.

§ 2.1.7.6 Assist the Owner in pre-qualifying prospective contractors.

§ 2.1.7.7 Issue all Bid Documents, evaluate bids and assist with contract negotiations.

§ 2.1.7.8 The Architect shall conduct weekly job meetings at the site and shall record and distribute minutes within three working days. By means of weekly visits, job meetings

minutes and telephone calls, and by means of visits by engineering sub-consultants at the appropriate times, the Architect shall endeavor to guard the Owner against deficiencies in the work of the Contractor. The Architect shall make additional site visits as required by the progress of the work and/or to resolve conflicts and problems.

§ **2.1.7.9** In connection with Change Orders and Construction Change Directives, prepare Drawings, Specifications and other documents and supporting data and evaluate the Contractor's proposals.

§ **2.1.7.10** Provide services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting there from.

§ **2.1.7.11** Provide services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Architect is party thereto.

§ **2.1.7.12** Prepare documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

§ **2.1.7.13** Provide analyses of the Owner's needs and the programming requirements of the Project.

§ **2.1.7.14** Provide services to verify the accuracy of drawings or other information furnished by the Owner.

§ **2.1.7.15** Error and Omissions: The Architect agrees that the cost to the Architect for corrections to the Contract Documents, necessitated by design errors or omissions, shall be part of the Architect's fee for the Basic Scope of Services as established herein.

§ **2.1.7.16** Time of Completion: The Architect shall perform services as expeditiously as is consistent with professional skill and care and the orderly progress of the work. The Architect shall include allowances for periods of time required for the Owner, HHAC, DASNY or other HHAC approved Architectural Consultant's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. The schedule, when approved, shall not be exceeded by the Architect, except for reasonable cause.

Also modify **Article 2** by modifying Section 2.6.1.3 to read:

§2.6.1.3 Subject to Section 3.3, the Architect's responsibility to provide Construction Phase services commences with the award of the Contract for Construction and terminates on the date the Project secures the Final Certificate of Occupancy.

Article 2 is also modified by adding the following new Section **2.6.6.6** to read as follows:

§ **2.6.6.6** Architectural Services will be considered completed upon the following:

- Final Certificate of Occupancy is issued; and
- All post construction activities and deliverables are completed.

Article 3 ADDITIONAL SERVICES

Modify **Article 3** by deleting the following Sections:

- § 3.1.3
- § 3.1.4
- § 3.1.11
- § 3.1.12
- § 3.1.14
- § 3.1.15

Also modify **Article 3** by adding the following new Sections:

§ 3.2.1 The following services shall not be considered Additional Services, but shall be included in Basic Services pursuant Sections 2.1.7 through 2.1.7.16 of this Rider:

§ 3.2.1.1 Measured Drawings: Measuring and drawing up existing conditions and preparation of demolition drawings;

§ 3.2.1.2 Existing facilities' surveys;

§ 3.2.1.3 Detailed cost estimating;

§ 3.2.1.4 On-site project representation;

§ 3.2.1.5 As-designed record drawings;

§ 3.2.1.6 As-constructed record drawings.

Also modify **Article 3** by deleting Sections 3.3.1.6, through 3.3.1.9.

Also modify **Article 3** by deleting Sections 3.3.2, 3.3.3 and 3.3.4.

Article 4 OWNER'S RESPONSIBILITIES

Modify **Section 4.4** to read as follows:

§4.4 Except as otherwise provided in this Agreement, 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.

Article 5 COST OF WORK

Modify **Article 5** by deleting Section 5.4.

Also modify **Article 5** by adding the following new Section:

§ 5.5.1 Cost Control: The Architect’s prepared plans and specifications shall not result in a construction estimate in excess of the established budget of _____, without construction contingency. In the event it is discovered during any Phase that the estimated cost of the work is in excess of the established budget or the bids received are in excess of the established budget, the Architect shall revise, at its own cost and expense, all or any part of the plans and specifications necessary to bring the construction cost within the established budget.

Article 6 COMPENSATION

Modify Section 6.5 to read as follows:

§ 6.5 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:	Ten percent (10%)
Design Development Phase:	Twenty percent (20%)
Construction Documents Phase:	Thirty-Five percent (35%)
Bidding and Negotiation Phase:	Five percent (5%)
Construction Phase:	Twenty-five percent (25%)
Upon Issuance of the Final C of O	Five percent (5%)
Total Basic Compensation	One Hundred percent (100%)

Also modify Article 6 by adding a new sentence to the end of Section 6.7 as follows:

§ 6.7 “Any increase in billing rates under this Article must be pre-approved by HHAC.”

Owner (signature)

Architect (signature)

Date

Date