

SECOND AMENDMENT TO AIA B101 – 2007 AGREEMENT BETWEEN OWNER AND ARCHITECT

Multnomah County Health Headquarters Building County Contract No. 4400001552

THIS SECOND AMENDMENT TO AIA B101 – 2007 AGREEMENT BETWEEN OWNER AND ARCHITECT is made as of the ____ day of _____, 2015 (“**Second Amendment**”) between **MULTNOMAH COUNTY**, a political subdivision of the State of Oregon (“**County**” or “**Owner**”) and **ZIMMER GUNSUL FRASCA ARCHITECTS, LLP**, an Oregon limited liability partnership (“**Architect**”). Owner and Architect may be referred to jointly in this Second Amendment as the “Parties” and individually as a “Party.”

RECITALS:

1. Effective May 24, 2012, County and Home Forward, formerly the Housing Authority of Portland, an Oregon municipal corporation (“**Home Forward**”), entered into an intergovernmental agreement, which was amended on January 4, 2013 (collectively, the “**IGA**”) for the development of a new building to house the Multnomah County Health Department administration and clinical services functions (the “**Project**”).
2. The Project is planned for construction on a 17,500-square foot site located in northwest Portland, Oregon, generally bounded by NW Sixth Avenue, NW Hoyt Street, and NW Irving Street, comprising the vacant, easterly portion of Block U, adjacent to the recently opened Bud Clark Commons, and further described as Lots 1, 4, 5 and 8, Block U, CITY OF PORTLAND, Multnomah County, Oregon (the “**Property**”).
3. Pursuant to the IGA and with County’s approval and direction, Home Forward, as owner, and Architect entered into an AIA B101 – 2007 Standard Form of Agreement, for the Project, on December 19, 2012 (the “**Architectural Contract**”).
4. Beginning June 30, 2014, County, Home Forward and Architect evaluated the estimated Project costs, which were substantially higher than 2012 estimates; the design and programming constraints on the Property as then zoned; and alternate sites for County Health Department programs that could not be accommodated in the then-permitted building envelope on the Property.
5. On January 23, 2015, Home Forward and Multnomah County entered into a Termination and Release Agreement pertaining to the IGA (the “**Termination**”), and an Assignment and Assumption of Architectural and Construction Agreements, under which Home Forward assigned and Multnomah County assumed the owner’s rights and obligations under the Architectural Contract, pursuant to the terms and conditions of the Termination.
6. Home Forward delivered written notice of the Assignment and Assumption of the Architectural Contract to Architect on February 4, 2015.
7. The Termination permitted County to reevaluate the entire Project strategy and file an application with the City of Portland for zoning amendments to increase the base height limit on the Property from 75 feet to 105 feet and to make the Property eligible for FAR bonuses.
8. The City of Portland Planning and Sustainability Commission recommended approval of the zoning amendments following a public hearing on April 28, 2015, and the City Council approved the amendments on June 17, 2015. The combined effect of the amendments allows County to relocate substantially all of the Health Department programs from the McCoy Building to the Property, consistent with the original Project goals.
9. On July 9, 2015, County, as Owner, and Architect entered into Change Order #1, increasing the Contract Sum by \$135,000.00 to complete additional work and items identified by Architect in its proposal dated June

15, 2015, and agreeing to identify the Architectural Contract as County Contract No. 4400001552. Change Order #1 was incorporated into a First Amendment to the County Contract dated July 9, 2015.

10. Owner and Architect desire to amend the Architectural Contract to address and enable expansion of the Project's program and design scope permitted by the zoning amendments and to update the proposed schedule and budget.

NOW, THEREFORE, in consideration of the foregoing Recitals, which shall be considered contractual in nature and effect, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend the Architectural Contract as follows:

AGREEMENTS:

1. All capitalized terms and phrases in this Second Amendment shall retain their meanings as defined in the Architectural Contract, unless otherwise defined herein. Text added by this Second Amendment shall be underlined and text deleted shall be stricken.
2. The Table of Articles on page 2 is modified, after Article 13, to read:

"14 PUBLIC CONTRACT PROVISIONS

"LIST OF EXHIBITS AND ATTACHMENTS

EXHIBIT A: INITIAL INFORMATION

EXHIBIT B: INSURANCE REQUIREMENTS FOR ARCHITECT AND SUBCONSULTANTS

EXHIBIT C: COMPENSATION AND HOURLY RATES OF ARCHITECT AND SUBCONSULTANTS

EXHIBIT D: SCOPE OF BASIC SERVICES

EXHIBIT E: SCOPE OF ADDITIONAL SERVICES

EXHIBIT F: PROJECT SCHEDULE

EXHIBIT G: [DELETED.]INTERGOVERNMENTAL AGREEMENT BETWEEN MULTNOMAH COUNTY AND HOME FORWARD

ATTACHMENT 1: FAC-1 AMENDED PROJECT PLAN NOVEMBER 2015

ATTACHMENT 2: GEOTECHNICAL REPORT

ATTACHMENT 3: ENVIRONMENTAL REPORTS PACKAGE

ATTACHMENT 4: MULTNOMAH COUNTY FACILITIES SPECIFICATIONS STANDARDS REVISED APRIL 2015

3. Section 1.2 is modified, to read:

"§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Anticipated commencement of construction date:

_____ [to be determined] ~~June 2014~~

- .2 Anticipated Substantial Completion date:

_____ [to be determined] ~~December 2015~~

4. Section 2.3 is modified, to read:

“§ 2.3 The Architect has selected Lee Kerns to serve as~~shall identify a~~ Project Manager authorized to act on behalf of Architect with respect to the Project. The Project Manager shall not be replaced without prior written approval of Owner.”

5. Section 2.8 is modified, to read:

“§ 2.8 Compliance with Laws. Architect shall comply with any and all laws, codes, and regulations applicable to Architect's services. Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project. Architect's Instruments of Service (and in particular the Construction Documents produced by Architect) and the Work contemplated thereby (if executed in general accordance with the Instruments of Service) shall, consistent with the Standard of Care, comply with all applicable laws, codes, ordinances, rules, regulations, interpretation and requirements of federal, state and local authorities and agencies which are in effect at the time such Instruments of Service are submitted for action by such governmental authorities or agencies or which are known to be enacted or placed in effect on or prior to use or occupancy of the Project. All designs shall provide for adequate construction tolerances to permit construction of the Project in accordance with the foregoing requirements. To the extent there is any instance of inconsistency between the applicable foregoing federal, state or local laws, Architect shall address that instance of inconsistency by designing the Project to conform to the specific requirements under the foregoing laws.” ~~that provide the greatest accessibility for persons with disabilities.~~

6. Section 3.1.2 is modified, to read:

“§ 3.1.2 The Architect shall coordinate its services with those services provided by the Architect's Consultants, as well as the Owner and the Owner's consultants. The Architect shall be entitled to reasonably 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.”

7. Section 3.2.1 is modified, to read:

“§ 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. The Architect shall assist Contractor, Owner's Representative and Owner in the preparation of a FAC-1 Amended Project Plan as the deliverable under Change Order #1 to the Architectural Contract. Upon completion by Architect, Contractor and Owner's Representative, and approval by Owner, the FAC-1 Amended Project Plan will be attached hereto as Attachment 1 and made a part hereof.”

8. Section 3.4.1 is modified, to read:

“§ 3.4.1 Based on the Owner's approval of the FAC-1 Amended Project Plan and 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 FAC-1 Amended Project Plan and 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.”

9. Section 3.5.3 is modified, to read:

~~“§ 3.5.3 During the development of the Construction Documents, the Architect shall assist Owner and Contractor in the development and preparation of 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, as previously negotiated by Owner and Contractor, and Specifications and may include bidding requirements and sample forms.”~~

10. Section 3.7.5.1 is modified, to read:

~~“§ 3.7.5.1 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, by issuance of an Architect's Supplemental Instruction (ASI). The Architect shall prepare support documentation for Construction Change Directives and Change Orders, in coordination with the Owner's Representative, for the Owner's approval and execution in accordance with the Contract Documents and the Project construction administration plan; the Contractor will prepare Change Orders. The Architect also shall prepare and issue Modifications of Drawings and Specifications incorporated into or referenced in Change Orders, Construction Change Directives and orders for minor changes in the Work. The Architect shall assist and advise the Owner in evaluating proposals for changes in the Work.”~~

11. Section 4.3.2 is modified, to read:

~~“§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall notify the Owner with reasonable promptness of the need for the following Additional Services and shall explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of any Additional 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 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or~~
- ~~.4 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 calendar 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.” Substantial Completion is currently projected for the first quarter of 2016.~~

12. Section 5.1 is modified, to read:

~~“§ 5.1 The Owner and Architect shall work together to determine requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, construction schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.” Within 15 business 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.~~

13. Section 5.3 is modified, to read:

~~“§ 5.3 The Owner has identified Brett Taute, as the Owner's Project Manager, and Steve Cruzen, of Shiels Obletz Johnsen, Inc., as the Owner's Representative, each of whom is 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.~~

14. Section 5.7 is modified, to read:

“§ 5.7 The Owner shall, at Owner's expense, contract directly with independent consultants to furnish tests, inspections and reports that the Owner is required to furnish by applicable law or the Contract Documents, which may but do not necessarily include structural, geotechnical field observation, soils tests ~~mechanical, and chemical tests~~, tests for air and water pollution, and tests for hazardous materials.
15. A new Section 5.8 is added, to read:

“Within 15 business 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.”
16. Section 5.10 is modified, to read:

“§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate directly with the Architect and Contractor ~~and the Consultants through the Architect~~ about matters arising out of or relating to the Construction Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. Nothing in this Section 5.10 shall be interpreted to prevent or bar the Owner from communicating directly with the Contractor regarding any subject that the Owner reasonably desires to keep confidential between the Owner and Contractor and others involved in such communications.”
17. Section 10.10.1 is modified, to read:

“§ 10.10 Notices. All notices given under this Agreement shall be in writing and shall be deemed properly given when delivered in person, delivered by commercial messenger or courier that maintains records of deliveries, or received by e-mail, as follows:

.1 If to the Owner:

Multnomah County ~~Home Forward~~
501 SE Hawthorne Blvd ~~435 SW Ash Street, 5th Floor~~
Portland OR ~~97214~~ ~~97209~~
Attn: Brett Taute, Project Manager ~~Julie Livingston~~
Telephone: ~~503.988.3284~~ ~~503.802.8424~~
Email: brett.t.taute@multco.us ~~julie.livingston@homeforward.org~~
18. Section 11.1 is modified, to read:

“§ 11.1 For the Basic Services described under Article 3, the Owner shall compensate the Architect as specified in by paying the stipulated sum (lump sum) of two million, five hundred and twenty six thousand dollars (\$2,526,000.00). See Exhibit “C” – Compensation and Hourly Rates of Architect and Consultants for detail related to this stipulated sum.
19. Section 11.3 is modified, to read:

“§ 11.3 For Additional Services that are performed by the Architect and the Consultants during the course of the Project, under Section 4.3 or otherwise, the Owner shall compensate the Architect utilizing the hourly rates as provided in Exhibit C.” ~~Reasonable annual adjustments to these hourly rates will be considered by the Owner, but any adjustments to hourly rates must be agreed to by Owner and incorporated by written amendment.~~
20. Section 11.5 is deleted.
21. Section 13.2 is modified, to read:

"§ 13.2 This Agreement is comprised of the following documents listed below:

- .1** AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect, as modified;
- .2** [Intentionally deleted.]
- .3** Other documents, Exhibits A, C, D, E and F shall be replaced by revised Exhibits and 4 Attachments attached to this Second Amendment and made a part hereof and Exhibit G shall be deleted:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Revised Exhibit A: Initial Information
Exhibit B: Insurance of Architect and Consultants
Revised Exhibit C: Compensation and Hourly Rates of Architect and Consultants
Revised Exhibit D: Scope of Basic Services
Revised Exhibit E: Scope of Additional Services
Revised Exhibit F: Project Schedule
Exhibit G: ~~Intergovernmental Agreement Between Multnomah County and Home Forward~~
~~[Deleted]~~
Attachment 1: FAC-1 Amended Project Plan November 2015
Attachment 2: Geotechnical Report
Attachment 3: Environmental Reports Package
Attachment 4: Multnomah County Facilities Specifications Standards Revised April 2015

22. Section 14.1 is modified, to read:

"§ 14.1 The Public Contracting Code and ~~County's Home Forward's~~ Public Contracting Rules contain certain requirements for public contracts, including but not limited to certain required contract provisions. The required contract provisions are contained in this Article 14, and Owner and Architect agree to comply with all requirements of ORS chapters 279A, 279B and 279C; ~~County's Home Forward's~~ Public Contracting Rules; and other Oregon laws whether, or not such provisions are included in ~~this Section 1.3.7.8~~ or excised from this Article 14 or its subsections."

23. Except as expressly modified by this Second Amendment, the parties agree and acknowledge that the Architectural Contract is and remains in full force and effect and binding on the parties.
24. This Second Amendment may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on both parties, notwithstanding that both parties are not signatories to the same counterpart. Each copy of this Second Amendment so executed shall constitute an original. This Second Amendment may not be modified except by a writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto execute this Second Amendment effective as of the date first set forth above.

OWNER:
MULTNOMAH COUNTY, a political
subdivision of the State of Oregon

By: _____
Deborah Kafoury,
Chair

ARCHITECT:
ZIMMER GUNSUL FRASCA ARCHITECTS, LLP,
an Oregon limited liability partnership

By: _____
Name: _____
Title: _____

Reviewed:
JENNY M. MADKOUR, COUNTY
ATTORNEY FOR MULTNOMAH
COUNTY
By: _____

Kenneth M. Elliott, Assistant
County Attorney

Revised EXHIBIT "A"
Initial Information
[to be attached]

Revised EXHIBIT "C"

Compensation and Hourly Rates Of Architect and Subconsultants
[to be attached]

Revised EXHIBIT “D”
Scope of Basic Services
[to be attached]

Revised EXHIBIT “E”
Scope of Additional Services
[to be attached]

Revised EXHIBIT “F”
Project Schedule
[to be attached]

ATTACHMENT 1
FAC-1 Amended Project Plan November 2015
[to be attached]

ATTACHMENT 2
Geotechnical Report
[to be attached]

ATTACHMENT 3
Environmental Reports Package
[to be attached]

ATTACHMENT 4
Multnomah County Facilities Specifications Standards Revised April 2015
[to be attached]