

MEMORANDUM

To: Members of the City Commission

From: Lisa Agnor, City Manager

Date: December 18, 2015

Subject: Approval of a contract with Flowers and Associates, Architects, for a preliminary architectural conceptual design, with estimated costs, for an animal shelter that adequately meets the needs of the City of Marshall.

Please find attached a copy of the proposed contract with Flowers and Associates, Architects, for architectural services for a preliminary conceptual design, with estimated costs, for an animal shelter facility.

Dean Searle will be present at the meeting on Monday to answer any questions the Commission may have related to the proposed contract.



AIA[®] Document B105[™] – 2007

Standard Form of Agreement Between Owner and Architect for a Residential or Small Commercial Project

AGREEMENT made as of the twenty-first day of December in the year Two Thousand Fifteen
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Marshall, Texas
401 South Alamo, Marshall, Texas 75670
Telephone Number: 903-935-4418; Fax Number: 903-938-3531
E-mail address: lagnor@marshalltexas.net

and the Architect:
(Name, legal status, address and other information)

Flowers & Associates, Architects, Inc.
400 West Fannin Street, Marshall, Texas 75670
Telephone Number: 903-935-5891; Fax Number: 903-935-5894
E-mail address: faai@sbcglobal.net

for the following Project:
(Name, location and detailed description)

Needs Assessment, Conceptual/Schematic Design with schematic construction cost estimate for the following project:

Construction of a new structure to serve as an Animal Shelter for the City of Marshall, Texas and surrounding areas. The facility will be located within the City of Marshall, Texas on a property to be selected prior to Design Development as defined in this Contract. The new facility will be approximately 12,000 square feet and contain approximately (90) dog kennels, (58) cat cage spaces, (2) other cage spaces, outdoor fenced areas, associated administrative spaces and associated support spaces. Construction to include all new site utilities, all new site soil work, new building construction, and new parking lot construction.

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

State or local law may impose requirements on contracts for home improvements. If this document will be used for Work on the Owner's residence, the Owner should consult local authorities or an attorney to verify requirements applicable to this Agreement.

The Owner and Architect agree as follows.

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ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide architectural services for the Project as described in this Agreement in a manner consistent with locally accepted standards for professional skill and care. The Architect shall assist the Owner in determining consulting services required for the Project. The Architect's services include the following consulting services, if any:

None

~~During the Design Phase, the Architect shall review the Owner's scope of work, budget and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall develop a design. Upon the Owner's approval of the design, the Architect shall prepare Construction Documents indicating requirements for construction of the Project and shall coordinate its services with any consulting services the Owner provides. The Architect shall assist the Owner in filing documents required for the approval of governmental authorities, in obtaining proposals and in awarding contracts for construction.~~

~~During the Construction Phase, the Architect shall act as the Owner's representative and provide administration of the Contract between the Owner and Contractor. The extent of the Architect's authority and responsibility during construction is described in AIA Document A105™ 2007, Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project. Generally, the Architect's services during construction include interpreting the Contract Documents, reviewing the Contractor's submittals, visiting the site, reviewing and certifying payments, and rejecting nonconforming Work.~~

ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the Project, and shall establish a budget that includes reasonable contingencies and meets the Project requirements. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the Owner's information. The Owner shall furnish consulting services not provided by the Architect, but required for the Project, such as surveying, which shall include property boundaries, topography, utilities, and wetlands information; geotechnical engineering; and environmental testing services. ~~The Owner shall employ a Contractor, experienced in the type of Project to be constructed, to perform the construction Work and to provide price information.~~

ARTICLE 3 USE OF DOCUMENTS (See Exhibit "A" attached)

~~Drawings, specifications and other documents prepared by the Architect are instruments of the Architect's service and are for the Owner's use solely with respect to this Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the Project or termination of this Agreement, the Owner's right to use the instruments of service shall cease. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information, or has permission from the copyright owner to transmit the information for its use on the Project.~~

ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT

In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for services performed. The Owner's failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate services. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days' written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement.

ARTICLE 5 MISCELLANEOUS PROVISIONS

This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A105-2007, Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

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 the Architect.

The Architect and Architect's consultants shall have no responsibility for the identification, discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project site.

ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ARCHITECT

The Architect's Compensation shall be:

Nineteen Thousand Eight Hundred Dollars and Zero Cents (\$19,800.00)

The Owner shall pay the Architect an initial payment of **Five Thousand Dollars and Zero Cents** (\$ **5,000.00**) as a minimum payment under this Agreement. The initial payment shall be credited to the final invoice.

The Owner shall reimburse the Architect for expenses incurred in the interest of the Project, plus **Ten percent (10 %)** as approved by Owner in writing.

Payments are due and payable upon receipt of the Architect's monthly invoice. Amounts unpaid **thirty (30)** days after the invoice date shall bear interest from the date payment is due at the rate of **One percent (1 %)**, or in the absence thereof, at the legal rate prevailing at the principal place of business of the Architect.

At the request of the Owner, the Architect shall provide services not included in Article 1 for additional compensation. Such services may include providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the scope, quality or budget; evaluating changes in the Work and Contractors' requests for substitutions of materials or systems; and services not completed within **Three (3)** months of the date of this Agreement through no fault of the Architect.

ARTICLE 7 OTHER PROVISIONS

(Insert descriptions of other services and modifications to the terms of this Agreement.)

1. The Owner reserves the right to extend the Architectural Services into later design phase services at the Owner's sole discretion with a revision in fees and time as agreed to by Owner and Architect at a future date. Subject to a new Contract.
2. The Architect will present the Owner with a Schematic Design including floor plan, typical site plan with outdoor support spaces including outdoor fenced areas, parking, sidewalks, etc. This Schematic Design will be to scale and the associated site plan will be dimensioned so that the Owner can determine the necessary site area and shape required for this project.
3. The Schematic Design will also include a schematic cost estimate for Owner's consideration.
4. The Schematic Design floor plan, site plan, and construction cost estimate must be completed and submitted to the Owner by January 30, 2016 unless extended by the Owner in writing.
5. The Architect shall not continue past Schematic Design Phase (into the Design Development or Construction Document Phase) until authorized in writing by the Owner at a future date.
6. If the Owner request in writing, the Architect shall perform site analysis for project appropriateness on various local sites. The Architect will be compensated for these design service revisions as agreed in writing by the Owner & Architect prior to commencement of said services.
7. If the selection of the future site for the project requires Schematic Design modifications, the Architect will be compensated for these design revision as agreed in writing by the Owner & Architect prior to commencing redesign services.
8. This Contract is subject to non-binding mediation and litigation in Harrison County, Texas. This Contract is not subject to Arbitration.
9. This Contract incorporates the attached Exhibit "A".

This Agreement entered into as of the day and year first written above.

OWNER (Signature)
 City of Marshall, Texas
 by: Lisa Agnor, City Manager

(Printed name and title)

ARCHITECT (Signature)
 Flowers & Associates, Architects, Inc.
 by: Becky Flowers, Architect

(Printed name and title)

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

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EXHIBIT "A"
ADDENDA TO AIA DOCUMENT B105 BETWEEN
FLOWERS & ASSOCIATES ARCHITECTS, INC. ("Architect") AND
THE CITY OF MARSHALL ("Owner")
COVERING THE DESIGN OF THE NEW ANIMAL SHELTER("Project")

This Addenda supplements and modifies the attached (or accompanying) Agreement by and between Owner and Architect; and in the event of any inconsistency between the terms and provisions of this Addenda, on the one hand, and the terms and provisions of the attached Agreement, on the other hand, the terms and provisions of this Addenda shall supersede and be controlling.

The capitalized terms used in this Addenda shall have the same meaning as such capitalized terms when used in such Agreement.

1. With reference to the Project, Architect agrees with Owner as follows: (a) Architect has qualifications and abilities relating to the services to be rendered by Architect with respect to the Project; (b) in the performance of such services, Architect shall utilize Architect's best efforts, skill, judgment and abilities; (c) Architect shall perform Architect's services with respect to the Project in compliance with all (to the best of Architect's knowledge and belief) laws, regulations, codes, ordinances and orders of governmental bodies having jurisdiction; (d) Architect shall specify (to the best of Architect's knowledge and belief) usage of only suitable materials for the Project; and (e) the Project, if built in compliance with the Drawings and Specifications, will (to the best of Architect's knowledge and belief) comply with all applicable laws, regulations, codes, ordinances and orders of governmental bodies having jurisdiction. Governmental Orders and Governmental Code Interpretations of codes, regulations and ordinances shall supersede and be controlling over the codes, regulations and ordinances.
2. The word "Architect" shall mean Flowers & Associates, Architects, Inc. It is agreed that John Flowers shall be the primary contact for the Owner and provide the supervision for the work to be completed under this Agreement.
3. The Architect shall advise the Owner of any need or advisability of the Owner's securing any tests, analyses, studies, reports, or consultants' services in connection with the development of the design and construction documents for the Project. Architect shall not obtain any tests or consultants without the prior written consent of the Owner.
4. The duties, responsibilities and limitations of authority of the Architect may be reasonably restricted, modified or extended by the Owner after the date of this Agreement, and if they are substantially restricted, modified or extended without written agreement of the Owner and Architect, then Architect's compensation shall be equitably adjusted. All restrictions, modifications, or extensions must be in accordance with State Law.
5. Upon Owner's request at any time and as often as so requested, Architect shall promptly provide Owner with progress prints. Owner shall at all times have reasonable access to the files and personnel of Architect relating to the Project in order to answer any reasonable questions

Owner may have relating to the Architect's performance on the Project. All plotting, printing and reproduction costs(including labor) shall be a reimbursable cost to the Owner, but no cost shall be charged the Owner unless Owner approved such charge in writing.

6. The Drawings, Specifications and other documents prepared by the Architect (the "Instruments of Service")for this Project shall be made available by the Architect to the Owner for use by the Architect or, if Architect is terminated, another architect that may be chosen by the Owner for completion of the Project. The Architect agrees to provide the Instruments of Service upon request and will include delivery of the Instruments of Service in such format as available to the Architect, including DWG electronic format that is modifiable. If such Instruments of Service are hereafter utilized by the Owner in connection with the Project with respect to which the Owner does not retain the services of the Architect, Owner shall be obligated to indemnify and hold harmless the Architect with respect to, relating to, or arising out of the usage by the Owner of such Instruments of Service without the contemporaneously utilization of the services of the Architect in conjunction with the Owner's usage of such Instruments of Service. The Architect shall also transfer the copyright to the Instrument of Service to Owner if Architect is terminated and also after completion of Project.
7. In the event of any termination of this Agreement, the Owner may select another architect of the Owner's choice to assist the Owner in any way in completing the Project. The Architect consents and authorizes the making of any reasonable and legal changes to the design of the Project by such other architect as the Owner may choose and shall transfer the copyright of the Instrument of Service to allow such use. The original Architect is specifically indemnified from any changes or revisions made by the replacement Architect. The replacement Architect must have Errors & Omissions Insurance equal or exceeding the original Architect of this contract. Any services provided by Architect, which are requested by the Owner after termination, shall be fairly compensated by the Owner.
8. The Architect shall keep all information concerning this Project confidential and proprietary unless otherwise expressly indicated in writing to Architect. Architect agrees that it will not use the Instruments of Service in connection with any other project other than the Project under this Agreement without the express written consent of Owner.
9. All formal notices required hereunder must be in writing, delivered in person, by email, by certified mail return receipt requested, or by a recognized overnight service which obtains a signature in connection with receipt. If formal notice is provided by email, it shall require the party receiving the same to provide notice of receipt in order to be effective. The formal notice delivered in person, certified mail or overnight mail shall be considered delivered upon delivery to the person, entity or firm to which it was intended or when it is deposited into a receptacle for the United States Postal Service or to the overnight carrier. The parties hereto will agree to provide formal notice by email of the activities in addition to any other types of notice. Ordinary questions may be provided by e-mail only.

10. The duties and obligations imposed upon the parties under this Agreement, and the rights and remedies available hereunder shall be in addition to, and not a limitation of any duties imposed or available at law or in equity.
11. Notwithstanding anything to the contrary, Owner shall not be obligated to make any payment (whether a Progress Payment or Final Payment) to Architect hereunder if any one or more of the following conditions exist: (1) Architect is in default of any of its obligations hereunder or otherwise in default under this Agreement; (2) Any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, that payment shall be made as part thereof attributable to services which were performed in accordance with this Agreement; or (3) Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid for a particular phase of the services of the Architect shall not be sufficient to complete such phase in accordance with the Agreement, no additional payments will be due Architect hereunder unless and until Architect, at its sole cost, performs a sufficient portion of the services so that such portion of the compensation then remaining unpaid is determined by Owner to be sufficient to so complete the services. The Architect may terminate this agreement within seven days, if any payment due is 30 days late per the original contract.

No partial or final payment by the Owner to the Architect is to be treated as a waiver of any of the Owner's or Architect's rights.

12. Architect shall present each months statement of all Changes in Services rendered and approved reimbursable expenses incurred for the preceding month. Architect expressly waives any right to payment for any Change in Services rendered if Architect does not give written notice of its claim that the services are additional within thirty (30) days of rendering the services and if such services are not billed as a Change in Services within sixty (60) days following their rendition.
13. Owner also shall have the right to inspect and copy all other records of the Architect relating to the Project. All of such records should be preserved by the Architect for a period of three (3) years after final payment.
14. The Architect shall submit valid certificates in form and substance satisfactory to the Owner evidencing the effectiveness of all insurance policies along with original copies of the amendatory riders to any such policies to the Owner for the Owner's approval before the Architect commences the rendition of any services hereunder.
15. Architect, upon request by the Owner, shall provide, within three (3) business days of the request, a report that includes the following information:
 - (a) Summary of work performed
 - (b) Work Schedule for the remaining portion of the Project.
 - (c) List of items from the attached Exhibit "A" which have been completed
 - (d) Anticipated time to complete the Project
 - (f) Percentage of this Project that has been completed.

If the Owner requests such a report, the Architect will be compensated for preparing the report as an additional reimbursable expense.

16. All references to the Agreement in this Exhibit (and all references in the Agreement to some other portion of the Agreement) shall, in each such case, mean the Agreement as modified by this Exhibit.
17. The "Owner" and "Owner's Representative" shall be that person designated by the Owner Commission to act in that capacity. The Owner may designate different parties to be the Owner's representative on different items requiring the Owner's participation or Owner approval hereunder.

EXECUTED in multiple counterparts, each of which shall have the force and effect of an original on this the _____ day of _____, 2015.

OWNER:
CITY OF MARSHALL

ARCHITECT:
FLOWERS & ASSOCIATES, ARCHITECTS,
INC.

By: _____
Printed Name: Lisa Agnor
Title: City Manager

By: _____
Printed Name: Becky Flowers
Title: Architect, Majority Owner