

# AIA<sup>®</sup> Document B101<sup>®</sup> – 2017

## *Standard Form of Agreement Between Owner and Architect*

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2026

BETWEEN the Architect's client identified as the Owner:

City of Bryan, a home rule municipal corporation.  
300 S Texas Avenue  
Bryan, TX 77803  
(979) 209-5100

and the Architect:

Jackson & Ryan Architects  
2370 Rice Boulevard, Suite 210  
Houston, TX 77005

for the following Project:

City of Bryan Animal Center  
2101 E. Martin Luther King (MLK)  
Bryan, TX 77803

The Owner and Architect agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

§ 1.1.1 The Owner's program for the Project:

The program is to include an Animal Center and other possible facilities and Center amenities that address species-specific animal housing and supporting infrastructure. Interior spaces will consist of adoption and stray animal holding, quarantine and isolation rooms, meet and greet rooms, training room, staff offices, laundry room, food preparation area, dry food storage room, and drive-thru Sallyport, with an option for a spay/neuter clinical area. The new facility will house the existing fifteen (15) staff members and, at a minimum, support 60 dog habitats, 80 cat habitats, and outdoor fenced play yards to give dogs space to exercise and meet their future family.

Refer to Exhibit "A" – RFQ #26-002, The Design and Construction of an Animal Center for the City of Bryan (Exhibit "B", City of Bryan Animal Center Feasibility Study 2018).

§ 1.1.2 The Project's physical characteristics:

The new City of Bryan Animal Center will be designed to be constructed at 2101 E. MLK Street, Bryan, Texas 77803 (the "Project"). The site currently is cleared of structures.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

The City of Bryan has established **Seven Million, four hundred thousand, and No /100 Dollars (\$7,400,000.00)** as the estimated project budget.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

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User Notes:

The design schedule for the Project will be developed by the Architect during the Schematic Design Phase. The Programming, Schematic Design, Design Development, and Construction Documents phases for the Project are TBD.

**.2 Construction commencement date:**

The construction schedule for the Project will be determined in conjunction with the Owner and Construction Manager during the Schematic Design Phase of the Project.

**.3 Substantial Completion date or dates:**

The construction schedule, including the Substantial Completion date, for the Project will be determined in conjunction with the Owner and Construction Manager during the Schematic Design Phase of the Project.

**.4 Other milestone dates: N/A**

**§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:**

Owner intends to use Construction Manager at Risk (CMAR) as the delivery method for the project.

**§ 1.1.6 Deleted.**

**§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:**

Frank Clark  
Business Liaison and Special Projects Manager  
City of Bryan  
P.O. Box 1000  
Bryan TX, 77803

**§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:**

N/A

**§ 1.1.9 The Owner shall retain the following consultants and contractors:**

*(List name, legal status, address, and other contact information.)*

**.1 Geotechnical Engineer:**

Terracon  
6198 Imperial Loop  
College Station, TX 77845

**.2 Civil Engineer:**

GLS Engineering  
4077 Cross Park Drive. STE 100  
Bryan, TX 77802

**.3 Other, if any:**

*(List any other consultants and contractors retained by the Owner.)*

TBD

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

Kim Hanschen, AIA

The Architect's representative shall be available to the Owner at all reasonable times for consultation with the Owner. The Architect may not change its representative without written approval of the Owner.

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Thornton Tomasetti  
820 Gessner Rd Suite 1695, Houston, TX 77024  
281.344.2032

.2 Mechanical Engineer:

Telios Corporation  
730 Town and Country Blvd Suite 750, Houston, TX 77024  
281.832.5100

.3 Electrical Engineer:

Telios Corporation  
730 Town and Country Blvd Suite 750, Houston, TX 77024  
281.832.5100

§ 1.1.11.2 Consultants retained under Supplemental Services:

None

§ 1.1.12 Other Initial Information on which the Agreement is based:

Exhibit "B" Jackson & Ryan Architects response to COB's Request for Qualifications (RFQ) #26-002

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation only if there are material changes to the scope of services. The Owner may adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

## **ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by competent architects practicing in the same or similar locality under the same or similar circumstances and professional license. The Architect shall perform its services as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and written consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall provide and maintain insurance with the minimum scope and indemnification limits as specified in Exhibit "C" until termination of this Agreement. Professional liability shall be maintained for not less than five (5) years following Substantial Completion of the Project as defined in the AIA Document A201-2017, Contract between Owner and the Contractor. Insurance provided pursuant to this Section shall be considered a part of the Architect's Basic Services and shall not be Reimbursable Expense within the scope of Section 11.8, or other provisions of this Agreement.

§ 2.5.1 Deleted

§ 2.5.2 Deleted

§ 2.5.3 Deleted

§ 2.5.4 Deleted

§ 2.5.5 Deleted

§ 2.5.6 Deleted.

§ 2.5.7 Deleted

§ 2.5.8 Deleted

§ 2.6 Architect shall review all drawings and plans and other design and engineering documents prepared by any Architect Consultant and shall make comments and recommendations regarding the design and engineering of the Project such that the Project is appropriately coordinated among the various disciplines. Architect assumes responsibility for the coordination of the Architect's Consultants' documents as part of Architect's Basic Services. Architect further agrees to provide its design documents, background information and design intent for the Project to all Consultants involved in the Project in order to achieve an integrated, consistent overall design for the Project. Consultants are required to perform their services in accordance with the Standard of Care. Nothing in this Agreement or in any Agreement with any Consultant shall relieve Architect or any Consultant of liability for the consequences of any failure to perform services in accordance with such professional standards.

§ 2.7 Architect shall be responsible for the completeness and accuracy of drawings and specifications prepared by or for Architect and for their compliance with all applicable building codes, ordinances, life safety, handicapped accessibility codes (including Chapter 469 of the Texas Government Code, *Elimination of Architectural Barriers*), and related federal and state regulations and all other regulatory requirements, laws, standards and statutes including, but not limited to the provisions of the Americans with Disabilities Act, and other applicable State and local accessibility requirements and building codes. Architect shall coordinate the work of all Consultants and shall direct all Consultants to make such revisions and modifications to such plans and drawings as may be necessary to comply with the permitting and other regulatory and legal requirements of the jurisdiction of the Project.

### **ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

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The Architect shall consult with the Construction Manager to maintain the Project budget, increase value to the Owner, and ensure constructability. The Architect shall provide draft design documents for estimating and pricing at the 30%, 60% and 90% completion for review by the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness 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.

§ 3.1.3 No later than the completion of the SD phase, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved in writing by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect. With the Owner's written approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.7 The Architect shall be responsible for the Architect's negligent acts or omissions, and for the negligent acts and omissions of the Architect's Consultants, their agents and employees, in the performance of their professional duties. Nothing in this Agreement shall relieve the Architect of liability for the consequences of its failure to perform services in accordance with this Agreement or the requisite Standard of Care established in Sections 2.2 and 2.7.

§ 3.1.8 The Architect shall submit plans for the Project to the Texas Department of Licensing and Regulation (TDLR) for handicap accessibility review. The Owner acknowledges that the Construction Documents are not completed until TDLR has approved them and any comments they require are incorporated in them even though construction may have begun or even been completed before comments are received. The Architect will forward the TDLR final inspection report to the Contractor for corrective work listed in the report to be completed.

### § 3.1.9 Pre-Design Phase Services.

§ 3.1.9.1 Program of Requirements (POR) Verification. The Architect shall provide Program Verification Services consisting of the following:

- .1 meet with Owner, Owner's representative, staff and other key departmental individuals (Project Stakeholders) to introduce the design team and gain overall understanding of the Owner's scope, needs, and goals for the Project;
- .2 attend benchmarking tours of peer administrative building facilities with the Project Stakeholders to observe and evaluate relevant aspects of those facilities for the Project;
- .3 conduct workshop meetings to develop the POR;
- .4 make requested revisions to the POR and prepare an updated POR with Architect's estimated low and high-cost ranges for each space listed in the spreadsheets;
- .5 prepare test fit drawings for critical areas of the Project deemed necessary by Architect in consultation with Owner to confirm the assigned net square footage;
- .6 prepare a Preliminary Design and Construction Schedule for the Project;

- .7 prepare a Final POR with the verified programmatic metrics, Preliminary Design and Construction Schedule, and Preliminary Cost Estimate with Architect's low and high-cost ranges for review with the Project Stakeholders;
- .8 meet with the Project Stakeholders to review the Final POR; and
- .9 assist staff in presenting to City Council (if required) the Final POR and metrics for Owner's approval prior to moving to the next phase of work.

### **§ 3.2 Schematic Design Phase Services**

**§ 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. Architect shall provide field verification for the Project as a Basic Service.

**§ 3.2.2** The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

**§ 3.2.3** The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

**§ 3.2.4** Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, up to three preliminary designs illustrating the scale and relationship of the Project components.

**§ 3.2.5** Based on the Owner's written approval of a preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, floor plans, renderings and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. Architect shall coordinate the mechanical, electrical and plumbing, structural, civil, information technology, audio/visual, security, and landscape architecture consultants' Schematic Design Services.

**§ 3.2.5.1** The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

**§ 3.2.5.2** The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

**§ 3.2.6** The Architect shall coordinate with the Construction Manager in preparing an estimate of the Cost of the Work to submit to the Owner prepared in accordance with Section 6.3.

**§ 3.2.7** The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's written approval.

### **§ 3.3 Design Development Phase Services**

**§ 3.3.1** Based on the Owner's written approval of 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 written approval. The Design Development Documents shall illustrate and describe the development of the approved 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 other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall coordinate and work with the Construction Manager to update the estimate of the Cost of the Work previously submitted pursuant to section 3.2.6 and prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's written approval.

#### **§ 3.4 Construction Documents Phase Services**

§ 3.4.1 Based on the Owner's written approval of the Design Development Documents, and on the Owner's written authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's written approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project in effect at the time of document preparation or reasonably foreseeable into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Construction Manager; and (3) 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 and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall coordinate and work with the Construction Manager to update the estimate of the Cost of the Work previously submitted pursuant to Section 3.3.2 and prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's written approval.

#### **§ 3.5 Procurement Phase Services**

##### **§ 3.5.1 General**

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective subcontractors. Following the Owner's written approval of the Construction Documents, the Architect shall assist the Owner in (1) reviewing either competitive bids or negotiated proposals obtained by the Construction Manager; (2) confirming responsiveness of bids or proposals; (3) evaluating the successful bid or proposal, if any, including bids/proposals for self-performing work by the Construction Manager; and, (4) reviewing the selection for award of subcontracts for construction.

##### **§ 3.5.2 Competitive Bidding**

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner and Construction Manager in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,

- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective subcontractors and requesting their return upon completion of the negotiation process; and
- .2 preparing responses to questions from prospective subcontractors and providing clarifications and interpretations of the Proposal Documents to the prospective subcontractors in the form of addenda.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective subcontractors.

### § 3.5.4 Guaranteed Maximum Price Proposal and Schedule of Values

§ 3.5.4.1 Architect shall assist the Owner in review of the Guarantee Maximum Price Proposal and associated Schedule of Values presented by the Construction Manager for written approval by Owner.

## § 3.6 Construction Phase Services

### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified in writing by the Owner.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the execution of the Guaranteed Maximum Price Amendment between the Owner and the Construction Manager and terminates on the date the Architect issues the final Certificate for Payment.

### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report in writing to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Failure to notify the Owner in writing of observed defects and deficiencies constitutes a breach of this Agreement and shall be a deviation from the Architect's agreed standard of professional care.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be subject to the Owner's written approval.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions in writing on Claims between the Owner and Construction Manager as provided in the Contract Documents.

### § 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify in writing the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved in writing submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve in writing, or take other appropriate action upon, the Construction manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise

specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's written approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 3.6.4.3** If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

**§ 3.6.4.4** Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

**§ 3.6.4.5** The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

### **§ 3.6.5 Changes in the Work**

**§ 3.6.5.1** The Architect may order 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. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's written approval and execution in accordance with the Contract Documents.

**§ 3.6.5.2** The Architect shall maintain records relative to changes in the Work.

### **§ 3.6.6 Project Completion**

**§ 3.6.6.1** The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 receive from the Construction Manager and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Construction Manager; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

**§ 3.6.6.2** The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

**§ 3.6.6.3** When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

**§ 3.6.6.4** The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final

payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

**ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**

**§ 4.1 Supplemental Services**

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide in writing the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Owner may request Additional Services in addition to those listed below which, if requested, shall be provided pursuant to the terms contained in this Section 4.1 and for the sums indicated in the written authorization by Owner. Under no circumstances will Owner be obligated to compensate the Architect or others for fees and expenses related to Additional Services unless the Owner has authorized the performance of such services **in advance and in writing**. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

*(Designate the Architect’s Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

<b>Supplemental Services</b>	<b>Responsibility</b> <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Architect
§ 4.1.1.2 Multiple preliminary designs	Not Provided
§ 4.1.1.3 Measured drawings	Not Provided
§ 4.1.1.4 Existing facilities surveys	Not Provided
§ 4.1.1.5 Site evaluation and planning	Owner
§ 4.1.1.6 Building Information Model management responsibilities	Architect
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Owner
§ 4.1.1.9 Landscape design	Owner
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	Not provided except as noted in Section 4.2.3
§ 4.1.1.14 Conformed documents for construction	Architect
§ 4.1.1.15 As-designed record drawings	Not Provided
§ 4.1.1.16 As-constructed record drawings	Architect
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect’s coordination of the Owner’s consultants	Architect
§ 4.1.1.21 Telecommunications/data design	Owner
§ 4.1.1.22 Security evaluation and planning	Owner

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<b>Supplemental Services</b>	<b>Responsibility</b> <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.23 Commissioning	Owner
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Architect/Owner - See * Note 1 below
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided
§ 4.1.1.31 Exterior enclosure / building envelope	Not Provided

\*Note 1. Architect to select specialty animal welfare equipment and the Owner will select standard equipment such as refrigerators, microwaves and other office furniture.

#### § 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

**Programming:** Architect will perform programming process with the Owner's administrators and staff, to begin in the month May. This will be performed as part of Architect's Basic Services and will constitute 20% of the Schematic Design Phase.

**Building Information Model (BIM) management responsibilities.** Architect shall host BIM for Architect's use and coordination with MEP, Structural, and Civil Engineering consultants during the design phase. Architect shall incorporate design changes, including documents, addenda, requests for information, architect's supplemental information, during construction.

**Architectural Interior Design.** Architect shall design the internal structural elements of the building to make spaces functional, safe, and aesthetically pleasing.

**Conformed Documents for Construction.** Architect shall prepare the "Issued for Construction" documents which are final, updated construction documents that incorporate all addenda, accepted alternatives, and revisions made during the bidding or negotiation process.

**Architect's coordination of the Owner's consultants.** Architect shall manage, schedule, and integrate the work of consultants hired directly by the Owner.

**Furniture, furnishings, and equipment design.** The Architect shall schedule, design, and coordinate all equipment in the facility except for the standard equipment such as refrigerators, microwaves, and office furniture, will be responsibility of the Owner.

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

**Civil Engineering:** Owner will hire a civil engineering consultant. Architect will coordinate with the civil engineering consultant as provided in this agreement.

**Site evaluation and planning:** Owner's civil engineering consultant will work with Architect on site layout, utilities, drainage, and traffic flow. Architect will coordinate with Owner's civil engineer to assess retention and detention requirements as well as drainage and parking lot layouts.

**Landscape Design:** Owner will hire a landscape design consultant. Architect will coordinate with the landscape design consultant as provided in this agreement.

**Telecommunications & Data:** Owner will hire a consultant for telecommunications and data plans. Architect will incorporate the telecommunications and data plan into the Construction Documents.

**Security Evaluation & Planning:** Owner will hire a consultant for security evaluation and planning. Architect will incorporate the security plans into the Construction Documents.

**Commissioning:** Owner will hire a commissioning agent as desired or as required by law.

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

#### § 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall be compensated as provided in section 11.3. The provision of Additional Services in excess of those referenced in this Section 4, et al. shall not entitle the Architect to additional compensation or an adjustment in the Architect's schedule unless specifically authorized by Owner and memorialized by written amendment to this Agreement.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization. Such written authorization to proceed shall not be construed as an amendment to this Agreement or acquiescence to a request for an amendment unless the Owner expressly states in such written authorization that the notice constitutes an amendment entitling the Architect to additional compensation:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, not reasonably foreseeable, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are not reasonably foreseeable and either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing, other than the Bryan Animal Center Advisory Committee or City Council meetings;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto; or
- .9 Consultation concerning replacement of Work resulting from fire or other cause during construction.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination, and the Owner shall have no further obligation to compensate the Architect for those services.

- .1 Preparing Change Orders and Construction Change Directives that require evaluation of Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .2 Evaluating an extensive number of Claims as the Initial Decision Maker; or
- .3 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting there from.
- .4 *Deleted.*
- .5 *Deleted.*

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Four (4) visits per month to the site by the Architect during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than sixty (60) calendar days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 *Deleted*

## **ARTICLE 5 OWNER'S RESPONSIBILITIES**

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within fifteen (15) calendar days after receipt of written request, information relevant for the Architect to evaluate same.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree in writing to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve in writing 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.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 Deleted.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 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.

§ 5.10 The Owner shall furnish all legal, insurance, and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Deleted

## **ARTICLE 6 COST OF THE WORK**

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead, and profit. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted in writing throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Construction Manager's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the

Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate as a Supplemental Service.

**§ 6.4** If, through no fault of the Architect, the Procurement Phase has not commenced within ninety (90) calendar days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

**§ 6.5** If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

**§ 6.6** If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

**§ 6.7** If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

**§ 7.1** The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

**§ 7.2** As part of the total compensation which Owner has agreed to pay Architect for the professional services to be rendered under this Contract, Architect agrees that hard copies of all finished and unfinished "Instruments of Service" including but not limited to documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs, preliminary reports, reports, and bid packet/construction contract documents/advertisement for bids incorporating any Owner standard provisions provided by Architect, all of which are produced by Architect and paid for by Owner are, and will remain, the property of the Owner. Architect will furnish Owner with electronic copies in .PDF format, to the extent they are available, of all of the foregoing to facilitate coordination; however, ownership of the underlying work product shall remain the intellectual property of the Architect. Architect shall have the right to use such work products for Architect's purposes on this Project. However, such documents are not intended to be suitable for reuse by Owner or others. Any reuse without the express written consent of the Architect will be at the Owner's sole risk and without liability or legal exposure to the Architect. The above notwithstanding, Architect shall retain all rights in its standard drawing details, designs, specifications, databases, computer software, and any other proprietary and intellectual property information provided pursuant to this Contract.

**§ 7.3** The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering, and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. 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 Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge, or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

### **§ 8.2 Mediation**

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be submitted to senior management for each party for attempted resolution and then be referred to non-binding mediation as a condition precedent to the institution of legal proceedings by either party.

§ 8.2.2 Mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement unless the Parties agree in writing on a mediation administered by a mutually selected mediator. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation.

§ 8.2.3 The parties shall equally share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the exclusive venue and method of binding dispute resolution shall Litigate in a District Court of competent jurisdiction in Brazos County, Texas.

### **§ 8.3 Deleted in Entirety.**

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

#### **ARTICLE 9 TERMINATION OR SUSPENSION**

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, and such failure continues for fifteen (15) calendar days following written notice, it shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven (7) calendar days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than ninety (90) calendar days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven (7) calendar days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven (7) calendar days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven (7) calendar days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, and Reimbursable Expenses incurred.

§ 9.7 Deleted

§ 9.8 Deleted

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

#### **ARTICLE 10 MISCELLANEOUS PROVISIONS**

§ 10.1 This Agreement shall be governed by the law of the state of Texas without regard to its conflict of laws principles.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction, as modified in writing by the Owner.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the prior written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least fourteen (14) calendar days prior to the requested dates of execution. If

the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least fourteen (14) calendar days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1 and as required by the Texas Public Information Act. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after fifteen (15) calendar days' written notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute, or as required by law, including an opinion issued by the Texas Attorney General's Office under the Texas Public Information Act. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants, and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 **Complaints against Registered Architects.** The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as Architects in Texas. Complaints may be filed with:

Texas Board of Architectural Examiners  
3333 Guadalupe, Suite 2-350  
Austin, Texas 78701-3942  
Telephone: 512-305-9000

§ 10.11 **Government Code Provisions.** Architect hereby verifies it complies with the following requirements. (a) Pursuant to Texas Government Code 2252.152, contracts with companies engaged in business with Iran, Sudan, or foreign terrorist organizations are prohibited, a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Government Code Sections 806.051, 807.051, or 2252.153. (b) Pursuant to Texas Government Code 2271.002, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification the company that it: (i) does not

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User Notes:

boycott Israel, and (ii) will not boycott Israel during the term of the contract.

**§ 10.12 Basic Safeguarding of Architect Information Systems.**

**§ 10.12.1** Architect shall apply basic safeguarding requirements and procedures to protect the Architect's information systems whenever the information systems store, process, or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ", which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

**§ 10.12.2** Architect shall include the substance of this clause (10.12.1) in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

**ARTICLE 11 COMPENSATION**

**§ 11.1** For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as set forth below. Compensation for Basic Services shall not increase regardless of any increase in the Project budget or negotiated Guaranteed Maximum Price (GMP) with the Construction Manager unless authorized by written amendment to this Agreement as may be necessitated by an increase in Project scope that creates material differences to the Initial Information:

- .1 Stipulated Sum not-to-exceed \$525,000 (includes FF&E in Section 11.4 – reference Exhibit “D”)
- .2 Deleted
- .3 Deleted

**§ 11.2** For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

Compensation for Supplemental Services designated as “Architect's” responsibility are included in the Stipulated Sun not-to-exceed amount of \$525,000 (Sect. 11.1.1). Compensation for Supplemental Services designated as “Not Provided” can be provided in a separate written amendment to this agreement signed by both parties if the need arises. Architect shall not commence such services until after the written execution of such amendment.

**§ 11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

Compensation for Additional Services will be as provided in a separate written amendment to this agreement signed by both parties. Architect shall not commence such services until after the written execution of such amendment.

**§ 11.4** Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus zero (0) percent as follows:

Furniture, Fixture, & Equipment: \$12,100

**§ 11.5** When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (15%)
Design Development Phase	Twenty	percent (20%)
Construction Documents Phase	Forty	percent (40%)
Procurement Phase	Five	percent (5%)

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Construction Phase	Twenty percent (20%)
Total Basic Compensation	One Hundred percent (100%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below in Exhibit E. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

**§ 11.8 Compensation for Reimbursable Expenses**

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Courier Services;
- .3 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Survey;
- .6 Geotechnical Study;
- .7 Development Site Plan submittal;
- .8 Traffic Impact Analysis;
- .9 Flood Plan Development Permit; and
- .10 Storm Water Management Plan.
- .11 Deleted
- .12 Deleted

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10 %) of the expenses incurred. Reimbursable Expenses are estimated to be \$14,900. For any amounts requested by the Architect as Reimbursable Expenses in excess of the estimated amount, in total, the Architect must obtain written authorization for such expenses prior to incurring same. Failure by the Architect to obtain such written authorization for any amounts in excess of the estimate is an express waiver of its right to compensation for such expenses.

§ 11.9 Deleted

**§ 11.10 Payments to the Architect**

**§ 11.10.1 Initial Payments**

§ 11.10.1.1 An initial payment of zero (\$0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

**§ 11.10.2 Progress Payments**

§ 11.10.2.1 Timeliness of payments and interest due on late payments are governed by chapter 2251 of the Texas Government Code.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

### §12.1 INDEMNIFICATION

**A. GENERAL. TO THE FULLEST EXTENT PERMITTED BY LAW, ARCHITECT SHALL INDEMNIFY AND HOLD HARMLESS OWNER, ITS EMPLOYEES, AGENTS, AND REPRESENTATIVES (HEREINAFTER REFERRED TO INDIVIDUALLY AS AN “INDEMNITEE” AND COLLECTIVELY AS THE “INDEMNITEES”) FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS’ FEES AND COSTS INCURRED BY INDEMNITEES WHICH ARE:**

**1. DUE TO THE VIOLATION OF THE REASONABLE INTERPRETATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS AGREEMENT, OR ANY SAFE HARBOR THERETO, BY ARCHITECT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL;**

**2. CAUSED BY OR RESULTING FROM ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION IN VIOLATION OF ARCHITECT'S STANDARD OF CARE, BY THE ARCHITECT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL;**

**3. CAUSED BY OR RESULTING FROM ANY CLAIM ASSERTING INFRINGEMENT OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE INFORMATION FURNISHED BY OR THROUGH ARCHITECT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL;**

**4. DUE TO THE FAILURE OF ARCHITECT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL TO PAY THEIR CONSULTANTS OR SUBCONSULTANTS AMOUNTS DUE FOR SERVICES PROVIDED IN CONNECTION WITH THE PROJECT; OR**

**5. OTHERWISE ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING SUCH CLAIMS, DAMAGES, LOSSES OR EXPENSES ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT SUCH CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES ARE CAUSED BY OR RESULT FROM ANY NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF THE ARCHITECT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL.**

**ARCHITECT’S OBLIGATION TO INDEMNIFY AND HOLD HARMLESS IS LIMITED TO THE PROPORTIONATE SHARE OF COVERED CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING REASONABLE ATTORNEY’S FEES AND EXPENSES THAT ARE ATTRIBUTABLE TO THE COVERED CONDUCT OF ARCHITECT.**

**B. REIMBURSEMENT OF GOVERNMENTAL AGENCY’S FEES IN DEFENSE OF CLAIMS.** To the extent Owner incurs attorney’s fees in defense of any claim asserted against the Owner which arises or results from

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**User Notes:**

the alleged acts or omissions of the Architect described in Section 12.1 A above, Architect shall reimburse Owner its reasonable attorney's fees in proportion to the Architect's liability found after a final adjudication of liability.

**§12.2 The Architect acknowledges that the Owner has or will have within sixty (60) calendar days of the execution of this agreement an executed agreement, 'AIA A-133, Standard Form of Agreement Between Owner and Construction Manager as Constructor, as amended, where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price (GMP).**

**ARTICLE 13 SCOPE OF THE AGREEMENT**

**§ 13.1** This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

**§ 13.2** This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- .2 N/A
- .3 Other Exhibits incorporated into this Agreement:

**Exhibit "A"** - RFQ #26-002 The Design and Construction of an Animal Center for the City of Bryan.

**Exhibit "B"** – Submittal response from Jackson & Ryan Architect's for RFQ-#26-

**Exhibit "C"** – City of Bryan's Insurance Requirements

**Exhibit "D"** – Jackson & Ryan Fee Schedule

**Exhibit "E"** – Jackson & Ryan Schedule of Hourly Rates

- .4 Other documents: N/A

This Agreement entered into as of the day and year first written above (See page 1).

**CITY OF BRYAN:**

**PREPARED AND RECOMMENDED:**

**APPROVED:**

\_\_\_\_\_  
Frank Clark  
Business Liaison and Special Projects Manager

\_\_\_\_\_  
Bobby Gutierrez, Mayor

**APPROVED FOR PROCESSING:**

**ATTEST:**

\_\_\_\_\_  
Hugh R. Walker  
Deputy City Manager

\_\_\_\_\_  
Melissa Brunner, City Secretary

Date: \_\_\_\_\_

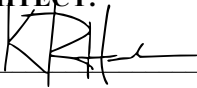
**APPROVED AS TO FORM:**

\_\_\_\_\_  
Thomas A. Leeper, City Attorney

**APPROVED FOR COUNCIL:**

\_\_\_\_\_  
Andrew Nelson, City Manager

**ARCHITECT:**

By:  \_\_\_\_\_

Printed Name: Kim Hanschen, AIA

Title: Principal

Date: 3/31/2026

## **EXHIBIT “A”**

**RFQ #26-002 The Design and Construction of an Animal Center for the City of Bryan**

## **Exhibit “B”**

**Jackson & Ryan Architects RFQ #26-002 Response**

## **EXHIBIT “C”**

**City of Bryan’s Insurance Requirements for Construction Contracts**

**EXHIBIT “D”**  
**Jackson & Ryan’s Fee Schedule**

**EXHIBIT “E”**

**Jackson & Ryan’s Schedule of Hourly Rates**