**INITIAL INFORMATION**

The Architect's Representatives include: Michael Sapp, AIA, Project Administrator
James Stufflebeam, AIA, Senior Project Manager
Pam Haldiman, Project Manager

The Owner's Representative includes: Tony Robyn, City of Joplin
Michelle Kaiser, CBC

All construction work shall be by a single General Contractor as determined through a competitive bid process.

**ARCHITECT'S RESPONSIBILITIES**

The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

**BIDDING OR NEGOTIATION PHASE SERVICES**

**GENERAL**

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding drafting contracts for construction to be reviewed by the Owner's legal counsel.

**COMPETITIVE BIDDING**

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

The Architect shall assist the Owner in bidding the Project by

- **.1** procuring the reproduction of Bidding Documents through printed or digital media for distribution to prospective bidders in cooperation with Owner Representatives;
- **.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 all prospective bidders in the form of addenda in cooperation with Owner Representatives; and

The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

**CONSTRUCTION PHASE SERVICES**

**GENERAL**

The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in General Conditions of the Contract for Construction. If the Owner and Contractor modify the General Conditions, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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 have a duty to see that the Construction Work is performed in accordance with the Contract Documents. Architect shall report to Owner in writing any Work that deviates from the Contract Documents immediately once Architect know of the deviation.

**EVALUATIONS OF THE WORK**

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 such 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 Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

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

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 Contractor, shall not show partiality to either. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in General Conditions, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

**CERTIFICATES FOR PAYMENT TO CONTRACTOR**

The Architect shall review and certify the amounts due the Contractor 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 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**SUBMITTALS**

The Architect shall review the Contractor's submittal schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved 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.

In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor'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 any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

If the Contract Documents specifically require the Contractor 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 shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

**CHANGES IN THE WORK**

The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents and EDA Summary of Construction Standards.

**PROJECT COMPLETION**

The Architect shall conduct site observations to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor 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 Contractor; and issue a final Certificate for Payment based upon a final observation indicating the Work complies with the requirements of the Contract Documents.

The Architect's site observations 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 Contractor of Work to be completed or corrected.

When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

The Architect shall forward to the Owner the following information received from the Contractor: (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 Contractor under the Contract Documents.

Prior to the expiration of one (1) year from the date of Substantial Completion, the Architect shall conduct a meeting with the Owner to review the facility operations and performance.

**ADDITIONAL SERVICES**

Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided shall entitle the Architect to compensation and an appropriate adjustment in the Architect's schedule.

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 services until the Architect receives the Owner's authorization:

- **.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, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- **.2** Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- **.3** Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- **.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** Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- **.6** Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- **.7** Evaluation of the qualifications of bidders or persons providing proposals;
- **.8** Consultation concerning replacement of Work resulting from fire or other cause during construction; or

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 subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- **.1** Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- **.2** Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- **.3** Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- **.4** Evaluating an extensive number of Claims as the Initial Decision Maker;
- **.5** Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- **.6** To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the

anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

**OWNER'S RESPONSIBILITIES**

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

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project, except with respect to letting contracts or approving bills which matters shall be approved by the board of the Owner. The Owner's Designated Representatives are as follows:

Tony Robyn, City of Joplin
Michelle Kaiser, CBC

The Owner represents that the Representatives designated have been duly authorized to act on behalf of and bind the Owner with respect to decisions with respect to the Project. The parties agree that Architect is entitled to rely on the information provided by, the instructions received from, and the decisions issued by the Owner's Designated Representatives.

The Owner represents that it has the full power and authority to make, execute, deliver, and perform the responsibilities of the Owner set forth in this Agreement and has authorized the undersigned to bind the Owner to this Agreement.

The representations of the Owner shall be continuing and shall survive the termination of this Agreement.

Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

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

**ARTICLE 6 COST OF THE WORK**

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, specified, and coordinated 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, infrastructure such as roads, sewers and utility-related work, and contingencies for changes in the Work or other costs that are the responsibility of the Owner.

The Owner's budget for the Cost of the Work is provided in the RFQ, and may be adjusted throughout the Project as directed by the Owner. Evaluations of the Owner's budget for the Cost of the Work, 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, Cost Estimator, nor the Owner has control over the cost of labor, materials or equipment; the Contractor'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.

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 make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work.

**MISCELLANEOUS PROVISIONS**

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.

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.

End of Exhibit 'D'