

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES**Project:** Norman Forward Libraries – Commissioning RFQ #1516-57**Client:** City of Norman, Oklahoma/Norman Municipal Authority**1. SCOPE OF SERVICES**

For the above-referenced Project, Burns & McDonnell Engineering Company, Inc. (BMcD) will perform the services set forth in the above-referenced Work Authorization and attached Letter Proposal for Commissioning Services for the Norman Forward Libraries – Commissioning RFQ #1516-57 dated May 31, 2016 (Exhibit A) in accordance with these Terms and Conditions. BMcD has relied upon the information provided by Client in the preparation of the Proposal, and shall rely on the information provided by or through Client during the execution of this Project as complete and accurate without independent verification.

2. PAYMENTS TO BMcD

A. Compensation will be as stated in the above-referenced Letter, Proposal, or Agreement. Statements will be in BMcD's standard format and are payable upon receipt. Time is of the essence in payment of statements, and timely payment is a material part of the consideration of this Agreement. A late payment charge will be added to all amounts not paid within 30 days of statement date and shall be calculated at 1.5 percent per month from statement date. Client shall reimburse any costs incurred by BMcD in collecting any delinquent amount, including reasonable attorney's fees. If a portion of BMcD's statement is disputed, Client shall pay the undisputed portion by the due date. Client shall advise BMcD in writing of the basis for any disputed portion of any statement.

B. Taxes as may be imposed on professional consulting services by state or local authorities shall be in addition to the payment stated in the above-referenced Letter, Proposal, or Agreement.

3. INSURANCE

A. During the course of performance of its services, BMcD will maintain Worker's Compensation insurance with limits as required by statute, Employer's Liability insurance with limits of \$1,000,000, and Commercial General Liability and Automobile Liability insurance each with combined single limits of \$1,000,000.

B. If the Project involves on-site construction, construction contractors shall be required to provide (or Client may provide) Owner's Protective Liability Insurance naming Client as a Named Insured and BMcD as an Additional Insured or to endorse Client and BMcD using ISO form CG 20 10 11 85 endorsement or its equivalent as Additional Insureds on all construction contractor's liability insurance policies covering claims for personal injuries and property damage in at least the amounts required of BMcD in 3A above. Construction contractors shall be required to provide certificates evidencing such insurance to Client and BMcD. Contractor's compensation shall include the cost of such insurance including coverage for contractual and indemnification obligations herein.

C. Client and BMcD release each other and waive all rights of subrogation against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of BMcD's services. A provision similar to this shall be incorporated into all construction contracts entered into by Client, and all construction contractors shall be required to provide waivers of subrogation in favor of Client and BMcD for damage covered by any construction contractor's property insurance.

4. INDEMNIFICATION

A. To the extent allowed by law, Client will require all construction contractors to indemnify, defend, and hold harmless Client and BMcD from any and all loss where loss is caused or alleged to be caused in whole or in part by the construction contractors, their employees, agents, subcontractors or suppliers.

B. If this Project involves construction and BMcD does not provide consulting services during construction including, but not limited to, on-

site monitoring, site visits, site observation, shop drawing review, and/or design clarifications, Client agrees to indemnify and hold harmless BMcD from any liability arising from this Project or Agreement, except to the extent caused by BMcD's negligence.

5. PROFESSIONAL RESPONSIBILITY– LIMITATION OF REMEDIES

A. BMcD will exercise reasonable skill, care, and diligence in the performance of its services and will carry out its responsibilities in accordance with customarily accepted professional practices. If BMcD fails to meet the foregoing standard, BMcD will perform at its own cost, the professional services necessary to correct errors and omissions reported to BMcD in writing within one year from the completion of BMcD's services for the Project. No warranty, express or implied, is included in this Agreement or regarding any drawing, specification, or other work product or instrument of service.

B. In no event will BMcD be liable for any special, indirect, or consequential damages including, without limitation, damages or losses in the nature of increased Project costs, loss of revenue or profit, lost production, claims by customers of Client, and/or governmental fines or penalties.

C. BMcD's aggregate liability for all damages connected with its services for the Project not excluded by the preceding subparagraph, whether or not covered by BMcD's insurance, will not exceed \$100,000.

D. These mutually negotiated obligations and remedies stated in this Paragraph 5, Professional Responsibility – Limitation of Remedies, are the sole and exclusive obligations of BMcD and remedies of Client, whether liability of BMcD is based on contract, warranty, strict liability, tort (including negligence), indemnity, or otherwise.

6. PERIOD OF SERVICE AND SCHEDULE

The provisions of this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the services stated in the Proposal. BMcD's obligation to render services hereunder will extend for a period that may reasonably be required for the completion of said services. BMcD shall make reasonable efforts to comply with deliverable schedules (if any) and consistent with BMcD's professional responsibility.

7. COMPUTER PROGRAMS OR MODELS

Any use, development, modification, or integration by BMcD of computer models or programs does not constitute ownership or a license to Client to use or modify such computer models or programs.

8. ELECTRONIC MEDIA AND DATA TRANSMISSIONS

A. Any electronic media (computer disks, tapes, etc.) or data transmissions furnished (including Project Web Sites or CAD file transmissions) are for Client information and convenience only. Such media or transmissions are not to be considered part of BMcD's instruments of service. BMcD, at its option, may remove all indicia of its ownership and involvement from each electronic display.

B. BMcD shall not be liable for loss or damage directly or indirectly, arising out of Client's use of electronic media or data transmissions.

9. DOCUMENTS

A. All documents prepared by BMcD pursuant to this Agreement are instruments of service in respect of the Project specified herein. They are not intended or represented to be suitable for reuse by Client or others in extensions of the Project beyond that now contemplated or on any other Project. Any reuse, extension, or completion by Client or others without written verification, adaptation, and permission by BMcD for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to BMcD.

B. In the event that BMcD is to reuse, copy or adapt all or portions of reports, plans, or specifications prepared by others, Client represents that Client either possesses or will obtain permission and necessary rights in copyright, patents, or other proprietary rights and will be responsible for any infringement claims by others. Client warrants the completeness, accuracy, and efficacy of the information, data, and design provided by or through Client (including prepared for Client by others), for which BMcD shall rely on to perform and complete its services.

10. ESTIMATES, SCHEDULES, FORECASTS, AND PROJECTIONS

Estimates, schedules, forecasts, and projections prepared by BMcD relating to loads, interest rates and other financial analysis parameters, construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are opinions based on BMcD's experience, qualifications, and judgment as a professional. Since BMcD has no control over weather, cost and availability of labor, cost and availability of material and equipment, cost of fuel or other utilities, labor productivity, construction contractor's procedures and methods, unavoidable delays, construction contractor's methods of determining prices, economic conditions, government regulations and laws (including the interpretation thereof), competitive bidding or market conditions, and other factors affecting such estimates or projections, BMcD does not guarantee that actual rates, costs, quantities, performance, schedules, etc., will not vary significantly from estimates and projections prepared by BMcD.

11. POLLUTION

In view of the uncertainty involved in investigating and recommending solutions to environmental problems and the abnormal degree of risk of claims imposed upon BMcD in performing such services, notwithstanding the responsibility of BMcD set forth in Paragraph 5A to the maximum extent allowed by law, Client agrees to release, defend, indemnify and hold harmless BMcD and its officers, directors, employees, agents, consultants and subcontractors from all liability, claims, demands, damages, losses, and expenses including, but not limited to, claims of Client and other persons and organizations, reasonable fees and expenses of attorneys and consultants, and court costs, except where there has been a final adjudication that the damages were caused by BMcD's willful disregard of its obligations under this Agreement. Such indemnification includes claims arising out of, or in any way relating to, the actual, alleged, or threatened dispersal, escape, or release of, or failure to detect or contain, chemicals, wastes, liquids, gases, or any other material, irritant, contaminant, or pollutant.

12. ON-SITE SERVICES

A. Project site visits by BMcD during investigation, observation, construction or equipment installation, or the furnishing of Project representatives shall not make BMcD responsible for construction means, methods, techniques, sequences, or procedures; for construction safety precautions or programs; or for any construction contractor(s)' failure to perform its work in accordance with the contract documents.

B. Client shall disclose to BMcD the location and types of any known or suspected toxic, hazardous, or chemical materials or wastes existing on or near the premises upon which work is to be performed by BMcD's employees or subcontractors. If any hazardous wastes not identified by Client are discovered after a Project is undertaken, Client and BMcD agree that the scope of services, schedule, and compensation may be adjusted accordingly. Client agrees to release BMcD from all damages related to any pre-existing pollutant, contaminant, toxic, or hazardous substance at the site.

13. CHANGES

Client shall have the right to make changes within the general scope of BMcD's services, with an appropriate change in compensation and schedule, upon execution of a mutually acceptable amendment or change order signed by authorized representatives of Client and BMcD.

14. TERMINATION

Services may be terminated by Client or BMcD by seven (7) days' written notice in the event of substantial failure to perform in

accordance with the terms hereof by the other party through no fault of the terminating party. If so terminated, Client shall pay BMcD all amounts due BMcD for all services properly rendered and expenses incurred to the date of receipt of notice of termination, plus reasonable costs incurred by BMcD in terminating the services. In addition, Client may terminate the services for Client's convenience upon payment of twenty percent of the yet unearned and unpaid estimated, lump sum, or not-to-exceed fee, as applicable.

15. DISPUTES, NEGOTIATIONS, MEDIATION

A. If a dispute arises relating to the performance of the services to be provided and, should that dispute result in litigation, it is agreed that the substantially prevailing party (as determined in equity by the court) shall be entitled to recover all reasonable costs of litigation, including staff time, court costs, attorney's fees and other related expenses.

B. The parties shall participate in good faith negotiations to resolve any and all disputes. Should negotiations fail, the parties agree to submit to and participate in a third party-facilitated mediation as a condition precedent to resolution by litigation. Unless otherwise agreed to, mediation shall be conducted under the rules of the American Arbitration Association.

C. Causes of action between the parties shall accrue, and applicable statutes of limitation shall commence to run the date BMcD's services are substantially complete.

16. WITNESS FEES

A. BMcD's employees shall not be retained as expert witnesses, except by separate written agreement.

B. Client agrees to pay BMcD pursuant to BMcD's then current schedule of hourly labor billing rates for time spent by any employee of BMcD responding to any subpoena by any party in any dispute as an occurrence witness or to assemble and produce documents resulting from BMcD's services under this Agreement.

17. CONTROLLING LAW AND VENUE

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Oklahoma, without regard to any conflicts of law provisions. The Parties agree that if any legal action is brought pursuant to this Contract, such action shall be instituted in the district court of Cleveland County.

18. RIGHTS AND BENEFITS – NO ASSIGNMENT

BMcD's services will be performed solely for the benefit of Client and not for the benefit of any other persons or entities. Neither Client nor BMcD shall assign or transfer interest in this Agreement without the written consent of the other.

19. ENTIRE CONTRACT

These Terms and Conditions and the above-referenced Letter, Proposal, or Agreement contain the entire agreement between BMcD and Client relative to BMcD's services for the Project herein. All previous or contemporaneous agreements, representations, promises, and conditions relating to BMcD's services for the Project are superseded. Since terms contained in purchase orders do not generally apply to professional services, in the event Client issues to BMcD a purchase order, no preprinted terms thereon shall become part of this Agreement. Said purchase order documents, whether or not signed by BMcD, shall be considered only as an internal document of Client to facilitate administrative requirements of Client's operations.

20. SEVERABILITY


Any unenforceable provision herein shall be amended to the extent necessary to make it enforceable; if not possible, it shall be deleted and all other provisions shall remain in full force and affect.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract the day and year first written above.

ATTEST:

Burns & McDonnell Engineering Company, Inc.

Secretary

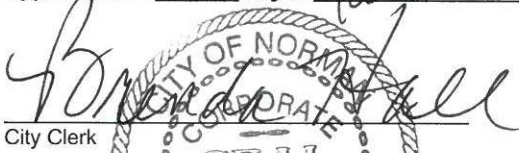


Chad Wolfe, Project Manager

ATTEST:

THE CITY

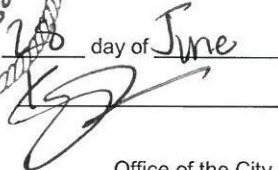
Approved this 28th day of June, 2016



City Clerk



Mayor

Approved as to form and legality this 28th day of June, 2016


Office of the City Attorney
NORMAN MUNICIPAL AUTHORITY

ATTEST:

Approved this 28th day of June, 2016.



Secretary



Chairman



Exhibit A
(on following pages)



May, 31 2016

Terry Floyd
Development Coordinator
P.O. Box 370
Norman, OK 73070

Re: Letter Proposal for Commissioning Services
For the Norman Forward Libraries – Commissioning RFQ #1516-57

Dear Terry Floyd:

Burns & McDonnell is pleased to provide this Letter Proposal for commissioning services for the East and Central Branch Library located in Norman, OK. This submission is based on the requirements contained in your Request for Proposal dated May 17, 2016.

This proposal includes all commissioning tasks required to achieve LEED-NC 2009 project registration inclusive of Credit EAp1, Fundamental Commissioning and Credit EA c3 Enhanced Commissioning on Central Library Building only.

If the descriptions of the scope of services and professional fees in this Letter Proposal are agreeable, we attached a Professional Services Agreement for your signature.

If you have any questions, please contact me at 314-210-2735. I look forward to review this with you on June 1, 2016 at 2:00pm.

Sincerely,

A handwritten signature in black ink, appearing to read "David C. Meyers". The signature is fluid and cursive, with a long horizontal stroke at the end.

David C. Meyers
Associate, Manager of Commissioning

I. Understanding of Project

A. Project Description

- LEED Commissioning of two new library projects being designed
- 12,500 square foot East Branch Library will be located near 3100 E. Alameda
- 80,000 square foot new Central Branch will be located near the intersection of James Garner Ave and Acres.
- Citizen advisory committee will be involved at periodic milestones during the project
- Anticipated maximum budget for the projects, including design and construction is \$5,000,000 for the East Branch, and \$37,000,000 for the Central Branch.
- Commissioning Authority (CxA) as defined and outlined in the LEED Reference Guide for Green Building Design and Construction, 2009 Edition.

B. Current Project Status

The project is currently in the early design phase.

C. Schedule

1. Project Kickoff: June 1, 2016
2. Design Period: 5/24/16 – 1/24/17
3. Bid Date: Late Jan 2017
4. Construction Complete: March 2019
5. 10 Month Warranty Review: Dec 2019

D. Sustainability

1. Proposed LEED Rating Level
The building will be pursuing LEED certification as defined by the US Green Building Council (USGBC).

The proposed rating level will be Silver following LEED requirements for New Construction NC 2009
2. Our LEED Point Responsibility
Burns & McDonnell will lead the effort to satisfy the requirements necessary to achieve the following LEED credits:
 - a. Energy & Atmosphere Prerequisite 1 (EAp1) Fundamental Commissioning.
 - b. Energy & Atmosphere Credit 3 (EAc3) Enhanced Commissioning on Central Library Building only.

II. Systems to be Commissioned

The following systems listed below will be commissioned by the Commissioning Authority (CxA) in support of LEED registration for this project. Quantities below were estimated based on prior experience. Burns and McDonnell will review the final equipment count with the City of Norman once the design is complete.

Norman East Branch

A. Mechanical

System	Estimated Quantity	Sampling Rate
Air Handling Units	1	100%
Heat Recovery Outside AHUs	1	100%
Fan Coil Units	9	100%
Other Exhaust Fans	3	100%

B. Plumbing

System	Estimated Quantity	Sampling Rate
Domestic hot water generators	1	100%
Domestic Hot Water Recirculation Pumps	1	100%

C. Building Automation / Integrated Control Systems

System	Estimated Quantity	Sampling Rate
Control System (BAS)	1	100%
<i>Control System Trending</i>	Included	
<i>Control System Alarm Handling</i>	Included	
<i>Control Sys Graphics Verification</i>	Included	
Lighting Control		
<i>Occupancy Sensors</i>	40	25%
<i>Daylight Harvesting</i>	20	25%
<i>Lighting Control System</i>	1	100%
<i>Photovoltaic</i>	1	100%

Norman Central Branch

A. Mechanical

System	Estimated Quantity	Sampling Rate
Air Handling Units	3	100%
Typical Air Handling Units	1	100%
Heat Recovery Outside AHUs	1	100%
Heating & Ventilating Units (Blower Coil Units)	16	100%
Fancoil Units	9	100%
Other Exhaust Fans	10	100%
Primary Heating Hot Water Pumps (GEO)	2	100%
VAV Terminal Units with Heater	5	100%
Heat Pumps (Air-to-Water)	2	100%

B. Plumbing

System	Estimated Quantity	Sampling Rate
Domestic hot water generators	1	100%
Domestic Hot Water Recirculation Pumps	1	100%

C. Building Automation / Integrated Control Systems

System	Estimated Quantity	Sampling Rate
Process Control System (PCS)		
Control System (BAS)	1	100%
<i>Control System Trending</i>	Included	
<i>Control System Alarm Handling</i>	Included	
<i>Control Sys Graphics Verification</i>	Included	
Lighting Control		
<i>Occupancy Sensors</i>	120	25%
<i>Daylight Harvesting</i>	60	25%
<i>Lighting Control System</i>	1	100%
<i>Photovoltaic</i>	1	100%

III. Commissioning Services

This proposal includes commissioning services during the following phases of the project. All phases of the project will require assistance from other members of the Design and Construction Team, including Owner's personnel. The cost, if any, for this assistance is not included in this Proposal.

A. LEED Commissioning

A. Design Phase

Design Phase Tasks include the following:

1. Owner's Project Requirements (One meeting for both buildings)
 - a) Facilitate Development of Owner's Project Requirements
2. Develop Cx Plan
3. Lead Cx Design Kickoff Meeting
4. Basis of Design
 - a) Review Basis of Design
5. Develop Cx Specifications
6. Conduct Cx Related Design Reviews (Central Library Only)
 - a) Design Development Review
 - b) 60% Construction Document Review
 - c) 100% Construction Document Review
7. LEED Coordination of Cx Activities
8. Attend [03] Meetings during Design Phase by phone conference (Central Library Only)

B. Construction Phase

1. Cx Plan Updates
2. Attend [1] Cx Construction Kickoff Meeting(s)
3. Review Submittals, RFIs, Change Orders for Cx Issues (Central Library Only)
4. Make [02] site visits for Construction Observations
5. Review O&M Documentation (Central Library Only)
6. Pre-Functional Checklists
 - a) Develop Pre-Functional Checklists
7. Develop Functional Tests
8. Attend [02] Construction Meetings
9. Maintain Logs (Issues, etc.)

C. Acceptance Phase

Acceptance Phase Tasks include the following:

1. Functional Performance Testing
 - a) Witness Functional Testing
2. Observe Training Sessions (Central Library Only)
3. Review Equipment Warranties (Central Library Only)
4. Compile Cx Report
5. Systems Manual (Central Library Only)
 - a) Develop Systems Manual

D. Warranty/Occupancy Phase

Warranty Phase Tasks include the following:

1. Warranty Review Meeting
2. Final Cx Report

IV. Deliverables

1. OPR (Owners Project Requirements)
2. BOD (Basis of Design)
3. Design Phase Commissioning Plan
4. Design review comments (Central Library Only)
5. Commissioning Specification
6. Construction Phase Commissioning Plan
7. Construction Checklists
8. Functional Performance Tests
 - i. Included 32 hours for the East Library
 - ii. Included 80 hours for the Central Library
9. Draft Final Report
10. Systems Manual(Central Library Only)
11. Final Cx report

V. Assumptions

1. Projects design schedules will be the similar
2. One OPR charrette for both building
3. We have included 16 hours of retesting on the Central Library and 8 on the East Library.

VI. Basis of Compensation

A. LEED Enhanced Commissioning Services – Central Branch

For BASIC COMMISSIONING SERVICES as defined above, we propose that the BASIS OF COMPENSATION will be a lump sum fee of \$54,470 (Dollars and No/100)

B. LEED Commissioning Services – East Branch

For BASIC COMMISSIONING SERVICES as defined above, we propose that the BASIS OF COMPENSATION will be a lump sum fee of \$25,890 (Dollars and No/100)

C. Additional Commissioning Services

For all work requested as Additional Commissioning Services by the Client, we propose that the BASIS OF COMPENSATION will be a fixed negotiated fee.

D. Out of town travel cost included in Fee

- a. Central – 3 trips 7 days
- b. East – 2 trips 3 Days

E. Reimbursable Expenses

The following expenses are in addition to BASIC COMMISSIONING SERVICES and ADDITIONAL COMMISSIONING SERVICES and will be invoiced at 1.0.

1. Reproduction/printing with in-house or by commercial printer at standard commercial rates.
2. Local and overnight couriers.
3. Outside consultants.

END OF PROPOSAL