



**Board Report
July 11, 2019**

AGENDA

JOHNSON COUNTY LIBRARY BOARD OF DIRECTORS REGULAR MEETING, JULY 11, 2019 CENTRAL RESOURCE LIBRARY CARMACK MEETING ROOM 4:00 P.M.

- I. Call to Order
- II. Citizen Comments
- III. Remarks
 - A. Members of the Johnson County Library Board of Directors
 - B. Board Chair, Bethany Griffith
 - C. Friends of the Library, Vickie Denk
 - D. Executive Director, Johnson County Library Foundation, Stephanie Stollsteimer
 - E. Liaison, Board of County Commissioners, Janeé Hanzlick
- IV. Reports
 - A. Board Counsel – Fred Logan
 - a) Land conveyance process
 - B. County Librarian Report – Sean Casserley, County Librarian
 - 1. Finances and Statistics – Nicki Neufeld, Finance Director5
 - a) Library Branch Trends – Adam Wathen11
 - b) Lenexa City Center First Month Statistics – Ken Werne and Adam Wathen
 - c) Summer Reading update – Sean Casserley
 - 2. Comprehensive Library Master Plan – Scott Sime, Project Coordinator
 - a) Draft Project Staging Timeline16
 - 3. Updates – Sean Casserley
 - a) Board retreat date
 - b) Lackman study liaison
 - c) Library Night at the K
 - d) Bike Fix-It Station at Central – Nick Ward-Bopp23
 - e) ALA conference report
 - f) Orientation with Commissioners Fast and Hanzlick
 - g) Solar energy comparison31
- V. Consent Agenda
 - A. Action Items:
 - 1. Minutes of the June 13, 2019, Library Board meeting32
 - B. Information Items
 - 1. Financial and Personnel
 - a) The County Librarian and the Finance Director certify those payment vouchers and personnel authorizations for April 2019 were handled in accordance with library and County policy.
 - b) The April 2019 Revenue and Expenditure reports produced from the County's financial system reflect the Library's revenues and expenditures
 - C. Gift Fund Report
 - 1. Treasurer's Report42

VI. Old Business

- A. Action item: Consideration of approval of contract with Code Koalas for Drupal 8 website migration project in an amount not to exceed \$141,050 – Michelle Beesley, IT Manager43
- B. Action item: Consideration of approval of replacement of the chiller unit and cooling coil at Blue Valley in the amount of \$125,30063
- C. Action Item: Consideration of approval of Option 3 for the Central Staffing and Space Consolidation (CSSC) project in an amount not to exceed \$8,707,000128
- D. Information Item: Memorandum of Understanding with the City of Prairie Village and YMCA130

VII. Adjournment



Suggested Motions

Consent Agenda

Suggested Motion: I move that the Library Board of Directors approve the consent agenda.

Consideration of approval of contract with Code Koalas for Drupal 8 website migration project in an amount not to exceed \$141,050

Suggested Motion: I move the Library Board of Directors approve the agreement with Code Koalas for the Library Website Drupal Migration Project in an amount not to exceed \$141,050.00.

Consideration of approval of replacement of the chiller unit and cooling coil at Blue Valley in the amount of \$125,300

Suggested Motion: I move the Johnson County Library Board of Directors approve the expenditure not to exceed \$125,300 for the installation of a new chiller and cooling coil at Blue Valley.

Consideration of approval of Option 3 for the Central Staffing and Space Consolidation (CSSC) project in an amount not to exceed \$8,707,000.

Suggested Motion: I move to approve the recommendation of Option 3 for the Central Staffing and Space Consolidation (CSSC) project in an amount not to exceed \$8,707,000 with the intent to use a combination of existing project funds, Public Building Commission (PBC) debt, and Library reserves.

JOHNSON COUNTY LIBRARY: Summary of Expenditures by Cost Category (.75 Increase Only)
May 2019
42% of year lapsed

OPERATING FUND

	Programs	2019 Budget
	Revenue	4,430,838
	Administrative Services	
	Information Technology	
	Collection Development	
	Branch/Systemwide Services	
	Transfer to Capital Projects	
	Interfund Transfers	
TOTAL OPERATING FUND EXPENDITURES		\$0
TOTAL .75 INCREASE FUNDS REMAINING OPERATING		\$4,430,838

SPECIAL USE FUND

	2017 Budget
Revenue:	1,871,476
Expenses:	
Contractual Services (General Maintenance)	
Commodities (Capital Equipment)	
Transfer to Debt Payment	18,958
Transfer to Debt Payment - CLMP	
Transfer to Capital Projects	523,717
TOTAL SPECIAL USE FUND EXPENDITURES	\$542,675
TOTAL .75 INCREASE FUNDS REMAINING SPECIAL USE	\$1,328,801
TOTAL .75 INCREASE FUNDS REMAINING ALL FUNDS	\$5,759,639

Expenditure of Friends of the JCL Donations 2019

<i>Expenditure Details</i>	<i>Current Month</i>	<i>YTD</i>
Volunteer Recognition	\$0.00	\$0.00
Advertising/Promotion	0.00	0.00
Collection Materials	0.00	0.00
Professional Development/Staff Recognition	0.00	0.00
Technology/Recruitment Consulting & Expenses	0.00	0.00
Strategic Planning meeting supplies	0.00	0.00
GEM Award/Staff Recognition	0.00	0.00
Homework Help and Tutor.com	0.00	0.00
Summer Reading Club/Elementia	0.00	0.00
Other Library Programming	0.00	0.00
MidAmerica Regional Council	0.00	0.00
Joint Board Meeting Expense	0.00	0.00
Board Travel Expenses	0.00	0.00
Board Retreat Expenses	0.00	387.12
Miscellaneous	0.00	0.00
Total Expenditures	\$ -	\$ 387.12

JOHNSON COUNTY LIBRARY TOTAL REVENUE REPORT

May 2019
42% of Year Lapsed

REVENUE ALL FUNDS	2019 Year to Date	2019 Budget	% Budget Year to Date	% Budget YTD Prior Year
Ad Valorem	19,052,877	33,045,236	58%	59%
Ad Valorem Delinquent	91,520	289,253	32%	0%
Motor Vehicle	840,175	3,103,349	27%	27%
Library Generated - Copying/Printing	44,923	99,255	45%	45%
Library Generated - Overdues / Fees	239,424	725,000	33%	33%
Sale of Library Books	12,500	50,000	25%	43%
Misc Other	773	18,703	4%	1%
Reimbursement	30,132	330,043	9%	0%
Library Generated - Other Charges	0	3,570	0%	2%
Investment	125,808	304,911	41%	79%
Unencumbered Balance Forward	0	10,000	0%	0%
Recreational Vehicle Tax	7,131	10,608	67%	33%
Commercial Vehicle Tax	40,403	61,191	66%	83%
Heavy Trucks Tax	3,125	2,307	135%	0%
Rental Excise Tax	17,417	35,642	49%	65%
State and Federal Grants	126,997	250,389	51%	50%
TOTAL REVENUE	20,633,206	38,339,457	54%	55%

Expenses ALL FUNDS with Collection Encumbrance	2019 Year to Date	2019 Budget	% Categories Expended
Categories			
Salaries and Benefits	8,072,386	21,323,420	38%
Contractual Services	1,911,671	4,710,131	41%
Commodities	3,446,386	4,385,684	79%
Risk Management Charges	62,701	126,252	50%
Capital / Maintenance / Repair	0	3,487,289	0%
Transfer to Debt Payment	0	827,916	0%
Transfer to Capital Projects	540,914	2,738,276	20%
Grants	126,997	250,389	51%
Interfund Transfer	0	490,100	0%
TOTAL EXPENDITURES	14,161,055	38,339,457	37%

Revenue - Expenses as of January 31, 2019 6,472,151

RESERVES ALL FUNDS	As of 12/31/18
Reserves Operating Fund	8,730,251
Reserves Special Use Fund	1,494,983
Total JCL Reserves	<u><u>10,225,234</u></u>

Scheduled Replacement Account

REVENUE RECEIVED TO DATE

2015 Fund Transfer	350,000
2016 Fund Transfer	699,000
2017 Fund Transfer	1,130,250
2018 Fund Transfer	1,147,850
2019 Fund Transfer	

Total Revenue	<u>3,327,100</u>
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2019

Contractual Services	1,461,600
Building Repair	211,954
Architectural Services	82,305
Furnishings and Office Equipment	73,032
HVAC	167,901
Sorter Parts and Labor	4,113
Security System Maint & Repair	33,549
Vehicles	66,488
AED Equipment	9,613
	2,110,555

Budget Remaining	1,216,545
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JOHNSON COUNTY LIBRARY: Summary of Expenditures by Cost Category
May 2019
42% Year Lapsed

OPERATING FUND	2019	2019	% Program
Programs	Year to Date	Budget	Expended
Administrative Services	1,705,682	5,072,528	34%
Information Technology	1,267,106	2,951,965	43%
Collection Development	1,597,069	3,467,822	46%
Branch/Systemwide Services	6,964,262	18,595,615	37%
Risk Management Charges	62,701	126,252	50%
Grants *	0	250,389	0%
Transfer to Capital Projects	0	3,487,289	0%
Interfund Transfer	0	490,100	0%
TOTAL OPERATING FUND EXPENDITURES	11,596,820	34,441,960	34%

SPECIAL USE FUND	2019	2019	% Budget
	Year to Date	Budget	Expended
Contractual Services (General Maintenance)	0	16,305	0%
Commodities (Capital Equipment)	42,769	315,000	14%
Transfer to Debt Payment	0	827,916	0%
Transfer to Capital Projects	523,717	2,738,276	19%
TOTAL SPECIAL USE FUND EXPENDITURES	566,485.6	3,897,497	15%

TOTAL EXPENDITURES	12,163,305	38,339,457	32%
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JOHNSON COUNTY LIBRARY: Summary of Expenditures by Type
May 2019
42% Year Lapsed

ALL FUNDS	2019	2019	% Categories
Categories	Year to Date	Budget	Expended
Salaries and Benefits	8,072,386	21,323,420	38%
Contractual Services	1,911,671	4,710,131	41%
Commodities	1,575,633	4,385,684	36%
Risk Management Charges	62,701	126,252	50%
Capital / Maintenance / Repair	0	3,487,289	0%
Transfer to Debt Payment	0	827,916	0%
Transfer to PBC Capital Leases	540,914	2,738,276	20%
Grants	126,997	250,389	51%
Interfund Transfer	0	490,100	0%
TOTAL EXPENDITURES	12,290,302	38,339,457	32%

JOHNSON COUNTY LIBRARY

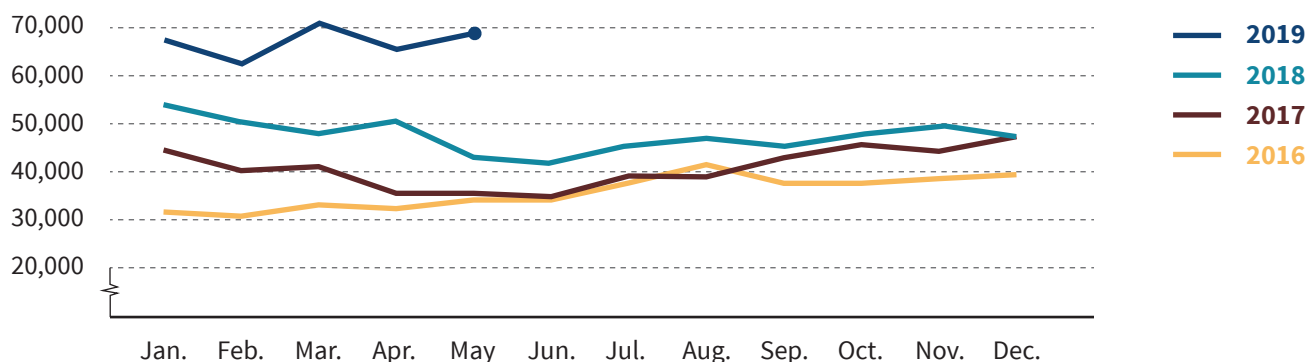
GRANTS MONTHLY REPORT

GRANTS*	Expenditures through 05/31/2019	Source	Received	Expenditures	Grant Award	Budget Remaining
285000079 State Aid Grant 2018		State	3/5/2019	\$126,512.64	\$126,657.28	\$144.64
285000082 State Aid 2019		State	3/15/2019	\$10,946.72	\$126,997.06	\$116,050.34

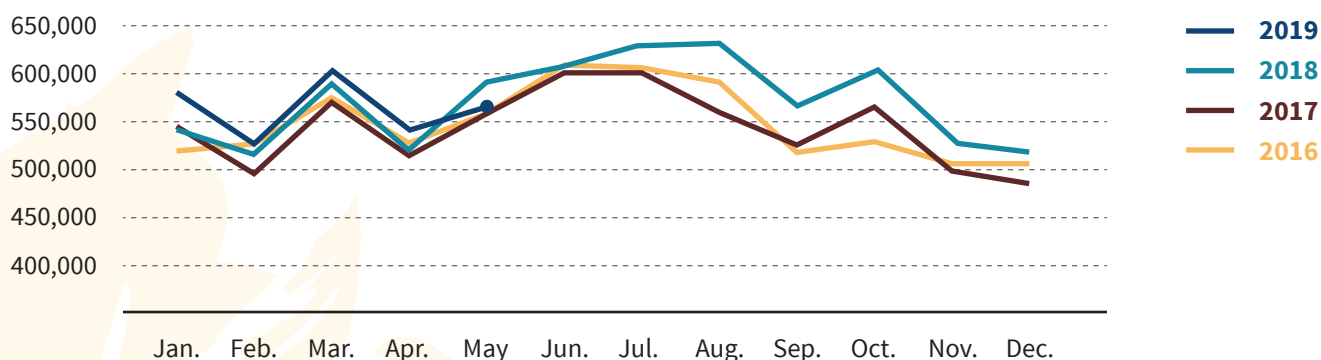
*Includes all expenditures and revenues over the life of the grant. (Includes multiple years due to the grants crossing fiscal years).

Core Operational Statistics

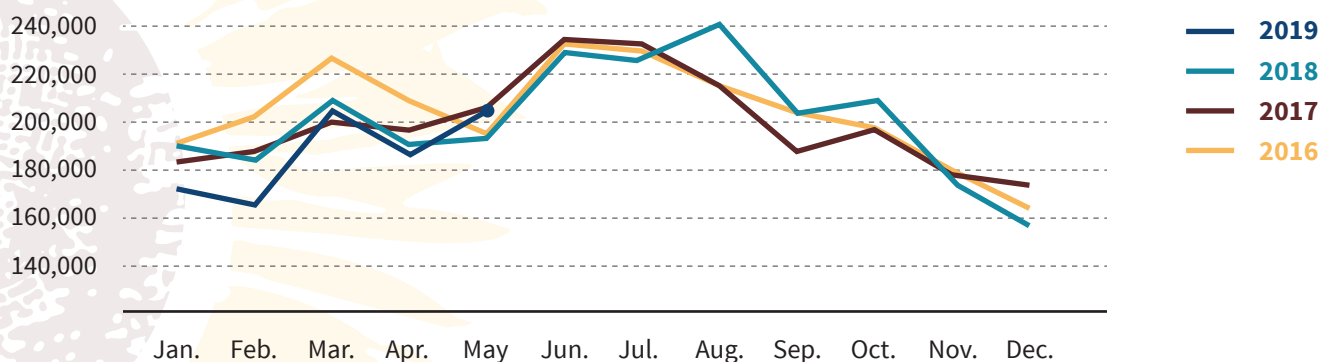
3 Year Digital Circulation Trend



3 Year Physical Circulation Trend

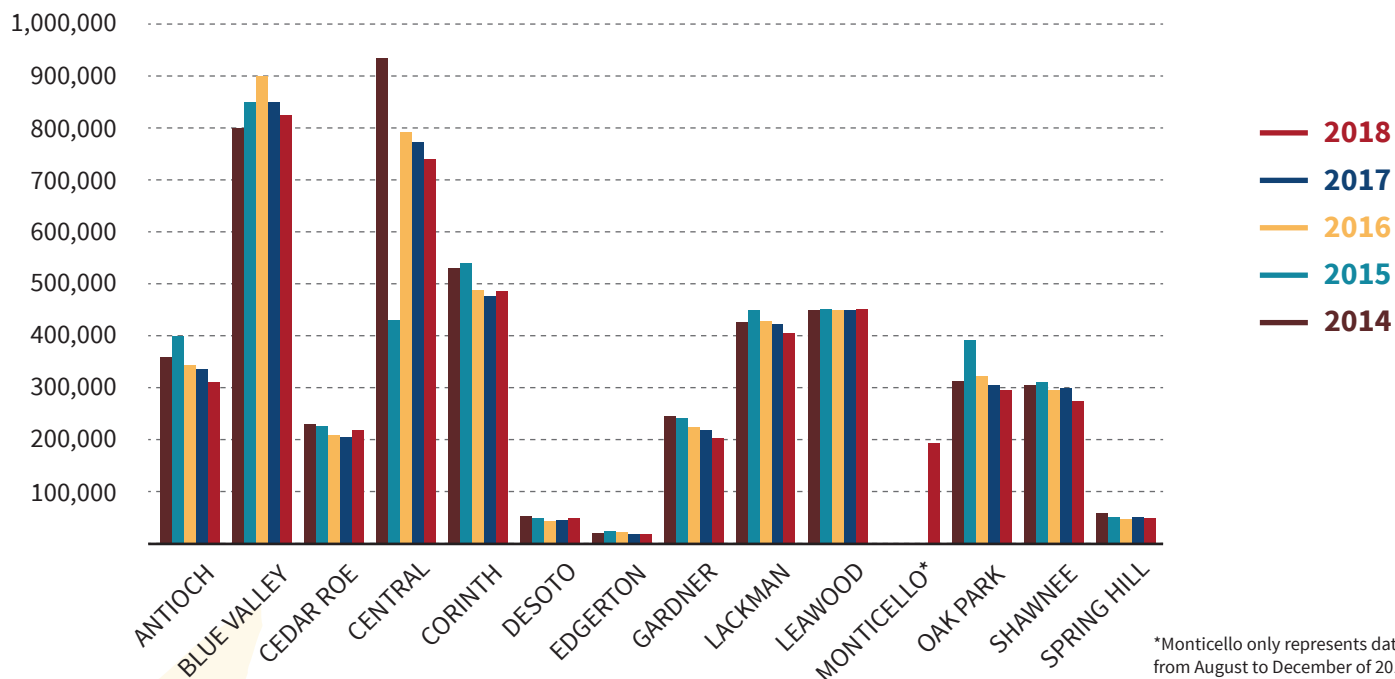


3 Year Visitation Trend

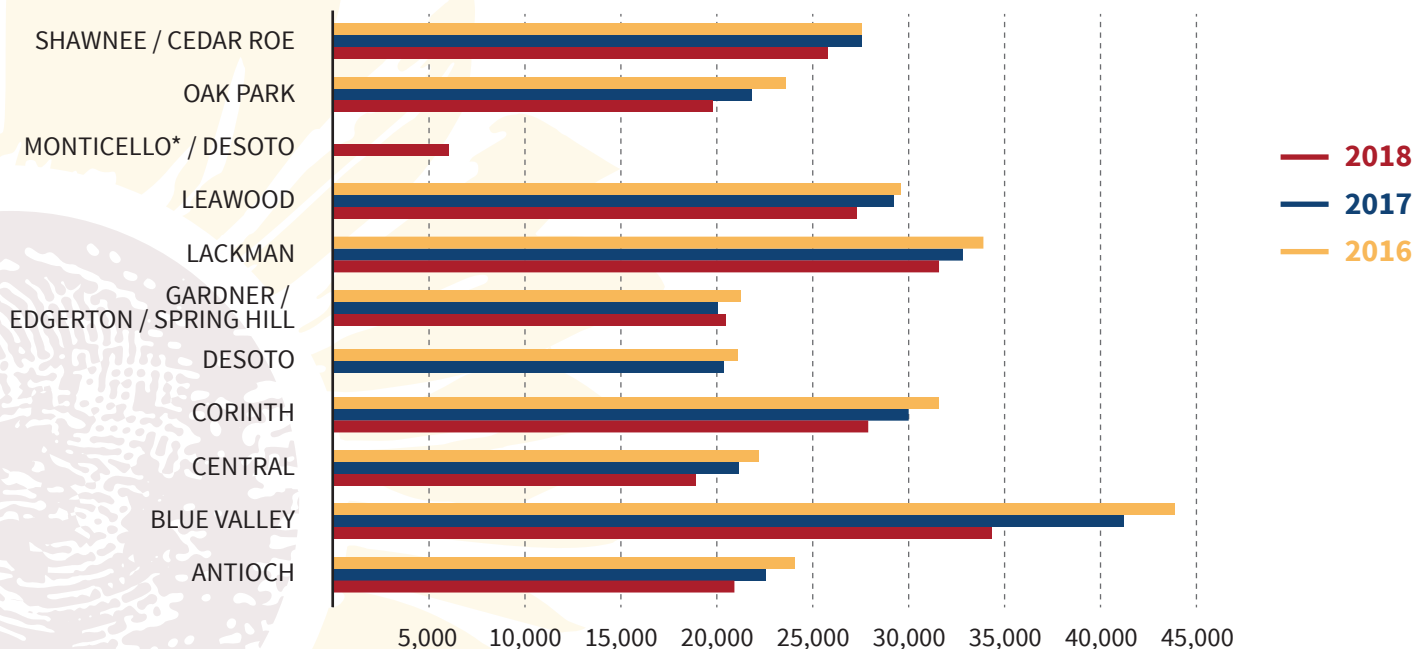


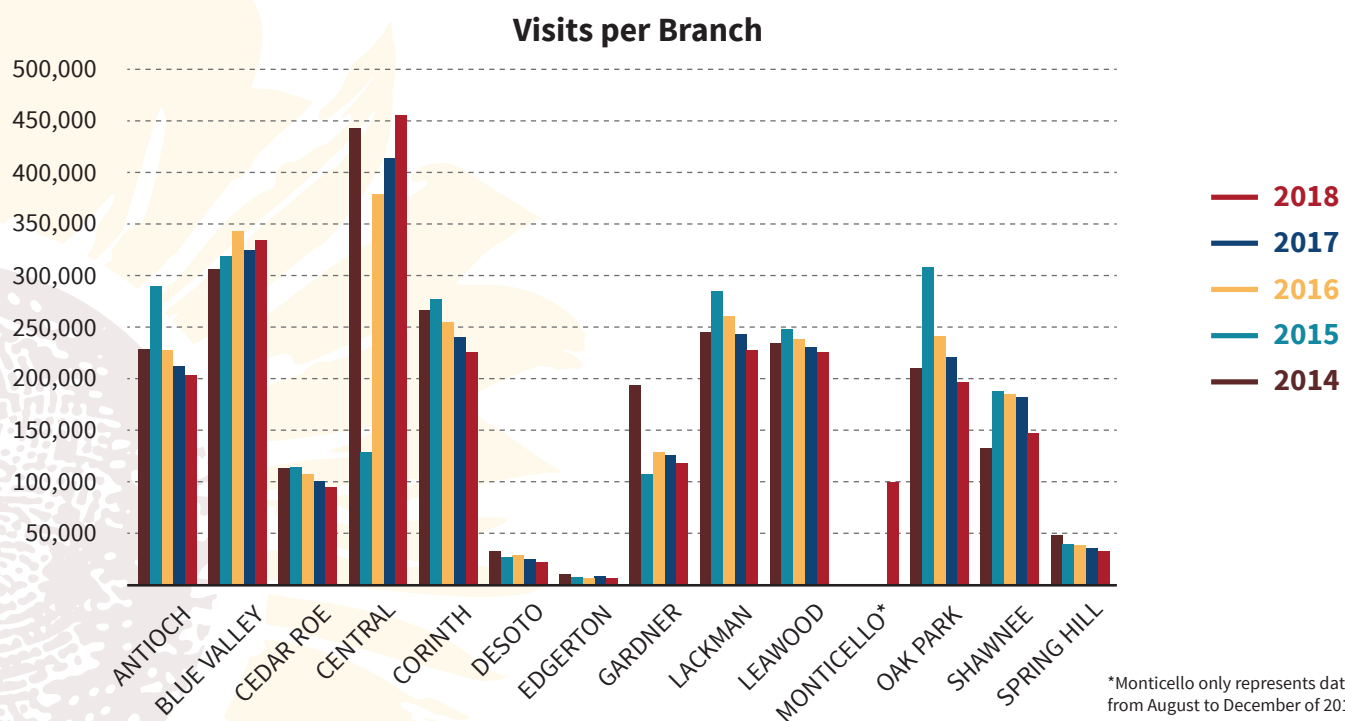
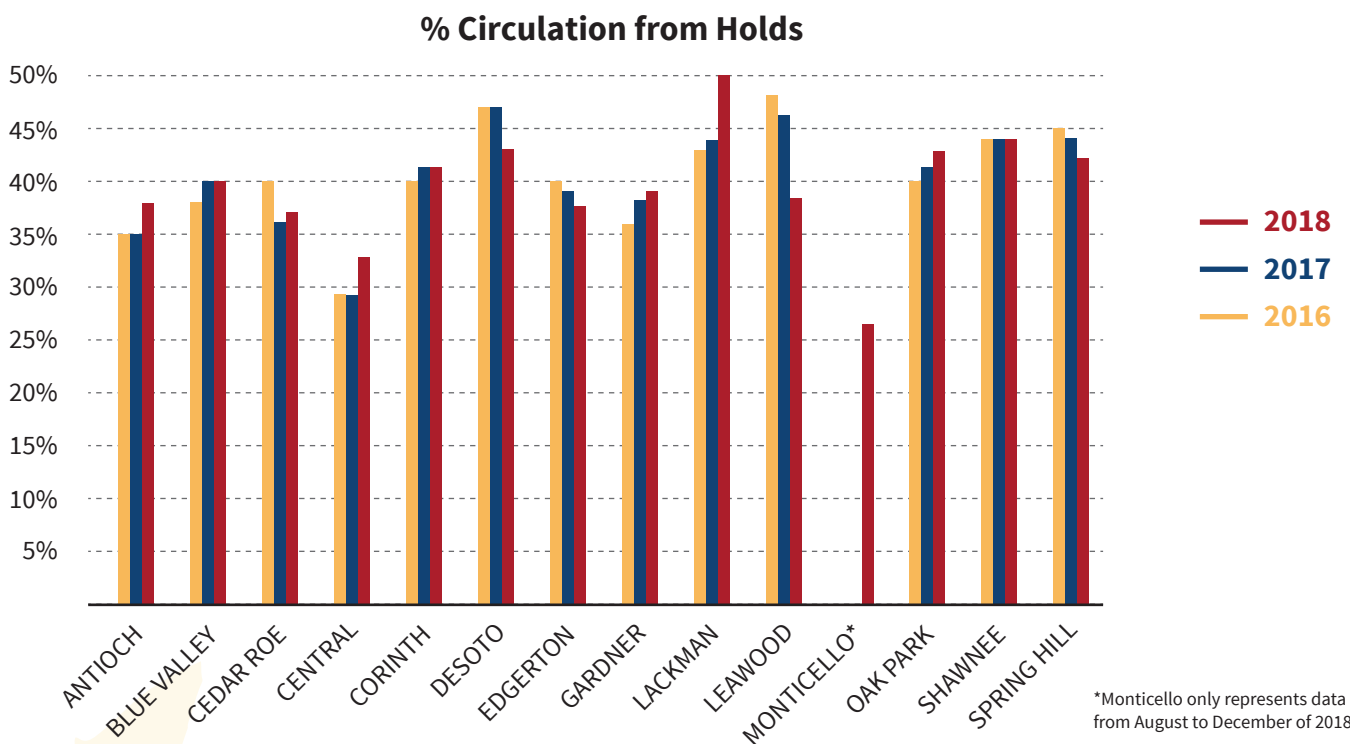
Trends in Branch Services

Circulation by Branch

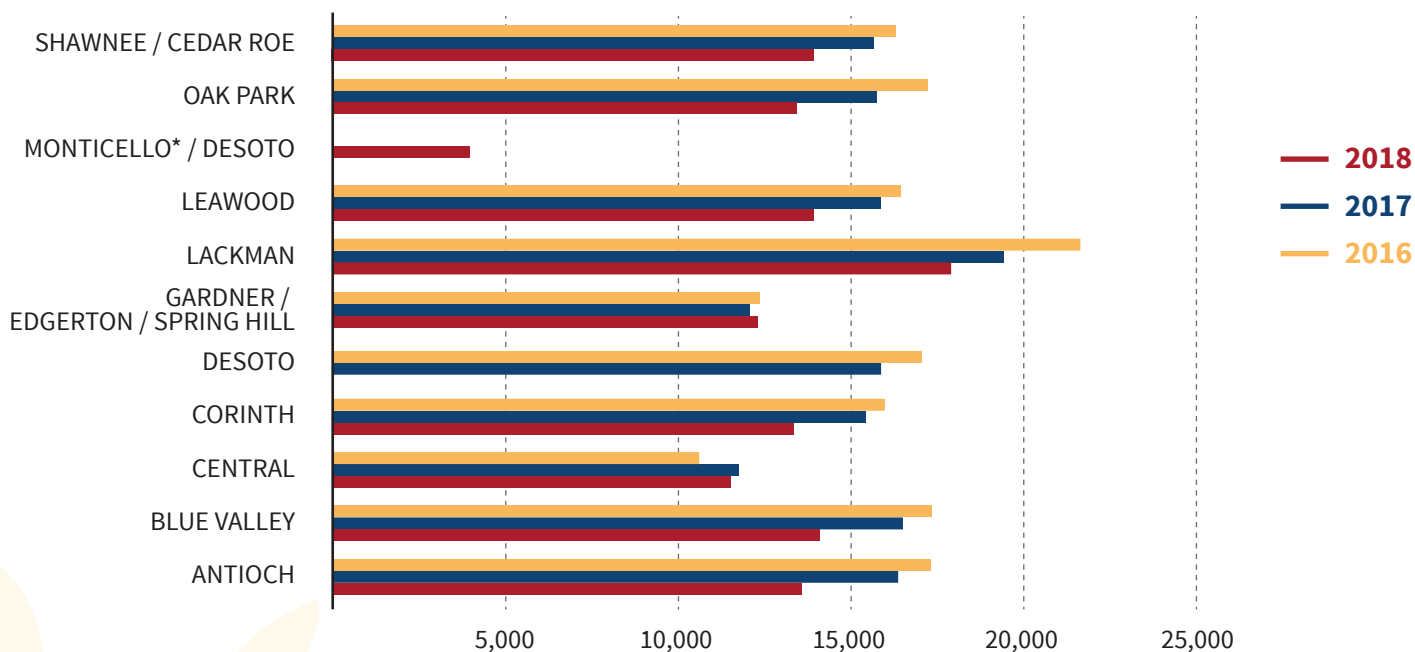


Number of Annual Circulations per Staff Member

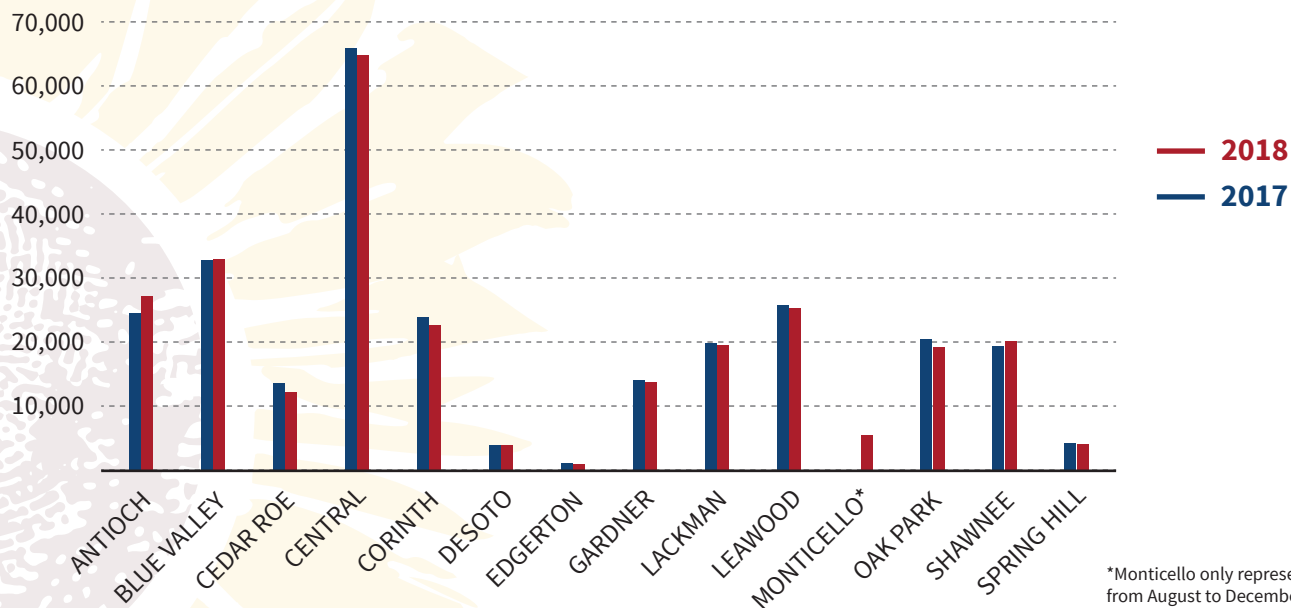




Number of Annual Visits per Staff Member

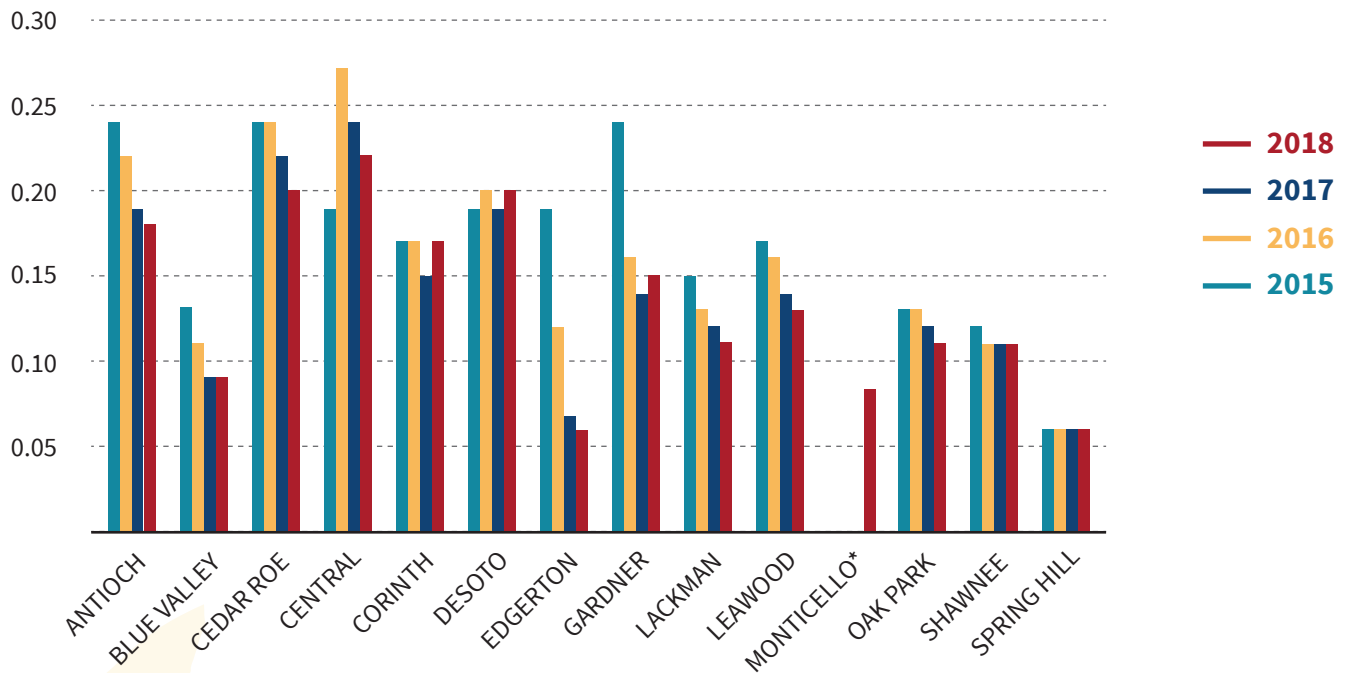


Number of Users per Branch

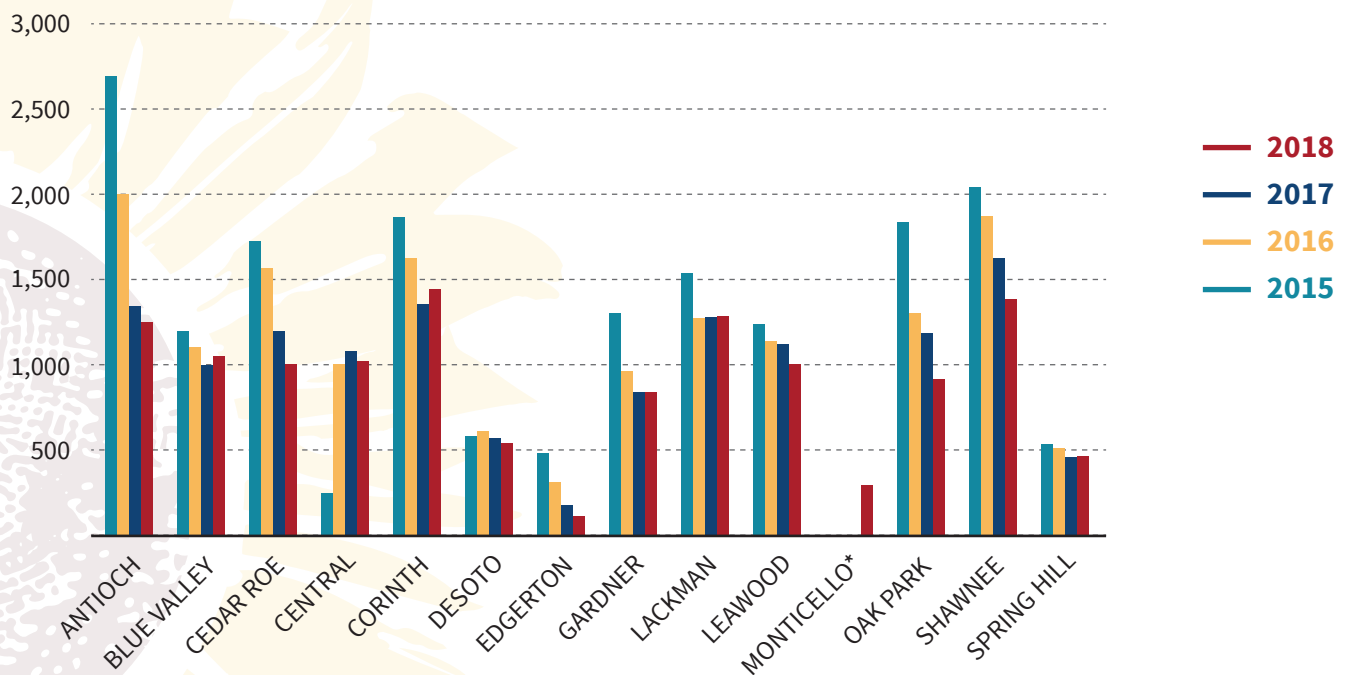


*Monticello only represents data from August to December of 2018

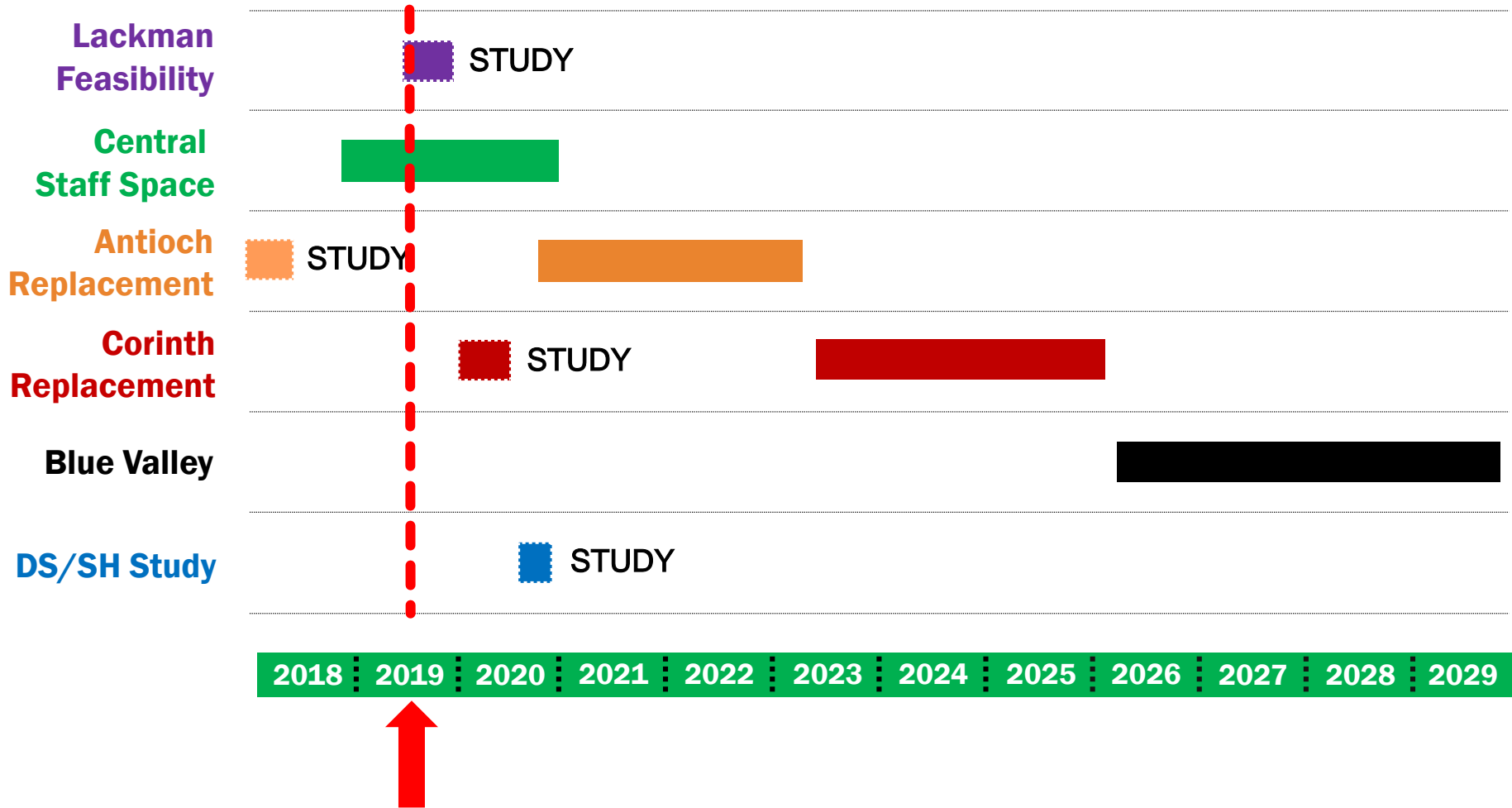
Number of Computer Sessions Per Visit



Average Number of Computer Sessions per Computer



Anticipated Draft Project Staging Timeline



This visual is shown as an illustration with anticipated dates, and may change.

Lackman Feasibility Assessment

Anticipated Timeline:

- June 2019
 - Creation and approval of project charter
- July-September 2019
 - Needs Assessment with Facilities, Friends, Foundation
 - Progress Report at Friends, Foundation, Library Board meetings
- November 2019
 - Presentation of options at Library Board Annual Retreat
- December 2019
 - Library Board action

Board Liaison(s) assigned –

Centralized Support Space Consolidation (CSSC)

Anticipated Timeline:

- July 2019
 - Direction received from Library Board
- August 2019
 - Approvals from BOCC, PBC
- Late Summer / Fall 2019
 - Design process begins with selected option

Board Liaison(s) assigned – JR Riley and Amy Ruo

Antioch Replacement

Anticipated Timeline:

- December 2018
 - Inclusion of Antioch Library Replacement in Capital Improvement Plan (CIP) Request
- June 2019
 - Draft Land Conveyance shared with the City of Merriam
- August 2019
 - 2020-2024 Budget Approval (BOCC)
 - City and Library Board approval of Land Conveyance
- Upcoming
 - BOCC approval and ratification of Land Conveyance
 - Property Maintenance Agreement
 - Public input, Design, Construction, Move-in, Opening

Board Liaison(s) assigned – Brandy Butcher

Corinth Replacement

Anticipated Timeline:

- 2019
 - Review/Approval of MOU between the Library Board and the City of Prairie Village
- 2020
 - Programming and Site Feasibility Study
- 2023
 - Begin capital project

Board Liaison(s) assigned –

Blue Valley

Anticipated Timeline:

- 2017
 - Successful conceptual design partnership with the City of Overland Park to study a larger BV location and Literary Park
- 2018
 - Library Board approved an alternate schedule, Blue Valley after Antioch and Corinth
- Upcoming
 - Land Conveyance document
 - 2026 - Begin capital project

Board Liaison(s) assigned –

DeSoto / Spring Hill study

Anticipated Timeline:

- 2018
 - The Library Board authorized a study to explore the possibility of refreshing and modernizing DeSoto and Spring Hill locations
 - emphasis on cosmetic refresh and potential expansion of hours and services
- 3rd Quarter 2020 – Begin work on study

Board Liaison(s) assigned–

Fix-It Stand & Bike Racks

Partnership w/BikeWalk KC &
Johnson County Department of Health &
Environment – Summer 2019



Issues

- Identified by JoCo Dept. of Health & Environment
 - Nearly 60 percent of adults are overweight or obese in Johnson County
 - 35 percent have been told by a health professional that they have high blood pressure

Issues (cont'd)

- Identified by Johnson County Library
 - Need for more bike racks
 - Need for new bike racks
 - Bikes abandoned on JCL property often have mechanical issue
 - New bike lanes near library

Solutions

- Partner w/JoCo Dept. of Health & Envir. to fund new fix-it stand, bike racks and program
- Partner w/BikeWalk KC to deliver programming on how to use the fix-it stand and how to ride your bike safely in Johnson County

Fix-it Stand Installed!



Fix-it Stand Installed (cont'd)



Programming



FREE! FAMILY CONFIDENT CITY CYCLING

Tuesdays & Thursdays
6:00-8pm
July 23rd, 25th, 30th
and August 1st

Johnson County Library - Central Resource
9875 W 87th St, Overland Park, KS 66212

Topics covered include: fix a flat, brake adjustment, basic cleaning & seasonal maintenance. If you don't have a bike, you can earn one by participating in this program!

Registration required. Please register with at
<http://bit.ly/familyCCC>.

Open to adults and kids ages 14+. Parental consent is required for anyone <18 years old. Parental permission form available on the registration site and from the Johnson County Central Library.



Programming (cont'd)

KEEP IT ROLLING!

Maintain Your Ride program with BikeWalkKC



Johnson County Central Library
Thursday, August 15th
6 - 8 pm

You've got a bike you love, and have been riding it around. Bring it by to have trained BikeWalkKC mechanics work with you on any minor issues and ask any lingering question about bike maintenance. We want to help you keep it rolling!

Register for this event at:
<http://bit.ly/myrJOCO>



SUSTAINABLE SOLUTIONS

ROOF TOP SOLAR ARRAY:

- **Electrical Use Offset:** 10% annually
- **Roof Area Required:** 10,000 gsf
- **Installation Cost:** \$550,000
- **Panel Life:** 25 – 30 years
- **Payback:** 29.8 years *

*Payback assumes \$18,460 savings in annual electrical costs



JCCC – Hospitality and Culinary Academy Building – Solar Array

**MINUTES JOHNSON COUNTY LIBRARY BOARD
REGULAR MEETING
June 13, 2019
Central Resource Library
4:00 p.m.**

BOARD: Brandy Butcher, Donna Mertz, JR Riley, Amy Ruo, Wayne Burke, David Sims

BOARD ATTORNEY: Fred Logan, Andy Logan

BOCC: Commissioner Hanzlick

FRIENDS OF THE LIBRARY: Julie Steiner

STAFF: Dean Allman, Sheida Bates, Michelle Beesley, Brian Berrens, Nancy Birmingham, Robin Carol, Sean Casserley, Abby Giersch, Lacie Griffin, Hope Harms, John Keogh, Linda King, Lucas Kirkendoll, Christopher Leitch, Juan Lopez-Tamez, Jennifer Mahnken, Anna Mattonen, Steph Neu, Nicki Neufeld, Michelle Olsen, Michaela Scruggs, Georgia Sizemore, Stephanie Stollsteimer, Tricia Suellentrop, Ben Sunds, Jackie Suptic, Adam Wathen, Ken Werne

GUESTS: Julie Steiner, Rick Wise, Karen Wulfekuhle

Vice Chair, Amy Ruo called the meeting to order at 4:00 p.m.

CITIZEN COMMENTS: There were none.

BOARD OF DIRECTORS COMMENTS: Ms. Ruo introduced new Library Board member, David Sims. Mr. Sims is a Financial Advisor at Enterprise and has lived in Johnson County for 15 years. He is excited to join the Library Board and became aware of the opportunity through former Library Board member, Nancy Hupp.

Ms. Ruo read the following statement from Board Chair, Bethany Griffith. "When my family vacation was planned I had not expected to be chair, so I wanted to send my apologies for missing today's meeting. However, this is a barely sincere sorry, since my feet are currently in the sand at Waikiki beach.

I want to thank everyone who helped build and launch Lenexa City Center, you are all rock stars. I will be having a Mai Tai in your honor!

Thank you Amy for stepping in to chair today's meeting."

Ms. Ruo stated the Lenexa opening was fabulous; everyone she spoke to enjoyed it. She thanked staff for their hard work.

FRIENDS OF THE LIBRARY: President of the Friends, Julie Steiner, reported to the Library Board.

Ms. Steiner provided an overview of the Friends' Strategic Plan. The plan includes four committees:

1. Membership
2. Community Engagement/Marketing
3. Revenue Generation and Fiscal Oversight
4. Executive Committee

The largest jump in membership to the Friends usually occurs on the preview night of the annual June book sale. The goal of the Membership committee is to increase membership.

The goal of the Community Engagement/Marketing committee is to tell the story of the Friends and increase awareness.

The Revenue Generation committee is moving ahead with the 2020 budget, and considering options around their leased space for the next three years.

The Executive Committee is charged with streamlining onboarding for new members, and has been meeting with the Foundation's executive committee to see how their plans align and where they can work together.

The Sizzlin' Summer Book Sale starts June 26 with a preview night for Friends and then runs through Saturday. This is the Friends' largest fundraiser of the year and is being held at the Lackman Brnach.

JOHNSON COUNTY LIBRARY FOUNDATION: Executive Director of the Foundation, Stephanie Stollsteimer welcomed Foundation President, Rich Cook.

Ms. Stollsteimer presented an overview of the Foundation's strategic plan. The Foundation board approved the three-year plan last March. The plan is divided into four mission driven initiatives/committees: Fund Development, Marketing and Events, People, and Governance.

The goal of the Fund Development committee is to thoughtfully obtain, manage, grow and allocate the financial resources of the Foundation with the highest degree of integrity.

Marketing and Events works to effectively communicate the Foundation's mission and engage community support for Johnson County Library programs and services.

The People committee recruits and retain board members who are committed and passionate about the Foundation's mission and goals; represent our diverse community and strengthen relationships with Library allies.

The goal of the Governance committee is to ensure fiscal responsibility, ethical governance and organizational sustainability through proactive leadership and management.

The Foundation recently received the news of a bequest from a dedicated volunteer, Christine O'Brien, in the amount of \$293,000.

The Foundation recently held the Stay Home and Read a Book Ball. It's a grass roots events and all donations went to summer reading.

Library Lets Loose will be held September 28. The Foundation is halfway to the sponsorship goal and pushing hard to the finish line.

The Foundation presented their annual gift to the Library that is a disbursement from the endowment. This year the gift is \$80,224.22. This gift goes to support the Library's collection.

COUNTY COMMISSIONER REPORT

Commissioner Hanzlick shared she is reading *A Confederacy of Dunces* by John Kennedy Toole.

She announced that the Board of County Commissioners has completed the budget hearing for the 2020 budget. She anticipates the Library budget will be approved and the mill levy will remain the same.

Thursday, June 20, the Board of County Commissioners will set the maximum expenditure budget. On Monday, July 29, there will be a public hearing on the FY 2020 proposed budget. On August 8, the Commission will formally adopt the FY 2020 budget resolution.

Commissioner Hanzlick thanked Teen Librarian, Kate McNair, for providing copies of *Some of My Best Friends are Black* by Tanner Colby. She shared the books with the Commissioners and marked the chapters that focus on Kansas City.

She commented that she loved the Lenexa opening and enjoyed trying out the drive thru.

BOARD COUNSEL REPORT

Role of the Library Board

Board counsel, Mr. Logan, spoke about the role of the Library Board with respect to the Friends and Foundation.

From a legal perspective, the Friends and Foundation are supporting organizations of the Johnson County Library. Mr. Logan suggested a practical way to consider the relationship is that the Library Board, Foundation and Friends are all supporting organizations for one another with shared goals.

Both the Friends and Foundation have boards of their own.

Intellectual Freedom and IT Services

Mr. Logan shared that this is an area of importance and it becomes more and more complicated. Library staff work hard to work with these complex issues. The Library is committed to protecting the confidentiality of patron information. If patrons check-out items, their reading record is not public. If the Library received an open records request for patron reading records the Library would deny the request as allowed by state law.

The Library takes seriously the Library Bill of Rights, patron confidentiality and the concept of intellectual freedom. Mr. Logan commented that the Library Bill of Rights has been recently amended. It says, "all people regardless of origin, age, background, or views, possess a right to privacy and confidentiality in their library use. Libraries should advocate for, educate about, and protect people's privacy, safeguarding all library use data, including personally identifiable information." Mr. Logan assured the Library Board that the Library and staff fully stand behind this policy.

COUNTY LIBRARIAN REPORT

Mr. Casserley thanked the Foundation for the gift, and thanked both the Friends and Foundation for working with the Library to align all the strategic plans.

Finance Report

Finance Director, Nicki Neufeld, reported to the Library Board. As of the end of April, the Library is at 54% of revenue received and has expended approximately 27% of the budget. Reserves are at \$10.2 million. These figures are as anticipated.

Ms. Neufeld addressed a question that was asked about the financial reports at the meeting last month. On review of the reports, it was discovered that there had been a miscoding of a math allocation, this has been corrected.

Trends in Marketing and Communication

Associate Director of Systemwide Services, Adam Wathen, introduced External Communication Manager, Robin Carol to the Library Board.

Mr. Wathen reviewed the operational statistics with the Board. They remain consistent with previous months in that digital circulation shows a 30% increase. Physical circulation is pacing above previous years by 5%, and visitation has dropped slightly compared to previous years by about 2%.

Mr. Wathen and Ms. Carol reviewed trends in communication, marketing and social media. Mr. Wathen explained that “impressions” are the number of times our patrons see our content. He presented a chart showing growth from over 7 million impression to over 15 million impression in the last three years. Almost all of the growth is in the paid impressions category.

There has been consistent growth in Twitter, Facebook and Instagram followers over the last three years. Website visits and catalog visits have remained consistent.

Finally, Mr. Wathen presented a chart comparing marketing spend with key outcomes. The Library’s goal is for the cost ratio to trend downward as we refine our marketing and become more effective.

COMPREHENSIVE LIBRARY MASTER PLAN

Antioch update

Associate Director of Branch Services, Jennifer Mahnken, presented to the Library Board.

In 2017, the City of Merriam invited the Library to consider moving its current Antioch branch to the new Community Center campus. This location is one block north of the current library location.

In December of 2017, the Library Board gave its approval for the library to explore this option formally.

The library spent several months exploring this idea, including both working with the City and evaluating the current Antioch Campus to see if it would be feasible for the Library to rebuild on its current site.

In June 2018, the Library recommended to the board that it move the current library to the new community center campus. The library board approved that recommendation.

In March, the Library Board approved the Memorandum of Understanding (MOU) with the City of Merriam to move forward with next steps – to plan a new library on this location.

The Board of County Commissioners (BOCC) approved and ratified the MOU in late April, showing their support. This project has been included in the 2020 Budget Request to the BOCC.

The Library's next step is to bring a land conveyance agreement to City of Merriam and the Library Board. After the City and Library Board have approved, the agreement will be taken to the BOCC for approval and ratification.

Commissioner Hanzlick asked if the Library is financially obligated to help pay for the parking garage.

Mr. Casserley responded the Library is not paying for public parking, although we may enter into an agreement with the City for maintenance of a number of lots and the grounds.

In response to a question, Mr. Casserley stated that the Library plans to sell the old building and put the money toward debt pay down.

Lenexa City Center

Mr. Casserley shared that in the first 14 days of opening there have been 19,293 checkouts, 10,996 returns and 17,499 visitors. 362 patrons have used the drive thru, 470 new cards have been made and 67 patrons have used the holds lobby.

Mr. Casserley provided an update to the board on the Lackman building. The Library is studying two options. The first option is the sale of the land, the second option would be to rent the building to the Friends or Foundation. The options will be brought to the Library Board for discussion at the Board Retreat and for action at the November Library Board meeting.

Fall Board retreat date

Mr. Casserley announced a poll will be sent to the Library Board to identify a meeting time for the annual Board retreat. The poll will focus on Thursdays in October. It is an open meeting and Commissioner Hanzlick is welcome to attend.

Library Night at the K

The Kansas City Royals will hold Library Night at the Kauffman Stadium on Tuesday, July 30. A portion of the tickets sales will be given to each participating Library.

Budget update

Mr. Casserley thanked the Board of County Commissioners for their work on the budget and for making no adjustment to the mill levy.

Operationalizing the strategic plan through tactic development

Mr. Casserley presented the tactic development model Library staff are using to operationalize the strategic plan goals. Staff are exploring each service area, and then will be ideating on possible solutions, deciding which options to pursue, developing the tactics to make them actionable and then implementing and evaluating.

CONSENT AGENDA

Minutes of the May 9, 2019, Library Board meeting

Motion: JR Riley

Second: Brandy Butcher

Motion carried unanimously

NEW BUSINESS

Consideration of approval of two sidewalk easements on the Monticello site

In August 2018, the Monticello Library was opened. In 2019, the Library was contacted by the City of Shawnee regarding constructing a new portion of sidewalk on Library property near Monticello Library along Hilltop Drive. These two easement items will provide the City of Shawnee the necessary legal authority to construct and maintain this portion of the sidewalk.

The Permanent Sidewalk Easement agreement would provide approximately 149 square feet to the existing sidewalk which would be constructed at the City's cost.

1. *Temporary Construction Easement* between the Library Board and the City of Shawnee. This easement temporarily grants the City of Shawnee access to approximately 749 square feet of space on the Monticello property to construct the new portion of sidewalk and adjoin it to the existing sidewalk on the Monticello site at one end, and to a new sidewalk on City-owned land.
2. *Permanent Sidewalk Easement* between the Library Board and the City of Shawnee. This easement allows the City to maintain the portion of sidewalk on the Monticello site.

Motion: Brandy Butcher moved to approve the temporary construction easement between the Library Board and the City of Shawnee on the Monticello site.

Second: JR Riley

Motion carried unanimously

Motion: Brandy Butcher moved to approve the permanent sidewalk easement between the Library Board and the City of Shawnee on the Monticello site.

Second: David Sims

Motion carried unanimously

Consideration of approval of request from the Kansas Department of Health and Environment

The Kansas Department of Health and Environment (KDHE) Dry Cleaning program is attempting to complete an investigation into the extent of groundwater contamination from a former dry cleaners site that was located near the Central Library.

KDHE has informed the Library that prior investigations have shown groundwater contamination has migrated from the original site, under nearby residential and industrial properties. They are requesting access to the Central Resource Library to collect groundwater samples. This request has been reviewed and approved by the Library's legal counsel.

Motion: JR Riley moved to approve the Kansas Department of Health and Environment's request for access to the Central Resource Library site for groundwater assessment.

Second: Brandy Butcher

Motion approved unanimously

Consideration of approval to close the Gardner branch for the installation of a new chiller

In May, the Library Board of Directors approved the contract to replace the chiller at the Gardner Branch. Since that time, the contractor has asked the Library to consider closing the branch for the installation.

During the installation, the older chiller will have to be craned off the building and the new chiller craned up. This is a safety concern for our patrons. Also during the installation, the HVAC will be off. Due to the time of year, this will cause patrons and staff to be uncomfortable in the building. The Library is a designated cooling center and will not be able to serve in this capacity during this week.

Motion: JR Riley moved that the Johnson County Library Board of Directors approve the closing of the Gardner branch from June 24-June 28, 2019, for the installation of a new chiller.

Second: David Sims

Motion approved unanimously

Informational item: Review of draft Memorandum of Understanding with Prairie Village

Mr. Casserley presented an initial draft of a Memorandum of Understanding between the City of Prairie Village, the Board of Directors of the Johnson County Library, and the YMCA. The MOU would form an agreement between the parties to study "the possibility of constructing a new Johnson County Library facility on land that is in closer proximity to the City's parks, swimming pools and tennis courts".

Old Business

Central Staff Support Consolidation (CSSC) Project

Mr. Casserley provided a history of the Central Building upgrade, and explained it has been a phased project. The Library has grown over the last 25 years making due with the space available. He stated that exceptional public service is only possible when we provide staff the space and support needed to serve patrons. Staff space much function well in order to support employees who support the public.

Rick Wise, Clark Enersen Partners, introduced the CSSC project goals.

The project goals are to:

- Improve system and branch material flow.
- Accommodate incoming system wide staff from Antioch.
- Create workspaces that facilitate collaboration and allow future flexibility - to change as needed by lower impact means - furnishings updates rather than physical. The Administration team also desires to lead by example with their own workspaces.
- Optimize adjacencies. Encourage connections and communication between departments.

- Split branch and system functions. Central is a branch in addition to the building where our support departments live. This project proposes a solution that would align the branch component at Central with the other branches in the system – allowing public service staff to move between locations with ease.

Mr. Wise presented the three options.

Option 1:

Option 1 is the base option. It aims to:

- Improve materials handling flow
- Relocate Antioch staff
- Centralize and consolidate Storage and Shared Amenities
- Relocation of CX and Materials Handling departments.
- Exterior Improvements to building, parking lot and dock
- Phased approach is required

Option 2:

- Optimize departmental adjacencies
- Improve materials handling flow
- Relocate Antioch staff
- Refresh staff workspace
- Centralize and consolidate Storage and Shared Amenities
- Provide a variety of staff Meeting Spaces
- Reduce Server Room
- Create a defined Storm Shelter
- Exterior improvements to building, parking lot and dock
- Phased approach is required

Option 3:

- Optimize departmental adjacencies
- Improve materials handling flow
- Relocate Antioch staff
- Refresh staff workspace
- Centralize and consolidate Storage and Shared Amenities
- Provide a variety of staff Meeting Spaces
- Reduce Server Room
- Create a defined Storm Shelter
- Exterior improvements to building, parking lot and dock
- Expanded Branch Services for new exterior drive-thru window and book drop.
- Kids' area relocates to a more desirable location.
- Phased approach is required.

Mr. Casserley shared that staff has been seeing an increased trend of vehicles cutting through the Library parking lot at speed and causing a hazard. Speed bumps have been added to the parking lot to try to mitigate the issue, but it has continued.

A benefit of moving the kids' area is increased safety, it would also increase the square footage dedicated to young patrons.

Dr. Burke asked why a defined storm shelter was not included in option 1.

Mr. Wise answered that option 1 would include a storm shelter and would be an enhancement for the building; it would not be a FEMA rated shelter.

In response to a question, Mr. Wise, stated that a major goal of the project is to rethink how staff might office in the building and do their work, providing greater flexibility for spaces.

Commissioner Hanzlick asked if these options impact energy efficiency and HVAC issues.

Mr. Wise answered that those space spaces and mechanical systems are being improved in each option, with the greatest improvements in options 2 and 3. The local equipment would be replaced with newer, more energy efficient equipment.

Mr. Casserley commented that with each of the options there are fewer "zones" in the building, making heating and cooling more efficient. The Library did research solar energy as an alternative energy source, but found there would be no cost advantage at this time.

Mr. Wise opened the budget discussion. There are three different project opportunities and three different scopes.

Option 1 Project Cost: \$2,600,000

Option 2 Project Cost: \$6,600,000

Option 3 Project Cost: \$8,300,000

Option 1 is an existing project and was approved in 2016 in the amount of \$1,700,000. The remaining \$900,000 for this option would be included in the Capital Replacement Plan.

The Library Board project liaisons recommend Option 3.

Ms. Neufeld presented a detailed breakdown of the funding options for Option 3. If Option 3 is selected, the Library would recommend using a combination of existing project funds, public building commission (PBC) debt and Library reserves.

Ms. Neufeld explained that the PBC is the Board of County Commissioners. They issue debt every fall for county projects and they would issue bonds for this project.

Mr. Riley commented that as a project liaison, he asked very detailed questions about the funding and he feels confident in the funding for Option 3. He expressed support for completing the project as it should be done. He is a firm believer in doing things the right way the first time and supports Option 3.

Ms. Ruot commented that she also supports Option 3. She likes the drive-thru option and increase to safety for the kids' area. The adjacency to the park for the kids' area is also a benefit.

Mr. Casserley shared that the timetable is achievable and within capacity.

Ms. Mertz also supports Option 3, and feels that it completes the project correctly.

Commissioner Hanzlick asked if including solar energy would change the project cost.

Mr. Casserley responded that alternative energy options were researched for the Monticello project and found that there was no cost benefit at this time.

Mr. Wise commented that the life of solar products is how long it takes to pay it back, and that the technology needs to be replaced within 20 to 25 years. If there is an interest to look at sustainable solutions for the CSSC project they can be investigated.

Commissioner Hanzlick responded that there is a community-wide discussion regarding the benefits of reducing the carbon footprint, and she is part of the Metro KC Climate Action Coalition. She was supportive of exploring alternative energy sources.

Mr. Casserley shared that the project team would be willing to investigate alternative energy for the project if it is of interest to the Board of County Commissioners.

Commission Hanzlick shared she believes there is will on behalf of the County Commission to consider those options. She also recommended the Library consult with the County's sustainability program manager.

Mr. Sims commented that he is supportive of flexible design that can be adapted to solar if it becomes less expensive in the future.

ADJOURNMENT

Motion: JR Riley moved to adjourn.

Second: David Sims

Motion approved unanimously

Meeting adjourned at 5:40 p.m.

SECRETARY _____
Amy Ruo

CHAIR _____
Bethany Griffith

SIGNED _____
Sean Casserley

JOHNSON COUNTY LIBRARY
GIFT FUND
TREASURER'S REPORT
Period: MAY-2019

			Receipts	Payments	Balance
	Opening cash balance				\$66,117.18
		Add Receipts	\$157.88		
		Less Payments		\$412.07	
	Ending Cash balance				\$65,862.99
		Less Liabilities		\$0.00	
	Unobligated cash balance				\$65,862.99

APPROVED: _____

DATE: _____

Website Software Upgrade

Michelle Beesley, IT Manager



Content Management System

- Open source software - Drupal
- JoCoLibrary
- Library Board Portal



Behind the Scenes Upgrade

- Limited changes to look and feel for patrons and for staff contributors
- Upgrade Drupal from version 7 to 8
- Position us to continue upgrading without requiring contractor support

Formal RFP Process

- Led by County Purchasing
- Committee members from Library, County Department of Technology and Innovation, and Wastewater
- Vendor selected!

Contract presented for approval

Security review completed

- Vendor Security Checklist

Reviewed by Library legal counsel:

- Detailed Statement of Work
- Payment schedule
- Professional Services Agreement

To: Johnson County Library Board of Directors

From: Sean Casserley, County Librarian

Date: July 11, 2019

Issue: Consideration of Approval of Contract with Code Koalas for Drupal 8 Website Migration Project

Suggested Motion: I move the Library Board of Directors approve the agreement with Code Koalas for the Library Website Drupal Migration Project in an amount not to exceed \$141,050.00.

Background: Drupal is the content management system, open source software, that supports the Library website and the Library Board website. As the software is open source, the Library CX-IT and CX-Web teams have supported it in-house since Drupal was adopted by the Library in 2012. The move from Drupal 7 to 8 is a major upgrade requiring a rebuild and content migration.

Analysis: As JCL's staff resources are not currently sufficient to tackle the Drupal 7 to 8 upgrade and migration, bids from skilled Drupal experts were sought through the formal RFP process with the guidance of County Purchasing. The team evaluating the submitted proposals included Library technical professionals and County Department of Technology and Innovation professionals. A local vendor was selected, Code Koalas, as a good fit for this project. They will be able to handle the upgrade and migration with limited changes to look and feel for patrons and staff contributors. The upgrade will provide the Library CX-IT and CX-Web teams new technical tools and functionality to evolve the design and user experience. It will also position the Library to continue with open source software utilizing in-house staff support and avoiding ongoing support contracts. Drupal 7 is end of life is November 2021, and supporting code base, PHP 7.2, is end of life in November 2020, meaning that security updates will not be provided after this date and the upgrade is not optional.

Alternatives:

- Move to a new content management system (instead of Drupal). This option would require a full redesign of the Library website and Library Board website, taking extensive CX resources for content and user experience refresh. A website redesign project is certainly down the road at some point but not yet planned nor resources allocated.
- Defer maintenance and upgrades of Drupal until 2020, placing us closer to the end of life for Drupal 7. Internal resources would need to go into upgrading PHP. The PHP upgrade is bundled as part of the Drupal upgrade and would not require staff resources if we move forward now.

Recommendation: The Johnson County Library Board of Directors approve the agreement with Code Koalas for the Library Website Drupal Migration Project in an amount not to exceed \$141,050.00.

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 5th day of July, 2019, by and between Ryan Wyse Technology & Design d/b/a Code Koalas, a Missouri LLC, with offices at 2024 Main Street STE 1W Kansas City, Missouri ("Contractor") and Johnson County Library ("Library").

WITNESSETH:

WHEREAS, the Library issued Request for Proposal No. 2019-045 Drupal dated 3/25/19, whereby the Library invited formal sealed proposals for Johnson County Library Website Drupal Migration for the Johnson County Library ("RFP"); and

WHEREAS, in response to the RFP, Contractor has submitted its proposal to provide to the Library a Johnson County Library Drupal Migration; and

WHEREAS, following review and evaluation of the proposals duly submitted, and interviews of the prospective and qualified candidates, the Library desires to engage the professional services of the Contractor to provide the solution described in the Contract Documents; and

WHEREAS, Contractor has represented that it is duly qualified and experienced to provide the Library with such services, and is willing to provide the same, in accordance with, and subject to, the terms and conditions of the Contract Documents; and

WHEREAS, the Library and Contractor hereby agree to accept the terms and conditions of the Contract Documents.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and the Contract Documents, and for other good and valuable consideration, the Library and the Contractor agree as follows:

1. **Contract Documents.**

A. The license and the services to be provided hereunder shall be governed by the terms and provisions of this Agreement, all Exhibits to this Agreement, and the respective provisions and representations contained in the following documents, which are incorporated herein by reference, and which together with the terms of this Agreement comprise the "Contract Documents":

(i) Contractor's Response to RFP No. 2019-045 Drupal dated 3/25/19 ("RFP Response"); and

(ii) Contractor's Cost Proposal for RFP No. 2019-045 Drupal dated 3/25/19 ("Cost Proposal").

B. Should any ambiguity, inconsistency, or conflict arise in the interpretation of the Contract Documents, the same shall be resolved by reference first to the terms and conditions of this Agreement, then by reference to the Exhibits, and then by reference in sequence to the provisions and representations contained in the documents referenced in Subsection 1.A hereinabove.

C. The following Exhibits are attached to and incorporated in this Agreement:

Exhibit A: Payment Schedule
Exhibit B: Statement of Work ("SOW")
Exhibit C: Vendor Security Checklist

D. "Website" shall mean the Johnson County Library Drupal Website Migration as enhanced, modified, corrected, upgraded, added, customized, or otherwise changed by Contractor pursuant to the requirements of the Contract Documents.

E. This Agreement shall be effective as of the date written above ("Effective Date").

2. Services.

A. Contractor shall provide (i) all services and (ii) the Website described in the Cost Proposal and License to provide a solution that meets all the terms, conditions, specifications, and requirements set forth in the Contract Documents ("Contract Services"). The Website shall be customized, installed, configured, and tested in accordance with the Contract Documents. As part of providing the Contract Services, the Contractor shall complete each deliverable of the SOW by the dates established therein. All Contract Services shall be performed for the Fixed Price set forth in Section 3 herein. Contractor shall provide maintenance and support of the Website under the terms and conditions set forth in the Support and Maintenance Agreement.

B. The Website provided by Contractor shall fully meet and include all of the detailed business/functional user requirements set forth in the RFP as specified, regardless of Contractor's comments or responses contained in the Response and without additional cost.

C. Contractor shall commence work on the Contract Services no later than fifteen (15) business days following the Effective Date. Contractor shall use its

best efforts to meet the “Go Live” date for live operation of the Website as stated in the project plan.

D. Contractor shall complete each deliverable set forth in the SOW no later than the last day of the respective timeline for such deliverable, as set forth in the SOW. A deliverable shall be considered complete based upon the criteria and standards set forth in Section 6 of this Agreement.

3. Compensation.

A. The Fixed Contract Price is \$141,050, which is set forth in more detail in the Cost Proposal. Payments for each phase shall not be due and payable unless and until each phase is completed and preliminarily approved by the Library. The Fixed Contract Price and annual maintenance and support is payable on the schedule set forth in Exhibit A.

B. A reserve in the amount of 20% (\$28,210.00) of the Fixed Contract Price shall be withheld by Library (“Reserve”). The Reserve is being held in lieu of a performance bond. The Reserve shall be paid upon Final Acceptance as specified in Section 6.C. of this Agreement.

C. Upon completion and preliminary acceptance by the Library of each deliverable listed in Exhibit A, Contractor shall invoice the fee specified in Exhibit A for each such phase, which shall become due and payable only upon Library’s acceptance. The invoice shall be sent to the attention of Johnson County Library, Michelle Beesley, 9875 W. 87th St., Overland Park, KS 66212 . Payment will be processed according to the regular payment procedures of the Library.

D. The Fixed Contract Price is inclusive of all expenses incurred by Contractor, including but not limited to shipping, travel, transportation, and per diem. Contractor shall be solely responsible for the expenses it incurs in connection with this Agreement.

4. Project Management.

A. Contractor will utilize trained, qualified employees capable of timely providing the Contract Services. All work shall be performed in a professional and workmanlike manner consistent with industry standards. Contractor shall arrange for such employees to execute and deliver the Contract Services in accordance with the terms, specifications, and requirements set forth in the Contract Documents by the specified dates agreed upon between the Library and Contractor. Contractor shall not use any subcontractors to perform any Contract Services.

B. Contractor will not reassign or replace its key personnel except for extenuating circumstances, for example: death, termination of employment, personnel issues, or illness. If such extenuating circumstances arise, then Contractor will make a good faith effort to present to the Library an individual replacement, who shall be subject to the Library's approval. If at anytime during this Agreement the Library determines in its sole discretion that an individual is not qualified, the Library will give notice to Contractor and Contractor will remove and replace that individual within a reasonable time.

C. The Library shall have the right to observe and monitor all aspects of the performance by Contractor of its obligations hereunder at any time during the Library's usual working hours and Contractor shall use reasonable efforts to facilitate such observation and monitoring. Information, functions and operations of Contractor not directly related to its obligations hereunder shall not be subject to observation and monitoring. Observation, monitoring, review, or other action by the Library shall not relieve Contractor of Contractor's responsibility for the accuracy and completeness of the work performed under this Agreement.

D. The Library has designated Cheryl Sickels as its Project Manager to facilitate and coordinate completion of this Agreement. Whenever this Agreement requires or when the Contractor needs to advise, communicate with, or seek the approval of the Library in rendering services under this Agreement, the Contractor shall direct all such communications and requests for approvals to the Library's Project Manager. The Library's Project Manager or a designee assigned by the Library shall be on-site whenever the Contractor is on-site at the Library's facilities.

E. The Contractor has designated Eric Riggs as its Project Manager to oversee the Contract Services. The Project Manager will serve as the primary point of contact with the Library and shall be available to meet with the Library as needed to plan and coordinate the Contract Services. At all times during the term of this Agreement, the Project Manager shall be accessible to the Library and shall communicate with the Library on project management and implementation. The Project Manager shall be responsible for effecting Contractor's compliance with the Contract Documents. The Project Manager shall communicate as requested (either by conference call or written status report) with the Library on project status and any relevant issues, exercise reasonable efforts to respond by telephone or e-mail within twenty-four (24) hours, Monday through Friday, to any questions raised by the Library, and supervise Contractor's personnel. At a minimum, the Project Manager shall attend and conduct weekly project status meetings by telephone conference call. Contractor agrees that its Project Manager shall dedicate such time as needed to perform the services in accordance with the deadlines and schedules set forth in the Project Plan. Contractor will designate and assign an employee who will serve as a back-up and perform the Project Manager's duties when the Project Manager is out of the office or otherwise unavailable.

F. At a minimum, Contractor shall be on-site at the Library's facilities for the following activities:

- Initial technology assessment and schedule development
- Training

- Other project activities better handled in person

G. Contractor agrees to comply with JCL's remote access policies, procedures, and guidelines. Prior to obtaining remote access, Contractor's employees shall agree in writing to comply with all of the Library's remote access policies, procedures, and guidelines.

5. Training.

A. As part of the Fixed Contract Price, Contractor shall provide the Library with training with as provided in the RFP Response, Cost Proposal, the SOW and Project Plan ("Training Program"). Any additional training not covered under the accepted Training Program is billed at the Contractor's standard hourly rate for custom services. The Library shall have the right to record and replay all training courses that are taught at the Library's facilities for internal training purposes only. The Library shall have the right to copy and use for internal purposes any materials provided by Contractor. Any videos, audio recordings, or retention of the Contractor's training services are the exclusive intellectual property rights of the Contractor. The Library does not obtain any proprietary rights in the copies of said videos, and may not license, sell, rebroadcast, or redistribute any such materials without the expressed written consent of the Contractor.

B. Contractor shall deliver a detailed user's manual in outline form to the Library before Final Acceptance that will enable Library's employees who are otherwise unfamiliar with the Website to become adequately informed about using the Website and any system operation or other similar materials that are necessary or useful to the Library in its use of the Website. Contractor shall provide the Library with an electronic copy of the user manual, which shall be reproducible. Any reproduced User's Manuals provided to the customer, whether in original form, hard copied form, or electronic medium, are the exclusive intellectual property rights of the Contractor. The Library does not obtain any proprietary rights in the copies of said videos, and may not license, sell, rebroadcast, or redistribute any such materials without the expressed written consent of the Contractor

6. Testing & Acceptance.

A. Contractor shall perform all services and obligations under this Agreement in accordance with the scheduled dates and deliverables set forth in the SOW

and the Contract Documents. A deliverable shall be considered to have been completed: (1) when all tasks associated with such deliverable have been completed; (2) all elements, items, and tasks associated with such deliverable have been actually provided and delivered to the Library; (3) such elements, items and tasks have passed any acceptance criteria applicable to such deliverables; and (4) Library has preliminarily accepted all elements, items, and tasks for that particular deliverable. Acceptance by Library of deliverables and payment for any individual deliverable does not in any way relieve or alter the requirements for Acceptance Testing and Final Acceptance as set forth in this Agreement.

B. Acceptance Testing shall be performed as set forth in the SOW and based on the User Requirements Specification set forth in RFP No. 2019-045 Drupal dated 3/25/19. If errors are discovered during Acceptance Testing, they will be corrected by Contractor. If errors are discovered that prevent the Website from operating and performing according to the requirements set forth in the Contract Documents, then Library may suspend the Acceptance Testing. If such suspension occurs, Library shall provide Contractor with written notice of the errors or operational failures that must be corrected before the system can be accepted. Contractor shall thereafter undertake its best efforts to correct such errors and failures no later than five (5) business days following notification. Upon correction of the same, Contractor shall immediately notify Library of completion of corrections, and follow-up Acceptance Testing shall occur. However, if the period of time required for corrections of errors or failures identified by Library in a single notice exceeds five (5) business days, Library may terminate all or a portion of this Agreement for cause in accordance with the terms of this Agreement, except that Contractor shall not be entitled to any additional time to correct or cure any errors or failures as may be provided by other sections of this Agreement. Notwithstanding any of the foregoing, in no event shall Library have less than ten (10) business days following completion of any corrections by Contractor to test any such corrections. The making of any such corrections and the subsequent testing thereof shall not relieve Contractor of or in any way modify the deadlines set forth in this Agreement.

C. Upon successful completion of the Acceptance Testing and live operation of all components of the Site, as modified, enhanced, and customized pursuant to this Agreement, for ninety (90) calendar days following first production use with no outstanding or unresolved errors that interrupt, prevent, or inhibit normal business procedures, and without back-up or reliance on a secondary system, and completion of all remaining Contract Services and deliverables under this Agreement, Library shall notify Contractor in writing of Library's Final Acceptance of the Website and Services ("Final Acceptance") and authorize the Final Acceptance Payment for the Website and Services, which is described in the Exhibit A as the Reserve. Final Acceptance Payment shall be remitted within

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thirty (30) days from the completion of the ninety (90) calendar day maintenance and stabilization period following successful launch to Production.

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7. Warranties.

Exclusive Warranty. Any warranty offered by Contractor for the Services shall be set forth in the SOW to the extent stated as a specific warranty. In the absence of any specific warranty in the SOW, Contractor warrants that all Services performed pursuant to this Agreement will be performed in accordance with the general standards and practices of the information technology industry in existence at the time the Services are being performed and shall meet the specifications (if any) set forth in the SOW.

REMEDIES. FOR ANY BREACH OF THE WARRANTY SET FORTH ABOVE, COMPANY'S EXCLUSIVE REMEDY, AND CONTRACTOR'S ENTIRE LIABILITY, SHALL BE THE RE-PERFORMANCE OF THE SERVICES. COMPANY MUST REPORT ANY DEFICIENCIES IN THE SERVICES TO CONTRACTOR IN WRITING WITHIN THIRTY (30) DAYS OF COMPLETION OF THE SERVICES IN ORDER TO RECEIVE THE WARRANTY REMEDIES IDENTIFIED IN THIS SECTION.

LIMITATION OF WARRANTIES. THE WARRANTY IN THIS SECTION IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

THIRD-PARTY PRODUCTS. ANY PRODUCTS, SOFTWARE, PLATFORMS, OR SERVICES PROVIDED BY THIRD PARTIES ARE PROVIDED BY CONTRACTOR ON AN "AS IS" BASIS, NOT SUBJECT TO THE WARRANTIES CONTAINED IN THIS SECTION, AND COMPANY'S SOLE AND EXCLUSIVE RIGHTS AND REMEDIES WITH RESPECT TO ANY THIRD-PARTY PRODUCTS, SOFTWARE, PLATFORMS, OR SERVICES ARE AGAINST THE THIRD-PARTY VENDOR.

8. Limitation of Liability.

Subject to the Company's compensation obligations to Contractor as defined in an SOW, either party's liability in contract, tort or otherwise (including negligence) arising directly out of or in connection with this Agreement or the performance or observance of its obligations under this Agreement or a specific SOW and every applicable part thereof shall be limited in the aggregate to the compensation defined in the SOW(s) at issue. UNDER NO CIRCUMSTANCES, WHETHER ON CONTRACT, WARRANTY, TORT OR OTHERWISE, SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES RESULTING DIRECTLY OR INDIRECTLY FROM THE SERVICES (INCLUDING THE DELIVERABLES) RENDERED OR THE FAILURE TO DELIVER OR RENDER SUCH SERVICES (INCLUDING THE DELIVERABLES) PURSUANT TO THIS AGREEMENT.

Infringement.

Contractor Indemnification. Contractor agrees to defend at its own expense any action brought against Company to the extent that it is based on a claim that any services furnished by Contractor under this Agreement infringe a United States patent, copyright, or trademark, and will pay any costs and damages finally awarded against Company in any such actions which are attributable to any such claim. Contractor's obligation under the preceding sentence is subject to the conditions that (i) Company promptly notifies Contractor in writing of any such claim, and (ii) Contractor has sole control of such defense and all negotiations for any settlement or compromise. Notwithstanding the prior sentence, Company shall have the right to approve any settlement that does not fully release Company from any present or future obligations related to any claims asserted. Contractor shall have no liability to Company with respect to any claim which is based upon or results from (A) the combination of any product covered by an order for Services with any equipment, device, firmware, hardware or software not furnished by Contractor, (B) any modification of any Services or Deliverables by a party other than Contractor, (C) Company's failure to install or have installed changes, revisions or updates to Services or Deliverables as instructed by Contractor, (D) Contractor's compliance with Company's specifications, designs or instructions, and/or (E) the Company Materials.

9. Company Indemnification. Company agrees to defend at its own expense any action brought against Contractor to the extent that it is based on a claim that any services furnished by Contractor under this Agreement (solely to the extent that the claims is based upon Contractor's compliance with Company's specifications, designs or instructions) or company provide materials infringe a United States patent, copyright, or trademark, and will pay any costs and damages finally awarded against Contractor in any such actions which are attributable to any such claim. Company's obligation under the preceding sentence is subject to the conditions that (i) Contractor promptly notifies Company in writing of any such claim, and (ii) Company has sole control of such defense and all negotiations for any settlement or compromise. Notwithstanding the prior sentence, Contractor shall have the right to approve any settlement that does not fully release Contractor from any present or future obligations related to any claims asserted.

10. Termination.

A. In the event Contractor does not satisfactorily deliver or complete the installation and implementation of the Website Product or provide services in accordance with the terms of the Contract Documents, or if Contractor materially breaches any of the terms, conditions, warranties or representations set forth in the Contract Documents, the Library may, at its option, notify Contractor of the Library's intention to terminate this Agreement. The Library shall notify Contractor in writing of the intended termination and specify the breaches, violations, and deficiencies that must be corrected. Except as provided elsewhere in this Agreement, Contractor shall have thirty (30) days from receipt of the notice to

cure such breach. Should Contractor fail to cure such breach, the Library shall then have the right to terminate this Agreement for cause by giving written notice to Contractor of such termination and specifying the effective date of such termination. In the event of termination for cause, the Library may pursue any rights or remedies available to it, including the option of completing by itself or by contracting with other sources, the services, software, and equipment to be provided under this Agreement on terms and conditions the Library deems appropriate and to charge Contractor for any additional charges incurred thereby.

B. The Library may terminate this Agreement at any time for the convenience of the Library, without penalty or recourse, by giving Contractor written notice of termination at least thirty (30) days prior to termination. In the event of such termination, Contractor shall be compensated for services satisfactorily performed through and up to the effective date of such termination in accordance with the contract rates.

C. Contractor acknowledges that the Library is subject to certain laws that require it to operate on a cash basis. If, in the judgment of the Library, sufficient funds are not appropriated to continue the services performed under this Agreement and for the payment of the charges hereunder, the Library may terminate this Agreement at the end of any of the Library's fiscal year. The Library agrees to give written notice of termination to Contractor at least 30 days prior to the end of such fiscal year, if such cause is known at least 30 days prior to the end of the fiscal year. If such 30-day notice is not possible because the Library did not know that sufficient funds would not be available or appropriated, the Library shall give as much notice as reasonably possible to Contractor prior to the end of the fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the Library or to Contractor.

11. Insurance. Contractor shall, for the duration of this Agreement, comply with and maintain the insurance requirements set forth in Special Conditions of RFP No. 2019-045 Drupal dated 3/25/19.

12. Notice. Any notices or invoices required or permitted by or from one party to the other under this Agreement shall be made in writing, delivered personally, or by United States mail, postage prepaid to the following addresses, or other location as either party may from time to time designate:

Library: Johnson County Library
ATTN: Michelle Beesley,
9875 W. 87th St.,
Overland Park, KS
66212

Contractor: Code Koalas

ATTN: Ryan Wyse
2024 Main Street, STE 1W
Kansas City, MO
64108

13. Compliance. Contractor agrees to abide by all federal, state or local laws, ordinances and regulations applicable to this Agreement and this project and to furnish any certification required by any federal, state or local governmental agency in connection with same.

14. Equal Opportunity. In connection with the furnishing of equipment, supplies, and/or services under this Agreement, Contractor shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, disability, or age. If discrimination by Contractor is found to exist, the Library shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of this Agreement and/or removal from bidder's lists issued by the Library until corrective action by Contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

15. Assignment. Contractor shall not assign, transfer, convey, subcontract or otherwise dispose of this Agreement or any of the rights and obligations hereunder without the prior written consent of the Library, but in no event shall such consent relieve Contractor from its obligations under the terms of this Agreement.

16. Independent Contractor. This Agreement is and shall be deemed an independent contract for services and Contractor and all persons providing services on behalf of Contractor under this Agreement shall be deemed independent contractors and shall not be deemed under any circumstances employees of the Library.

17. Conflict of Interest. Contractor hereby covenants that at the time of the submission of the bid/proposal Contractor has no other contractual relationships, which would create any actual or perceived conflict of interest. Contractor further agrees that during the term of this Agreement neither Contractor nor any of its employees or subcontractors shall acquire any other contractual relationships that would create such a conflict.

18. Right to Examine and Audit Records. Contractor agrees that the Library, or any of its authorized representatives, shall have access to and the

right to examine and audit any and all books, documents, papers and records of Contractor hereunder, or any change order or contract modification thereto, or with compliance with any clauses thereunder. Such records shall include hard copy as well as computer readable data. Contractor shall require all of its payees including but not limited to, insurance agents or material suppliers to comply with the provisions of this clause by including the requirements hereof in a written agreement between Contractor and payee. Further, Contractor agrees to cooperate fully and will cause all related parties and will require all of its payees to cooperate fully in furnishing or making available to the Library any and all such books, documents, papers, and records.

19. Publicity. Contractor must obtain prior written approval from the Library for use of information relating to the Library or the Contract Documents in advertisements, brochures, promotional materials or media, or other informational avenues.

20. Taxes. The Library is exempt from paying sales tax and shall provide Contractor with a tax exemption certificate. In no event shall Library be liable for any personal property taxes levied on Contractor or on any taxes levied on Contractor's employees' wages or any other taxes required to be paid by Contractor under federal or state law.

21. Investigation & Research. Contractor, by investigation and research has acquired reasonable knowledge of all conditions affecting the work to be done and labor and material needed, and the execution of this Agreement is to be based upon such investigation and research, and not upon any representation made by the Library or any of its officers, agents or employees, except as provided herein.

22. Confidentiality.

A. Any records, reports, information, data, statistics, forms, procedures, systems, studies and any other communication or form of knowledge given to, accessible by, or prepared or assembled by Contractor under this contract shall be considered confidential and shall not be made available to any individual or organization by Contractor without the prior written approval of the Library. Contractor shall implement and maintain procedures for safeguarding confidentiality and insuring that such confidential information shall be kept confidential by Contractor's employees. Contractor agrees that the release of confidential information will cause damage to the Library and, in such event, the Library shall be entitled to pursue its rights and remedies under law and equity, including injunctive relief. In the event Contractor discovers or is notified of a breach or potential breach of confidentiality, Contractor shall immediately notify the Library in writing of such breach or potential breach including the nature of the breach, the customers, records or data involved, and the actions taken by Contractor to secure Customer Data. "Immediately" as used in the preceding

sentence shall mean within 24 hours of the Contractor's discovery or receipt of notice. Contractor shall investigate the breach or potential breach and shall inform the Library of the results of such investigation within five (5) business days.

B. In its performance of Contract Services, Contractor may have access to certain records, data, or information that include the names, addresses, e-mail addresses, and/or telephone or cell phone numbers, criminal history records, medical records, individually identifiable health information, and other confidential or private information pertaining to individuals ("Customer Data"). Contractor acknowledges and agrees that it does not have nor does it claim any ownership interest whatsoever in Customer Data and that custody and title and all other rights and interests in Customer Data are and shall remain in the Library. Customer Data, together with any and all duplicates and any and all products in any manner derived from the data, shall only be used by Contractor to perform services authorized by the Library under this Agreement and shall not be released, distributed, or exchanged with or to any other person or entity or used for any other purpose including, but not limited to, solicitation to sell any product, property or service, either directly or indirectly, by Contractor or any third party, and such use is absolutely prohibited under the terms of this Agreement. Contractor shall and hereby agrees to adopt and enforce policies and procedures to ensure that its use of Customer Data complies with this Section and with K.S.A. 45-230 and amendments thereto. Pursuant to K.S.A. 45-220(c)(2), Contractor certifies that it "does not intend to, and will not: (A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed."

C. Upon termination of this Agreement, Contractor shall cease any use of Customer Data and all other records, data, and information belonging to the Library, and shall return to the Library any and all Customer Data and any other Library records, data, and information and shall erase, delete, or destroy all Customer Data and any other Library records, data, and information. Contractor shall not retain any copies of Customer Data or any other Library records, data, and information. Upon request, Contractor shall provide to the Library written certification of such destruction. Contractor's restrictions on use of Customer Data or any other Library records, data, and information and Contractor's obligations under this section shall survive the termination of this Agreement.

D. The terms, conditions, requirements and obligations set forth in the Contract Documents shall be subject to the Kansas Open Records Act, K.S.A. 45-215 et seq., any applicable federal or state laws, or court order.

23. Change Requests. Library may, in its sole discretion, request that changes be made to the specifications or other aspects of the Contract Documents and tasks associated with the Contract Documents. Change requests shall be made pursuant to the procedures set forth in the SOW. If Library requests such a change, Contractor will use its best efforts to implement the requested change at no additional expense to Library and without delaying delivery and implementation of the Website and Contract Services. In the event that the proposed change will, in the reasonable opinion of Contractor, require a delay in delivery or implementation of the Website or would result in additional expense to Library, then Library and Contractor shall confer and Library shall, in its discretion, elect either to withdraw its proposed change or require Contractor to deliver the Website with the proposed change and subject to the delay and/or additional expense. Any accepted changes shall be effective only when incorporated in written amendments to this Agreement and executed by authorized representatives of the Contractor and Library.

24. Cumulation of Remedies. All remedies available for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

25. Miscellaneous.

A. The waiver of any breach of any provision of the Contract Documents shall not constitute a waiver of any subsequent breach of the same or other provisions herein.


B. The Contract Documents contains the entire understanding between the parties and supersedes all prior agreements or understandings between the parties with respect to the subject matter hereof.

C. Any amendment modification or waiver of any provision in the Contract Documents shall not be effective unless made in writing signed by the parties.

D. The Contract Documents shall be governed by and construed in accordance with the laws of the State of Kansas. Any lawsuit brought regarding the Contract Documents shall be brought only in the District of Johnson County, Kansas, to the exclusion of all other jurisdictions and venues.

E. This Agreement shall be binding on the heirs, successors, executors, administrators, and assigns of the parties hereto.

*Bethany Griffith, Chair
Board of Directors of the Johnson County Library*

«  _____
*Ryan Wyse Technology & Design d/b/a Code
Koalas
(Printed name and title)*

Attest:

**Secretary of the Board of Directors of the Johnson
County Library**

APPROVED AS TO FORM:

Fred Logan, Legal Counsel to Johnson County Library Board of Directors

To: Johnson County Library Board of Directors
From: Sean Casserley, County Librarian
Date: July 11, 2019

Issue: Replacement of the chiller unit and the cooling coil at the Blue Valley Library.

Suggested Motion: I move that the Johnson County Library Board of Directors approve the installation of a new chiller and cooling coil at Blue Valley in an amount not to exceed \$125,300.

Background: The Johnson County Library opened the Blue Valley Branch in 2001. The equipment to be replaced is original installation.

Though the branch is slated to be replaced in the next ten years, we feel it is prudent to go ahead and make this change now. The replacement of this equipment will result in substantial operating savings, as the advance in technology has progressed in the last nearly 20 years.

The refrigerant used by the original unit used is no longer being produced, and prices being charged for reclaimed refrigerant have increased substantially. The last addition of refrigerant cost \$2200.00 and it is getting more difficult to locate.

The plan for installation will be between seasons in the fall. If the original chiller fails, the time frame will be moved up

County Purchasing has bid this and this is the low satisfactory bid.

Alternatives: We do have the option of not replacing this unit and wait until the building is replaced.

Legal Review: Legal has reviewed and approved this contract

Budget Approval: The cost of the unit is \$125,300

Recommendation: To approve the expenditure of \$125,300 to replace the chiller and cooling coil at Blue Valley Library.

AIA[®] Document A104[™] – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the _____ day of _____ in the year 2019
(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

Board of Directors of the Johnson County Library
9875 W 87th St
Overland Park, KS 66212

and the Contractor:

(Name, legal status, address and other information)

Anderson Mechanical, LLC
Mark Cooper
108 E 125th Place, Kansas City, MO 64145

For the following Project:

(Name, location and detailed description)

Blue Valley Library
9000 W 151st ST
Overland Park, KS 66221

The Architect:

(Name, legal status, address and other information)

The Clark Enersen Partners.
James Beecher, Principal
2020 Baltimore Avenue, suite 300
Kansas City, MO 64108-1914
816.474.823

Whenever the terms "Architect" or "Architect's" appear in the provisions or headings of the Contract Documents, such terms shall be replaced with "Engineer" or "Engineer's", respectively, as the case may be. This change shall apply to all forms of the terms, unless otherwise indicated, or unless such change would render the meaning of the context of the specific provision or heading thereof nonsensical.

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

The Owner and Contractor agree as follows.
TABLE OF ARTICLES

Init.

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User Notes:

- 1 THE WORK OF THIS CONTRACT
- 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 3 CONTRACT SUM
- 4 PAYMENT
- 5 DISPUTE RESOLUTION
- 6 ENUMERATION OF CONTRACT DOCUMENTS
- 7 GENERAL PROVISIONS
- 8 OWNER
- 9 CONTRACTOR
- 10 ARCHITECT
- 11 SUBCONTRACTORS
- 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 13 CHANGES IN THE WORK
- 14 TIME
- 15 PAYMENTS AND COMPLETION
- 16 PROTECTION OF PERSONS AND PROPERTY
- 17 INSURANCE AND BONDS
- 18 CORRECTION OF WORK
- 19 MISCELLANEOUS PROVISIONS
- 20 TERMINATION OF THE CONTRACT
- 21 CLAIMS AND DISPUTES

EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents or reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☐ The date of this Agreement.

☒ A date set forth in a written notice to proceed issued by the Owner to the Contractor.

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User Notes:

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- ☐ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

- ☐ Not later than () calendar days from the date of commencement of the Work.

- ☒ By the following date: **November 25th, 2019**

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

- ☒ Stipulated Sum, in accordance with Section 3.2 below
- ☐ Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below
- ☐ Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be (**One Hundred Twenty Five Thousand Three Hundred Dollars and Zero Cents. \$125,300.00**), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 3.2.2 Unit prices, if any:

Init.

(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 3.2.3 Allowances, if any, included in the stipulated sum;
(Identify each allowance.)

Item N/A	Price
----------	-------

§ 3.3 Cost of the Work Plus Contractor's Fee

(Paragraph deleted)

Intentionally Omitted

(Paragraphs deleted)

§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price

Intentionally Omitted

§ 3.5 Liquidated damages, if any:

(Paragraphs deleted)

(Insert terms and conditions for liquidated damages, if any.)

(Paragraphs deleted)

The Owner and Contractor recognize that time is of the essence of this Agreement and that if the Contractor does not achieve Substantial Completion within the time specified in Article 2 of the Agreement, plus any extensions thereof allowed in accordance with the Contract Documents, the Contractor shall be liable for and shall pay the Owner the sums hereinafter stipulated as liquidated damages for delay, but not as a penalty, for each and every calendar day that expires following the time specified in

(Table deleted)

Article 2: TWO HUNDRED FIFTY DOLLARS AND NO CENTS (\$250.00).

(Paragraphs deleted)

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment including all supporting documentation, properly submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 4.1.3 An Application for Payment shall be submitted by the Contractor no later than the first day of the month. Payment of amounts due to the Contractor from the Owner, except retainage, shall be made within thirty (30) days after the Owner receives a certified, properly completed, undisputed request for payment according to the terms of the Agreement, unless extenuating circumstances exist which would preclude approval of payment within 30 days. If such extenuating circumstances exist, then payment shall be made within forty-five (45) days after Owner receives payment request.

§ 4.1.4 Retainage, if any, shall be withheld as follows:

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Five percent (5%) of the amount of each Application for Payment retained until final completion and acceptance of all Work covered by the Contract. If during the course of performance of the Work, the Owner determines that a higher rate of retainage is required because the Contractor has failed to meet the terms of the Agreement, is not performing according to the Construction Schedule, shows poor workmanship or other issues, the Owner reserves the right to increase the retainage amount up to, but not exceeding, ten percent (10%) of the value of the Agreement.

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

18 % per annum

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price;
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1;
- .4 the Contractor has submitted a final Release of Claims, certifying that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
- .5 the Contractor has submitted a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner;
- .6 the Contractor has submitted a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; and
- .7 consent of surety, if any, to final payment.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final approved Certificate for Payment.

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

The method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

☒ [X] Litigation in a court of competent jurisdiction

(Paragraphs deleted)

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, as modified, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 Intentionally Omitted

§ 6.1.3 Intentionally Omitted

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User Notes:

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(Table deleted)

§ 6.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Refer to the Project Manual

Section	Title	Date	Pages
---------	-------	------	-------

§ 6.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
G0.00	Title Sheet and Drawing index	May 9 2019
M0.01	HVAC Demolition Plan	
M1.01	HVAC Plan	
M1.02	Mechanical Schematics, Controls & Schedules	
E0.01	Electrical demolition plan	
E1.01	Electrical, power and Auxiliary plan	

§ 6.1.6 The Addenda, if any:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 Other Exhibits:

(Check all boxes that apply.)

☐ Exhibit A, Determination of the Cost of the Work.

☐ AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐ The Sustainability Plan:

Init.

Title	Date	Pages
-------	------	-------

[] Supplementary and other Conditions of the Contract;

Document	Title	Date	Pages
----------	-------	------	-------

- .2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents.)

Invitation For Bid, Bid Request No. 2019-068
 Executed Bid Form
 Executed Performance Bond
 Executed Statutory Bond to the State of Kansas

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this modified Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract, together with the performance bond, statutory bond, and maintenance bond, if any, represent the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 7.3.1 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and by the Owner's own forces, including persons or entities under separate contracts not administered by the Contractor.

§ 7.3.2 Knowledge

The terms "knowledge", "recognize", and "discover", their representative derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a Contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents.

§ 7.3.3 Persistently

The phrase "persistently fails" and other similar expressions, as used in reference to the Contractor, shall be interpreted to mean any combination of acts and omissions, which causes the Owner or the Architect to reasonably conclude that

Init.

the Contractor will not complete the Work within the Contract Time, for the Contract Sum or in substantial compliance with the requirements of the Contract Documents.

§ 7.3.4 Provide

When the word "provide" including derivatives thereof is used, it shall mean to properly fabricate, transport, deliver install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Specifications.

§ 7.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants, if any, under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, photographs, digital media, sketches, drawings, specifications, and other similar materials.

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Architect and the Architect's consultants, if any, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants', if any, reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants, if any.

§ 7.6 Digital Data Use and Transmission

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmission, unless otherwise provided in the Agreement or in the Contract Documents.

§ 7.7 Building Information Models Use and Reliance Intentionally Omitted

§ 7.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents 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 Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 7.9 Notice

§ 7.9.1 Where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering Notice in electronic format such as name, title and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

(Paragraph deleted)

§ 7.9.2. Intentionally Omitted

§ 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Intentionally Omitted

§ 8.1.2 Unless otherwise provided for in the Contract Documents, the Owner shall, upon the written request of the Contractor, furnish or make available surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site; provided, however, the Owner makes no representation as to the accuracy of any such information provided to the Contractor under the provisions of this Section and the Contractor shall be required to verify the accuracy of an such information furnished by the Owner and report back to the Owner within five (5) calendar days of any omissions, errors, or inconsistencies in the furnished information discovered by the Contractor.

§ 8.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Architect's additional services and expenses made necessary thereby, from the payment then or thereafter due the Contractor. If payments then or thereafter due are insufficient, the Contractor shall pay the difference to the Owner.

§ 8.4 The rights stated in this Article 8 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (1) granted in the Contract Documents, (2) at law or (3) in equity.

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ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information, if any, furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. The Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor, Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and all other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation and consultation by the Architect and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

§ 9.5 Taxes

The Contractor shall pay any and all sales, consumer, use, and other similar taxes for the Work or portions thereof provided by the Contractor which are not otherwise exempt from taxation by the laws of the place where the Project is located.

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§ 9.5.1 Following execution of the Agreement, the Owner shall provide the Contractor with a Kansas State Sales Tax exemption Certificate number issued by the Kansas Department of Revenue to be used by the Contractor as allowable for sales of tangible personal property services purchases by the Contractor for the Work or portion thereof. The Contractor shall furnish the number of such certificate to all suppliers from whom purchases are made, and such suppliers shall execute invoices covering same bearing number of such certificate. All such invoices shall be held by the Contractor for a period of five (5) years from the date of such invoices and shall be subject to an audit by the Kansas Director of Revenue.

§ 9.5.2 Upon completion of the Project, the Contractor shall file with the Owner a notarized statement that all purchases made under the exemption certificate were entitled to be exempt from the Kansas Retailer's State Tax and Kansas Compensating Use Tax.

§ 9.5.3 The Contractor shall assume responsibility and be liable for the proper use of the exemption certificate number and shall pay all legally assessed penalties for improper use of the certificate and any and all taxes that are not otherwise exempt under the certificate.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are required at the time bids are received or negotiations concluded.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for correction of such Work and shall bear the costs, losses and expenses attributable to correction.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's approval a Baseline Schedule for the Work. Thereafter, the Construction Schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent approved Construction Schedule submitted to the Owner and Architect.

§ 9.8.3 Should the updates to the Construction Schedule show the Contractor to be twenty (20) or more calendar days behind the Baseline Schedule at any time during the construction, the Contractor shall work with the Owner and Architect to prepare a recovery plan for returning the Project to a completion within the current Final Completion Date. The Owner reserves the right to withhold payments to the Contractor until a reasonable recovery plan is submitted and accepted by the Owner. All costs associated with the preparation of the recovery plan shall be the Contractor's responsibility unless the delay was caused by reasons beyond the control of the Contractor.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's Baseline Schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and

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Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 10.6. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 9.9.3 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 9.9.4 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 9.9.5 Electronic Documentation submittals: The Contractor shall submit electronic data in accordance with Exhibit B, Standards for Delivery of Electronic Document Information.

§ 9.9.6 Intentionally Omitted

§ 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project.

§ 9.13 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared or made available by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished in writing to the Architect and the Owner.

§ 9.15 Concealed or Unknown Conditions.

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If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend to the Owner an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner or Contractor disputes the Architect's recommendation, either party may proceed as provided in Article 21.

(Paragraphs deleted)

§ 9.16 Indemnification

§ 9.16.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and their respective officers, consultants, agents and employees from and against claims, damages, losses and expenses, including but not limited to lost revenues or profits and attorneys' fees, arising out of or resulting from the Contractor's failure or refusal to perform the Work required by the Contract Documents, or arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or damage or destruction of property, personal or real, including loss of use resulting therefrom, caused in whole or in part by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.16.1. The Contractor's obligation to indemnify and hold harmless the Architect shall apply only to the extent that the Owner's agreement with the Architect contains a reciprocal indemnification and hold harmless provision protecting the Contractor.

§ 9.16.2 In claims against any person or entity indemnified under this Section 9.16 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.16.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10 ARCHITECT

§ 10.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representative during construction, until the conclusion of the one year warranty period. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 10.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 10.3 The Architect shall visit the site at intervals appropriate to the stage of the construction 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. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will 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, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.4 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report 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. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not

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have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work, provided, however, the Architect shall be responsible for promptly notifying the Owner of the failure of the Contractor, Subcontractors, or any other persons performing any of the Work, in failing to use proper construction means and method, techniques sequences, procedures, safety precautions and programs, but only to the extent the Architect becomes aware of, or should, exercising due professional diligence, be aware of the same, and shall also promptly notify the Owner in writing of the failure of any of the foregoing parties to carry out the Work in accordance with the Contract Documents.

§ 10.5 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Architect will 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 conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 9.2, 9.4 and 9.9. 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.

§ 10.8 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 10.9 Intentionally Omitted

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and Architect the names of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award contracts with Separate Contractors in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided in Article 21.

§ 12.1.1 The Owner shall require his own forces and his separate contractors to coordinate their activities with the Work of the Contractor, who shall cooperate with them.

§ 12.1.2 The Contractor shall participate with other separate contractors and the Owner in coordinating their construction schedules with the Baseline Schedule and the Construction Schedule. The Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, and damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§ 13.4 Intentionally Omitted

ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

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§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.6.3.

§ 14.5 If the Contractor is materially delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by fire, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

The Contract Time will not be extended due to normal inclement weather. The Contractor shall include in all schedules an allowance for calendar days, for which, according to historical data in the location of the project, work subject to normal inclement weather cannot be performed.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect and Owner, before the first Application for Payment, and if necessitated by Change Orders, updated from time to time thereafter, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect and Owner. This cost loaded schedule of values, when and only when approved in writing by the Architect and the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Additionally, with each Application for Payment, the Contractor shall submit the current Construction Schedule including updated cost loading reflecting all changes to date to the Cost of the Work.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 6, including all Modifications thereto;
- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- .5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

§ 15.3 Applications for Payment

§ 15.3.1 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 15.3.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor and approved in writing by the Architect in accordance with the Contract Documents.

§ 15.4 Certificates for Payment

§ 15.4.1 Procedure:

- .1** At least seven days (7) before the date established for each progress payment submittal, the Contractor shall submit to the Architect and Owner, a draft of the Application for Payment for operations completed in accordance with the most recently approved schedule of values as required under Section 15.1, for completed portions of the Work. The application shall be notarized, shall reflect retainage provided for in the Contract Documents and be supported by such data substantiating the Contractor's right to payment as the Owner or Architect require, including but not limited to, requisitions from Subcontractors and material suppliers and properly executed Release of Claims forms.
- .2** Such application shall be accompanied by monthly releases of claims by the Contractor, Subcontractors and selected material suppliers whose work coincides with the application for payment and cost loaded schedule of values. Failure on the part of the Owner or Architect to enforce this requirement either at any single time or repeatedly during the course of the Project shall not constitute or be deemed a waiver on the part of the Owner or Architect thereafter to enforce this requirement upon the Contractor.
- .3** At least four (4) days before the date established for each progress payment submittal, the Owner, Architect, and Contractor shall meet to review the submitted draft. The parties shall resolve any questions or concerns raised. The contractor, based on the outcome of the meeting, shall adjust his draft Application for Payment accordingly and submit a notarized, signed Application for Payment to the Architect.

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- .4 The Architect shall date stamp the signed application upon receipt. If it is in accordance with outcomes decided in Section 15.3.4 and all other provisions of this Contract, the Architect will, within two (2) business days, issue to the Owner a Certificate for Payment, with a copy to the Contractor. If it is not in accordance, the Architect shall notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the 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 the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will 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 Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 The Architect will withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 15.4.4 Intentionally Omitted

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven (7) business days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner. Notwithstanding anything in the Section 15.5.1 to the contrary, the Owner may elect, in the Owner's sole discretion, to make any payment requested by the Contractor on behalf of a subcontractor of any tier jointly payable to the Contractor and such subcontractor. The Contractor and such subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (i) contract between the Owner and a subcontractor of any tier, (ii) obligations from the Owner to such subcontractor, or (iii) rights in such subcontractor against the Owner. Further, to the extent permitted by law, any disputes between the Contractor and subcontractor shall not affect the contract time or cost between the Owner and Contractor.

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§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 15.5.4 Intentionally Omitted

§ 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Receipt of Electronic Documentation submittals in accordance with Exhibit B, Standards for Delivery of Electronic Document Information shall be a condition of utilizing the Work for its intended use.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Receipt of Electronic Documentation submittals in accordance with Exhibit B, Standards for Delivery of Electronic Document Information shall be a condition of determining that the Work has been completed in accordance with terms and conditions of the Contract Documents.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall promptly pay to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;

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- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor, and equipment or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

§ 16.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor or the Contractor's Subcontractor, or a Sub-subcontractors;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction; and
- .4 construction or operations by the Owner or other Contractors.

§ 16.1.2 The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.1.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 16.1.4 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 16.1.5 If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 10 calendar days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop any ongoing Work in the affected area and immediately notify the Owner and Architect within twenty-four (24) hours maximum by phone or email in writing of the condition. When the material or substance has been rendered harmless by an authority of the Owner's choosing, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended if and as appropriate and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional and incurred costs of shutdown, delay, and start-up, if any.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 16.2.3 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 16.2, except to the extent that the cost and expense are due to the Owner's fault or negligence

§ 16.2.4 If, without negligence on the part of the Contractor or breach of relevant provisions of the Contract Documents, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 16.2.5 HOT WORK PERMITS Contractor shall utilize and provide certification that all "Hot Work" associated with demolition and renovation, and new construction is being monitored by use of Factory Mutual Hot Work Permits.

§ 16.2.6 RED TAG SYSTEM Contractor shall utilize the Factory Mutual Red Tag System at all times when the fire protection equipment is taken out of service. The Owner shall be advised at least twenty-four (24) hours prior to all times when the fire protection equipment is impaired or out of service.

§ 16.2.7 MATERIAL, EQUIPMENT AND QUALITY ASSURANCE Systems and components used in the construction of the Work shall be Factory Mutual Engineering and Research (FMER) listed and labeled.

§ 16.2.8 Contractor shall perform all Work in accordance with the most current edition of the NFPA 70e Standard for Electrical Safety in the Workplace. Perform arc flash hazard analysis, prepare and submit written report to Owner and install labeling in compliance with Article 130 of NFPA 70e.

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall carry and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall carry and maintain in force for the duration of the Contract the insurance required by this Agreement, underwritten by insurer(s) lawfully authorized to write insurance in the state of Kansas, insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in Article 17.1.2 of the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations under Section 9.16. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. The Contractor shall cause the commercial liability coverage required by the Contract Documents to include: (1) Owner, specifically the " Board of Directors of the Johnson County Library and Board of County Commissioners of Johnson County, Kansas and their respective officers, Commissions, Agencies and employees, ," and the Architect and the Architect's Consultants as Additional Insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations and during the Contractor's completed operations. The Additional Insured requirement, as to the Public Building Commission (OR) Board of County Commissioners, shall be subject to the limitation of liability for claims within the scope of the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., and amendments thereto, and does not create a partnership or joint venture between the Owner and Contractor under this Contract. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

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§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than one million (\$ 1,000,000) each occurrence, two million (\$ 2,000,000) general aggregate per project, and two million (\$ 2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, and death of any person;
- .2 personal and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 9.15.

ISO Form CG0001 or its equivalent with no amendments to the definition of an insured contract including Premises and Operations; Products and Completed Operations Liability; and Contractual Liability. The Liability insurance shall include Blasting, Explosion, Collapse, and Underground coverage.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor, hired by the Contractor, and non-owned vehicles used by the Contractor, with policy limits of not less than one million (\$ 1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Umbrella (Excess) Liability: To be provided over the primary general liability; automobile liability and employers' liability insurance policies with policy limits of not less than five million (\$ 5,000,000) per occurrence and five million (\$ 5,000,000) Aggregate

§ 17.1.6 Workers' Compensation and Employer's Liability:

- A. Statutory Workers' Compensation including an all states endorsement
- B. Employer's Liability (E.L. and Disease):
 - i. Bodily Injury by Accident \$500,000 Each Accident
 - ii. Bodily Injury by Disease \$500,000 Policy Limit
 - iii. Bodily Injury by Disease \$500,000 Each Employee

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than one million dollars (\$ 1,000,000) per claim and two million dollars (\$ 2,000,000) in the aggregate.

§ 17.1.8 If the Work involves the transport, dissemination, use, or possible release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than one million dollars (\$ 1,000,000) per claim and two million dollars (\$ 2,000,000) in the aggregate.

§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than two million dollars (\$ 2,000,000) per claim and four million dollars (\$ 4,000,000) in the aggregate.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until

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the expiration of the period required by Section 17.1.1.

Board of Directors of the Johnson County Library and **The Board of County Commissioners**, Johnson County, KS, its officers, Commissions, Agencies and employees shall be named as Additional Insured, on a primary and non-contributory basis, under the Commercial General Liability policy. The Additional Insured requirement shall be subject to the limitation of liability for claims within the scope of the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., and amendments thereto, and does not create a partnership or joint venture between the Owner and Contractor under this Contract.

Prior to contract execution, the successful bidder shall furnish Certificate(s) of Insurance verifying the required insurance is in full force and effect in accordance with this Contract. Within five (5) business days of expiration of any insurance coverage, Contractor shall provide renewal Certificate(s) of Insurance as required by this Contract. The Certificate Holder shall be as follows:

Board of Directors of the Johnson County Library and **The Board of County Commissioners**, Johnson County, Kansas

c/o Risk Manager
111 South Cherry Street, Suite 2400
Olathe, Kansas 66061-3486

The full description of the work to be performed, bid/project number, and the required Additional Insured language shall be referenced on the Certificate(s) of Insurance in the Description of Operations section. Prior to any reduction in coverage, cancellation, or non-renewal the Contractor or its Agent shall provide certificate Holder not less than thirty (30) days advance written notice of such change in Contractor's insurance coverage. It is Contractor's sole responsibility to provide this notice to Certificate Holder. Failure to provide notice shall not relieve Contractor of its obligations under this Agreement.

§ 17.1.11 The Contractor understands and agrees that any insurance or self-insurance maintained by the Board of Directors of the Johnson County Library and Board of County Commissioners of Johnson County, Kansas and their respective officers, Commissions, Agencies and employees, shall apply in excess of and not be contributory with any insurance or self-insurance maintained by Contractor.

§ 17.1.12 The Contractor shall not commence work under this Agreement until the Contractor has obtained all insurance required under this Article, Certificates of Insurance have been submitted to Owner and such insurance has been approved by the Owner. Evidence of continuing coverage for the Contractor or for a Subcontractor or anyone directly or indirectly employed by any of them shall be mailed to Certificate Holder, within five (5) days of renewal or replacement.

§ 17.1.13 All such insurance shall remain in effect until final payment and at all times thereafter when the Contractor may be correcting, removing or replacing defective work as provided by these Contract Documents. In addition, the Contractor shall maintain such commercial general liability and completed operations insurance for the statute of repose and furnish the Owner with evidence of continuation of such coverage. Certified copies of all insurance policies shall be provided to Owner, upon Owner's request.

§ 17.1.14 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ 17.1.15 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies, including Owner's self-insured retentions,

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and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.16 Within five (5) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.17 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage

Limits

§ 17.2 Owner's Insurance

§ 17.2.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

(Table deleted)

(Paragraphs deleted)

§ 17.3 Property Insurance

§ 17.3.1 Unless otherwise provided for in this Agreement, the Contractor shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the state of Kansas, property insurance written on a builder's risk "all-risk" completed value or equivalent policy form in the amount of the initial Contract Sum plus the total value of the entire Project on a replacement cost basis subject to the Owner's policy deductible. The Contractor's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 15.7 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 17.3 to be covered, whichever is later. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 17.3.2 Upon Substantial Completion, the Owner, at Owner's sole discretion, may require Contractor to continue the insurance required by Section 17.3.1 or replace the insurance policy required under Section 17.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.3.3 Intentionally Omitted

§ 17.3.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ 17.3.5 Prior to commencement of the Work, the Contractor shall secure the insurance, and provide evidence of the coverage, required under this Section 17.3 and, upon the Owners's request, provide a copy of the property insurance policy or policies required by this Section 17.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

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§ 17.3.6 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.3, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. At Owner's sole discretion, upon receipt of notice from the Contractor, Owner shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Contractor or the Owner. The Contract Time and Contract Sum shall be equitably adjusted. The Contractor waives all rights against the Owner, Subcontractors, and Sub-subcontractors to the extent any loss to the Contractor would have been covered by the insurance had it not expired or been cancelled. If the Owner purchases replacement coverage, the cost of the insurance shall be charged to the Contractor by an appropriate Change Order. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide required insurance.

§ 17.3.7 Waiver of Subrogation

§ 17.3.7.1 The Contractor and Owner waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Contractor and Owner, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.3.7.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.3.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, and if not caused by the negligence of the Contractor, the Owner waives all rights in accordance with the terms of Section 17.3.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 17.3.8 A loss insured under the Contractor's property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay the Owner and Architect their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, the Owner and Architect shall make payments to their consultants and Subcontractors in similar manner.

§ 17.3.9 Other Insurance Provided by the Owner

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

§ 17.4 Bonds

§ 17.4.1 The Contractor shall furnish a Performance Bond and Statutory Bond on forms supplied by the Owner and contained in the Bidding Documents in amounts each equal to one hundred percent (100%) of the initial Contract Sum as well as subsequent modifications thereto. Such bonds shall be executed by a surety company authorized to do business in the State of Kansas and require the appointment of a Kansas Resident Agent. The Statutory Bond shall be filed with the Clerk of the District Court of Johnson County, Kansas and receipt of filing furnished to the Owner. In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 17.4.2 Intentionally Omitted

Init.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless otherwise provided in the Contract Documents

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor at Contractor's expense shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor an express written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

§ 18.6 UNCOVERING WORK If a portion of the Work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract Time.

§ 18.6.1 If a portion of the Work has been covered which the Architect has not specifically requested to observe prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or one of the other Contractors in which event the Owner shall be responsible for payment of such costs.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

The Contractor shall not assign the Contract without written consent of the Owner.

§ 19.2 Governing Law

The Contract shall be governed by the laws of the state of Kansas.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's representative:

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User Notes:

(Name, address, email address and other information)

Dean Allman Assistant Facilities Manager
9875 W. 87th St., Overland Park, KS 66212
913.826.4341 (desk) | 913.645.2679 (cell) | 913.826.4600 (office)

§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

Mark Cooper
816-352-2328
mark@andersonmechanicalkc.com
108 E 125th Place, KC, MO 64145

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 19.7 The following provisions shall apply to this and all resulting contracts and subcontracts with and between all contractors, subcontractors, vendors, and /or suppliers connected with this Project, except (i) those whose contracts with the Owner cumulatively total five thousand dollars (\$5,000) or less during the Owner's fiscal year or (ii) those contracts with and between all contractors, subcontractors, vendors and/or suppliers who employ fewer than four (4) employees during the term of this contract.

- .1 The Contractor shall observe the provision of the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq., and amendments thereto, the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111 et seq., and amendments thereto, and the applicable provisions of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., and amendments thereto and shall not discriminate against any person in the performance of work under present contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin or ancestry.
- .2 In all solicitations or advertisements for employees, the Contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Commission on Civil Rights ("Commission");
- .3 If the Contractor fails to comply with the manner in which the Contractor reports to the Commission in accordance with the provisions of K.S.A. 44-1031, and amendments thereto, the Contractor shall be deemed to have breached the present Contract, and it may be canceled, terminated or suspended, in whole or in part, by the Owner; and
- .4 If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination, the Kansas Age Discrimination in Employment Act or the ADA under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present Contract, and it may be cancelled, terminated or suspended, in whole or in part, by the Owner.

§ 19.8 Notwithstanding anything to the contrary contained in this Contract or represented by either party to the other or by the Architect to either the Owner or Contractor, the Contractor warrants that each and every chemical substance or product offered, sold, handled, or used for the Work under this Contract, or otherwise, transferred by the Contractor to officers, employees, agents or authorized representatives of the Owner as the date of such offer, sale, transfer or use shall comply with the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard 29 CFR 1910.1200.

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§ 19.9 Right to Examine and Audit Records, Contract Change Order Procedures; Overcharges.

§ 19.9.1 The Contractor agrees that the Owner, or any of its authorized representatives, shall have access to, and the right to examine and audit, any and all books, documents, papers and records (collectively the "Records") of the Contractor involving transactions related to the contract (the "Contract") between the Owner and Contractor hereunder, or any change order or Contract modification thereto, or with compliance with any clauses thereunder. Such Records shall include hard copy as well as computer readable data. The Contractor shall require all of its payees including, but not limited to, subcontractors, insurance agents or material suppliers (collectively the "payee(s)") to comply with the provisions of this clause by including the requirements hereof in a written agreement between the Contractor and payee(s). Further, the Contractor agrees to cooperate fully and will require all of its payees to cooperate fully in furnishing or making available to the Owner any and all such Records. The Owner's right to examine and audit any and all Records hereunder shall survive termination of the Contract.

§ 19.9.2 The Contractor agrees to follow the quality control change order processing system (the "System") utilized by Architect and Owner to ensure that any and all Contract change orders or Contract modifications (collectively the "Change Order(s)") that may be necessitated and result during the course of the performance of work or services rendered (the "Work") pursuant to, and under the requirements of, the Contract are warranted and properly processed. The System shall serve as a means for Owner and Contractor representatives to ensure the propriety, justification and timeliness of the Change Order(s), and dill documentation to enable the parties to examine how the price was determined, reviewed, evaluated, negotiated, and accepted or rejected.

§ 19.9.3 The Contractor aggress that is at any time following thirty-six (36) months of termination of the Contract (the "audited period"), an audit performed by or for the Owner hereunder of the Records and/or Change Order(s) pertaining to, or in connection with, the Work and/or the Contract reveals that any overcharges were paid by the Owner and were attributable to any error, omission, negligence, misrepresentation, or willful act on the part of the Contractor, or an of its officers, employees, subcontractors, agents or payees, then the Contract, or any of its assigns or successors shall, within thirty (30) days of receipt of written notice from the Owner, refund upon demand, and be and remain liable to the Owner for payment of, any such overcharges revealed, including interest thereupon, for the audited period, as well as any and all out-of-pocket costs incurred by the Owner with the respect to conducting the audit and collecting the overcharges. Neither shall the making and acceptance of final payment under the Contract nor the termination of the Contract constitute a waiver of any claim on the part of the Owner to make demand upon the Contractor for any such overcharges and related costs thereto; provided, further, that any such demand of the Owner made upon the Contractor shall not be subject to claims and disputes procedural requirements or provisions, if any, of the Contract, but shall remain a continuing obligation of the Contractor until satisfied.

§ 19.10 Definitions:

Baseline Schedule – a cost loaded schedule defining all submittals and all significant construction activities and milestones necessary for the commencement and Final Completion of the Work by the Contractor or Construction Manager (if retained) and the work of the Owner's own forces and separate contractors. The Baseline Schedule shall be prepared by the Scheduling Consultant, Contractor, or Construction Manager (if retained) and shall be mutually accepted by the Owner, Architect and Contractor or Construction Manager (if retained) prior to issuance of a Notice To Proceed.

Construction Schedule – Originating from the Baseline Schedule, including cost loading and updates to reflect change in the Cost of Work, and modified by the Contractor or Construction Manager (if retained) as they deem necessary to perform the Work thereafter, however, increases in time to achieve: 1) milestones, 2) completion of phases, 3) Substantial Completion or 4) Final Completion, shall require approval through the Claims and Disputes process identified in AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor, as modified. If a Scheduling Consultant is responsible for maintaining and modifying the Construction Schedule, the Contractor or Construction Manager (if retained) shall provide all necessary information to the Scheduling Consultant so that he can perform his duties.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Architect fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed.

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§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor an accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 Intentionally Omitted

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

§ 20.3.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 cease operations as direction by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work, and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 20.3.2 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed in accordance with the Contract Documents and costs reasonable incurred by reason of such termination, along with reasonable overhead and profit thereon.

§ 20.3.3 Upon termination by a court of competent jurisdiction that termination of the Contractor pursuant to Section 20.2 as wrongful or otherwise improper, such termination shall be deemed a termination for convenience pursuant to the Section 20.3 and the provisions of this Section SC 20.3 shall apply.

§ 20.4 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 20.4.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 20.4.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent
(Paragraph deleted)

Init.

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred to the Architect for initial decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall require an initial decision by the Architect as a condition precedent to binding dispute resolution. Unless the Architect and all affected parties agree, the Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 21.2 Notice of Claims

§ 21.2.1 Intentionally Omitted

§ 21.2.2 Intentionally Omitted

§ 21.3 Intentionally Omitted

§ 21.4 The Architect will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, or (4) suggest a compromise.

§ 21.5 In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense

§ 21.6 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished or (3) advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will render an initial decision.

§ 21.7 The Architect will render an initial decision that either rejects or approves the Claim in whole or in part. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to binding dispute resolution.

§ 21.8 Either party may, within 30 days from the date of an initial decision, file for binding dispute resolution within 60 days of the initial decision. Failure to demand binding dispute resolution within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor, and shall result in a waiver by both parties of their rights to pursue binding dispute resolution proceedings with respect to the initial decision

§ 21.9 Intentionally Omitted

§ 21.10 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

Init.

§ 21.11 **Intentionally Omitted**

(Paragraphs deleted)

Init.

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

OWNER *(Signature)*

CONTRACTOR *(Signature)*

Bethany Griffith, Chair

(Printed name and title)

Board of Directors of the Johnson County Library

(Printed name and title)

Attest:

Secretary of the Board of Directors of the Johnson
County Library

APPROVED AS TO FORM:

Fred J. Logan, Jr.
Counsel to the Board of Directors of the Johnson County Library

Init.

Additions and Deletions Report for AIA® Document A104™ – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:15:30 ET on 06/25/2019.

PAGE 1

AGREEMENT made as of the day of in the year 2019

...

Board of Directors of the Johnson County Library
9875 W 87th St
Overland Park, KS 66212

...

Anderson Mechanical, LLC
Mark Cooper
108 E 125th Place, Kansas City, MO 64145

...

~~for~~ For the following Project:

...

Blue Valley Library
9000 W 151st ST
Overland Park, KS 66221

...

The Clark Enersen Partners.
James Beecher, Principal
2020 Baltimore Avenue, suite 300
Kansas City, MO 64108-1914
816.474.823

Whenever the terms "Architect" or "Architect's" appear in the provisions or headings of the Contract Documents, such terms shall be replaced with "Engineer" or "Engineer's", respectively, as the case may be. This change shall apply to all forms of the terms, unless otherwise indicated, or unless such change would render the meaning of the context of the specific provision or heading thereof nonsensical.

The Owner and Contractor agree as follows.

PAGE 2

The Contractor shall execute the Work described in the Contract Documents or reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

☒ A date set forth in a written notice to proceed issued by the Owner to the Contractor.

PAGE 3

☒ By the following date: November 25th, 2019

☒ Stipulated Sum, in accordance with Section 3.2 below

§ 3.2 The Stipulated Sum shall be (\$—), (One Hundred Twenty Five Thousand Three Hundred Dollars and Zero Cents, \$125,300.00), subject to additions and deductions as provided in the Contract Documents.

PAGE 4

Item N/A

Price

§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work. Intentionally Omitted

§ 3.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work. Intentionally Omitted

§ 3.4.2 The Contractor's Fee: **§ 3.5** Liquidated damages, if any:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

(Insert terms and conditions for liquidated damages, if any.)

§ 3.4.3 Guaranteed Maximum Price

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed (\$—), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. *(Insert specific provisions if the Contractor is to participate in any savings.)*

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 3.4.3.3 Unit Prices, if any:

(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

The Owner and Contractor recognize that time is of the essence of this Agreement and that if the Contractor does not achieve Substantial Completion within the time specified in Article 2 of the Agreement, plus any extensions thereof allowed in accordance with the Contract Documents, the Contractor shall be liable for and shall pay the Owner the sums hereinafter stipulated as liquidated damages for delay, but not as a penalty, for each and every calendar day that expires following the time specified in

Item	Price
------	-------

§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based: Article 2: TWO HUNDRED FIFTY DOLLARS AND NO CENTS (\$250.00).

§ 3.4.3.6 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

§ 3.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

...

§ 4.1.1 Based upon Applications for Payment including all supporting documentation, properly submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

...

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the day of the month. If an

Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than () days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.) An Application for Payment shall be submitted by the Contractor no later than the first day of the month. Payment of amounts due to the Contractor from the Owner, except retainage, shall be made within thirty (30) days after the Owner receives a certified, properly completed, undisputed request for payment according to the terms of the Agreement, unless extenuating circumstances exist which would preclude approval of payment within 30 days. If such extenuating circumstances exist, then payment shall be made within forty-five (45) days after Owner receives payment request.

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due. Retainage, if any, shall be withheld as follows:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)
Five percent (5%) of the amount of each Application for Payment retained until final completion and acceptance of all Work covered by the Contract. If during the course of performance of the Work, the Owner determines that a higher rate of retainage is required because the Contractor has failed to meet the terms of the Agreement, is not performing according to the Construction Schedule, shows poor workmanship or other issues, the Owner reserves the right to increase the retainage amount up to, but not exceeding, ten percent (10%) of the value of the Agreement.

PAGE 5

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

18 % per annum

...

- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section ~~15.7.1~~ 15.7.1;
- .4 the Contractor has submitted a final Release of Claims, certifying that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
- .5 the Contractor has submitted a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner;
- .6 the Contractor has submitted a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; and
- .7 consent of surety, if any, to final payment.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final approved Certificate for Payment, or as follows: Payment.

...

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the The method of binding dispute resolution shall be as follows:

...

[] — Arbitration pursuant to Section 21.6 of this Agreement

{ X } Litigation in a court of competent jurisdiction

☐ — Other (Specify)

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.

§ 6.1.1 The Agreement is this executed AIA Document A104™-2017, as modified, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.) Intentionally Omitted

§ 6.1.3 The Supplementary and other Conditions of the Contract: Intentionally Omitted

Document	Title	Date	Pages
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PAGE 6

Refer to the Project Manual

<u>G0.00</u>	<u>Title Sheet and Drawing index</u>	<u>May 9 2019</u>
<u>M0.01</u>	<u>HVAC Demolition Plan</u>	
<u>M1.01</u>	<u>HVAC Plan</u>	
<u>M1.02</u>	<u>Mechanical Schematics, Controls & Schedules</u>	
<u>E0.01</u>	<u>Electrical demolition plan</u>	
<u>E1.01</u>	<u>Electrical, power and Auxiliary plan</u>	

☐ AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

☐ AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:

PAGE 7

Invitation For Bid, Bid Request No. 2019-068

Executed Bid Form
Executed Performance Bond
Executed Statutory Bond to the State of Kansas

The Contract Documents are enumerated in Article 6 and consist of this modified Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

The Contract Documents form the Contract for Construction. ~~The Contract represents Contract, together with the performance bond, statutory bond, and maintenance bond, if any, represent~~ the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3.1 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and by the Owner's own forces, including persons or entities under separate contracts not administered by the Contractor.

§ 7.3.2 Knowledge

The terms "knowledge", "recognize", and "discover", their representative derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a Contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents.

§ 7.3.3 Persistently

The phrase "persistently fails" and other similar expressions, as used in reference to the Contractor, shall be interpreted to mean any combination of acts and omissions, which causes the Owner or the Architect to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum or in substantial compliance with the requirements of the Contract Documents.

§ 7.3.4 Provide

When the word "provide" including derivatives thereof is used, it shall mean to properly fabricate, transport, deliver install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Specifications.

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's ~~consultants~~ consultants, if any, under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, photographs, digital media, sketches, drawings, specifications, and other similar materials.

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§ 7.5.1 The Architect and the Architect's ~~consultants~~ consultants, if any, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's ~~consultants'~~ consultants', if any, reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's ~~consultants~~ consultants, if any.

...

~~The parties shall agree upon protocols governing the transmission and use of~~ If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, the parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. ~~form, they shall endeavor to establish necessary protocols governing such transmission, unless otherwise provided in the Agreement or in the Contract Documents.~~

...

~~Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~ Intentionally Omitted

...

§ 7.9.1 ~~Except as otherwise provided in Section 7.9.2, where~~ Where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

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§ 7.9.2 ~~Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.~~

§ 7.9.2. Intentionally Omitted

...

§ 8.1.1 ~~Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.~~ Intentionally Omitted

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site. Unless otherwise provided for in the Contract Documents, the Owner shall, upon the written request of the Contractor, furnish or make available surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site; provided, however, the Owner makes no representation as to the accuracy of any such information provided to the Contractor under the provisions of this Section and the Contractor shall be required to verify the accuracy of any such information furnished by the Owner and report back to the Owner within five (5) calendar days of any omissions, errors, or inconsistencies in the furnished information discovered by the Contractor.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the neglect and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21, and expenses made necessary thereby, from the payment then or thereafter due the Contractor. If payments then or thereafter due are insufficient, the Contractor shall pay the difference to the Owner.

§ 8.4 The rights stated in this Article 8 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (1) granted in the Contract Documents, (2) at law or (3) in equity.

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§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information information, if any, furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

...

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. Contract.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor, Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

...

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, construction equipment and machinery, water, heat, utilities, transportation, and

other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and all other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation and consultation by the Architect and in accordance with a Modification.

...

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements ~~may~~ will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

...

The Contractor shall pay any and all sales, consumer, use, and other similar taxes ~~that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect, for the Work or portions thereof provided by the Contractor which are not otherwise exempt from taxation by the laws of the place where the Project is located.~~

§ 9.5.1 Following execution of the Agreement, the Owner shall provide the Contractor with a Kansas State Sales Tax exemption Certificate number issued by the Kansas Department of Revenue to be used by the Contractor as allowable for sales of tangible personal property services purchases by the Contractor for the Work or portion thereof. The Contractor shall furnish the number of such certificate to all suppliers from whom purchases are made, and such suppliers shall execute invoices covering same bearing number of such certificate. All such invoices shall be held by the Contractor for a period of five (5) years from the date of such invoices and shall be subject to an audit by the Kansas Director of Revenue.

§ 9.5.2 Upon completion of the Project, the Contractor shall file with the Owner a notarized statement that all purchases made under the exemption certificate were entitled to be exempt from the Kansas Retailer's State Tax and Kansas Compensating Use Tax.

§ 9.5.3 The Contractor shall assume responsibility and be liable for the proper use of the exemption certificate number and shall pay all legally assessed penalties for improper use of the certificate and any and all taxes that are not otherwise exempt under the certificate.

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§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are ~~customarily secured after execution of the Contract and legally~~ required at the time bids are received or negotiations concluded.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for correction of such Work and shall bear the ~~costs~~ costs, losses and expenses attributable to correction.

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule approval a Baseline Schedule for the Work. Thereafter, the Construction Schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule approved Construction Schedule submitted to the Owner and Architect.

§ 9.8.3 Should the updates to the Construction Schedule show the Contractor to be twenty (20) or more calendar days behind the Baseline Schedule at any time during the construction, the Contractor shall work with the Owner and Architect to prepare a recovery plan for returning the Project to a completion within the current Final Completion Date. The Owner reserves the right to withhold payments to the Contractor until a reasonable recovery plan is submitted and accepted by the Owner. All costs associated with the preparation of the recovery plan shall be the Contractor's responsibility unless the delay was caused by reasons beyond the control of the Contractor.

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's ~~construction schedule~~ Baseline Schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 10.6. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 9.9.3 The Contractor shall ~~not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.~~ perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 9.9.4 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals. The Contractor shall not be relieved of responsibility for

errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 9.9.5 Electronic Documentation submittals: The Contractor shall submit electronic data in accordance with Exhibit B, Standards for Delivery of Electronic Document Information.

§ 9.9.6 Intentionally Omitted

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The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared or made available by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect in writing to the Architect and the Owner.

§ 9.15 Indemnification Concealed or Unknown Conditions.

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend to the Owner an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner or Contractor disputes the Architect's recommendation, either party may proceed as provided in Article 21.

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 9.16 Indemnification

§ 9.16.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and their respective officers, consultants, agents and employees from and against claims, damages, losses and expenses, including but not limited to lost revenues or profits and attorneys' fees, arising out of or resulting from the Contractor's failure or refusal to perform the Work required by the Contract Documents, or arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or damage or destruction of property, personal or real, including loss of use resulting therefrom, caused in whole or in part by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.16.1. The Contractor's obligation to

indemnify and hold harmless the Architect shall apply only to the extent that the Owner's agreement with the Architect contains a reciprocal indemnification and hold harmless provision protecting the Contractor.

§ 9.16.2 In claims against any person or entity indemnified under this Section 9.16 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.16.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 10.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an the Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. conclusion of the one year warranty period. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

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§ 10.3 The Architect will shall visit the site at intervals appropriate to the stage of the construction 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. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will 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, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.4 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule Construction Schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work of the Work, provided, however, the Architect shall be responsible for promptly notifying the Owner of the failure of the Contractor, Subcontractors, or any other persons performing any of the Work, in failing to use proper construction means and method, techniques sequences, procedures, safety precautions and programs, but only to the extent the Architect becomes aware of, or should, exercising due professional diligence, be aware of the same, and shall also promptly notify the Owner in writing of the failure of any of the foregoing parties to carry out the Work in accordance with the Contract Documents.

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§ 10.7 The Architect will 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 conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 9.2, 9.4 and 9.9. 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.

...

§ 10.9 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. Intentionally Omitted

...

§ 11.2 Unless otherwise stated in the Contract Documents, ~~Documents or the bidding requirements,~~ the Contractor, as soon as practicable after award of the Contract, shall ~~notify-furnish in writing to~~ the Owner and Architect the names of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and ~~with Separate Contractors retained under Conditions of the Contract to award contracts with~~ Separate Contractors in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided in Article 21.

§ 12.1.1 The Owner shall require his own forces and his separate contractors to coordinate their activities with the Work of the Contractor, who shall cooperate with them.

§ 12.1.2 The Contractor shall participate with other separate contractors and the Owner in coordinating their construction schedules with the Baseline Schedule and the Construction Schedule. The Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, and damage to the Work, or defective construction of a Separate Contractor.

§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. ~~If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.~~

§ 13.4 ~~If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.~~ **Intentionally Omitted**

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§ 14.5 If the Contractor is materially delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) ~~labor disputes, fire, unusual delay in deliveries,~~ abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

The Contract Time will not be extended due to normal inclement weather. The Contractor shall include in all schedules an allowance for calendar days, for which, according to historical data in the location of the project, work

subject to normal inclement weather cannot be performed.

...
§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect and Owner, before the first Application for Payment, and if necessitated by Change Orders, updated from time to time thereafter, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values Architect and Owner. This cost loaded schedule of values, when and only when approved in writing by the Architect and the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Additionally, with each Application for Payment, the Contractor shall submit the current Construction Schedule including updated cost loading reflecting all changes to date to the Cost of the Work.

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§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

...
§ 15.3.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor and approved in writing by the Architect in accordance with the Contract Documents.

§ 15.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either Procedure:

- .1 At least seven days (7) before the date established for each progress payment submittal, the Contractor shall submit to the Architect and Owner, a draft of the Application for Payment for operations completed in accordance with the most recently approved schedule of values as required under Section 15.1, for completed portions of the Work. The application shall be notarized, shall reflect retainage provided for in the Contract Documents and be supported by such data substantiating the Contractor's right to payment as the Owner or Architect require, including but not limited to, requisitions from Subcontractors and material suppliers and properly executed Release of Claims forms.
- .2 Such application shall be accompanied by monthly releases of claims by the Contractor, Subcontractors and selected material suppliers whose work coincides with the application for payment and cost loaded schedule of values. Failure on the part of the Owner or Architect to enforce this requirement either at any single time or repeatedly during the course of the Project shall not constitute or be deemed a waiver on the part of the Owner or Architect thereafter to enforce this requirement upon the Contractor.
- .3 At least four (4) days before the date established for each progress payment submittal, the Owner, Architect, and Contractor shall meet to review the submitted draft. The parties shall resolve any questions or concerns raised. The contractor, based on the outcome of the meeting, shall adjust his draft Application for Payment accordingly and submit a notarized, signed Application for Payment to the Architect.
- .4 The Architect shall date stamp the signed application upon receipt. If it is in accordance with outcomes decided in Section 15.3.4 and all other provisions of this Contract, the Architect will, within two (2) business days, issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner Contractor. If it is not in accordance, the Architect shall notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.3 The Architect ~~may will~~ withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

§ 15.4.4 ~~When either party disputes the Architect's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.~~Intentionally Omitted

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven (7) business days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner. Notwithstanding anything in the Section 15.5.1 to the contrary, the Owner may elect, in the Owner's sole discretion, to make any payment requested by the Contractor on behalf of a subcontractor of any tier jointly payable to the Contractor and such subcontractor. The Contractor and such subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (i) contract between the Owner and a subcontractor of any tier, (ii) obligations from the Owner to such subcontractor, or (iii) rights in such subcontractor against the Owner. Further, to the extent permitted by law, any disputes between the Contractor and subcontractor shall not affect the contract time or cost between the Owner and Contractor.

§ 15.5.4 ~~Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.~~Intentionally Omitted

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Receipt of Electronic Documentation submittals in accordance with Exhibit B, Standards for Delivery of Electronic Document Information shall be a condition of utilizing the Work for its intended use.

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been

fulfilled. Receipt of Electronic Documentation submittals in accordance with Exhibit B, Standards for Delivery of Electronic Document Information shall be a condition of determining that the Work has been completed in accordance with terms and conditions of the Contract Documents.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund promptly pay to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

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§ 15.7.4 Acceptance of final payment by the Contractor, a ~~Subcontractor~~ Subcontractor, and equipment or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

~~The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to~~
§ 16.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the ~~Contractor, a Contractor or the Contractor's Subcontractor, or a Sub-subcontractor; and Sub-subcontractors;~~
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of ~~construction; construction; and~~

~~The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.~~
4 construction or operations by the Owner or other Contractors.

§ 16.1.2 The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.1.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 16.1.4 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 16.1.5 If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 10 calendar days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter

...

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop any ongoing Work in the affected area and immediately notify the Owner and Architect within twenty-four (24) hours maximum by phone or email in writing of the condition. When the material or substance has been rendered harmless, harmless by an authority of the Owner's choosing, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately if and as appropriate and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional and incurred costs of shutdown, delay, and start-up, if any.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 16.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred. The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 16.2, except to the extent that the cost and expense are due to the Owner's fault or negligence

§ 16.2.4 If, without negligence on the part of the Contractor or breach of relevant provisions of the Contract Documents, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 16.2.5 HOT WORK PERMITS Contractor shall utilize and provide certification that all "Hot Work" associated with demolition and renovation, and new construction is being monitored by use of Factory Mutual Hot Work Permits.

§ 16.2.6 RED TAG SYSTEM Contractor shall utilize the Factory Mutual Red Tag System at all times when the fire protection equipment is taken out of service. The Owner shall be advised at least twenty-four (24) hours prior to all times when the fire protection equipment is impaired or out of service.

§ 16.2.7 MATERIAL, EQUIPMENT AND QUALITY ASSURANCE Systems and components used in the construction of the Work shall be Factory Mutual Engineering and Research (FMER) listed and labeled.

§ 16.2.8 Contractor shall perform all Work in accordance with the most current edition of the NFPA 70e Standard for Electrical Safety in the Workplace. Perform arc flash hazard analysis, prepare and submit written report to Owner and install labeling in compliance with Article 130 of NFPA 70e.

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§ 17.1.1 The Contractor shall ~~purchase~~ carry and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall ~~purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~ carry and maintain in force for the duration of the Contract the insurance required by this Agreement, underwritten by insurer(s) lawfully authorized to write insurance in the state of Kansas, insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in Article 17.1.2 of the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations under Section 9.16. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. The Contractor shall cause the commercial liability coverage required by the Contract Documents to include: (1) Owner, specifically the " Board of Directors of the Johnson County Library and Board of County Commissioners of Johnson County, Kansas and their respective officers, Commissions, Agencies and employees, " and the Architect and the Architect's Consultants as Additional Insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations and during the Contractor's completed operations. The Additional Insured requirement, as to the Public Building Commission (OR) Board of County Commissioners, shall be subject to the limitation of liability for claims within the scope of the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., and amendments thereto, and does not create a partnership or joint venture between the Owner and Contractor under this Contract. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

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§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than (\$) each occurrence, (\$) general aggregate, and (\$ one million (\$ 1,000,000) each occurrence, two million (\$ 2,000,000) general aggregate per project, and two million (\$ 2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, ~~including occupational sickness or disease,~~ and death of any person;

ISO Form CG0001 or its equivalent with no amendments to the definition of an insured contract including Premises and Operations; Products and Completed Operations Liability; and Contractual Liability. The Liability insurance shall include Blasting, Explosion, Collapse, and Underground coverage.

§ 17.1.3 Automobile Liability covering vehicles owned by the ~~Contractor~~ Contractor, hired by the Contractor, and non-owned vehicles used by the Contractor, with policy limits of not less than one million (\$ 1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.5 Workers' Compensation at statutory limits. **Umbrella (Excess) Liability:** To be provided over the primary general liability; automobile liability and employers' liability insurance policies with policy limits of not less than five million (\$5,000,000) per occurrence and five million (\$5,000,000) Aggregate

§ 17.1.6 Employers' Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) policy limit. **Workers' Compensation and Employer's Liability:**

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A. Statutory Workers' Compensation including an all states endorsement

B. Employer's Liability (E.L. and Disease):

- i. Bodily Injury by Accident \$500,000 Each Accident
- ii. Bodily Injury by Disease \$500,000 Policy Limit
- iii. Bodily Injury by Disease \$500,000 Each Employee

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than one million dollars (\$ 1,000,000) per claim and two million dollars (\$ 2,000,000) in the aggregate.

§ 17.1.8 If the Work involves the transport, dissemination, use, or possible release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than one million dollars (\$ 1,000,000) per claim and two million dollars (\$ 2,000,000) in the aggregate.

§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than two million dollars (\$ 2,000,000) per claim and four million dollars (\$ 4,000,000) in the aggregate.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. ~~The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.~~

Board of Directors of the Johnson County Library and The Board of County Commissioners, Johnson County, KS, its officers, Commissions, Agencies and employees shall be named as Additional Insured, on a primary and non-contributory basis, under the Commercial General Liability policy. The Additional Insured requirement shall be subject to the limitation of liability for claims within the scope of the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., and amendments thereto, and does not create a partnership or joint venture between the Owner and Contractor under this Contract.

Prior to contract execution, the successful bidder shall furnish Certificate(s) of Insurance verifying the required insurance is in full force and effect in accordance with this Contract. Within five (5) business days of expiration of any insurance coverage, Contractor shall provide renewal Certificate(s) of Insurance as required by this Contract. The Certificate Holder shall be as follows:

Board of Directors of the Johnson County Library and The Board of County Commissioners, Johnson County, Kansas

c/o Risk Manager

111 South Cherry Street, Suite 2400

Olathe, Kansas 66061-3486

The full description of the work to be performed, bid/project number, and the required Additional Insured language shall be referenced on the Certificate(s) of Insurance in the Description of Operations section. Prior to any reduction in coverage, cancellation, or non-renewal the Contractor or its Agent shall provide certificate Holder not less than thirty (30) days advance written notice of such change in Contractor's insurance coverage. It is Contractor's sole responsibility to provide this notice to Certificate Holder. Failure to provide notice shall not relieve Contractor of its obligations under this Agreement.

§ 17.1.11 ~~The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the~~ understands and agrees that any insurance or self-insurance maintained by the Board of Directors of the Johnson County Library and Board of County Commissioners of Johnson County, Kansas

and their respective officers, Commissions, Agencies and employees, shall apply in excess of and not be contributory with any insurance or self-insurance maintained by Contractor.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04. The Contractor shall not commence work under this Agreement until the Contractor has obtained all insurance required under this Article. Certificates of Insurance have been submitted to Owner and such insurance has been approved by the Owner. Evidence of continuing coverage for the Contractor or for a Subcontractor or anyone directly or indirectly employed by any of them shall be mailed to Certificate Holder, within five (5) days of renewal or replacement.

§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. All such insurance shall remain in effect until final payment and at all times thereafter when the Contractor may be correcting, removing or replacing defective work as provided by these Contract Documents. In addition, the Contractor shall maintain such commercial general liability and completed operations insurance for the statute of repose and furnish the Owner with evidence of continuation of such coverage. Certified copies of all insurance policies shall be provided to Owner, upon Owner's request.

§ 17.1.14 Other Insurance Provided by the Contractor The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ 17.1.15 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies, including Owner's self-insured retentions, and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.16 Within five (5) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.17 Other Insurance Provided by the Contractor

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§ 17.2.2 Property Insurance

§ 17.2.2.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's

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risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.2.2.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all

rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 17.2.3 Other Insurance Provided by the Owner

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

§ 17.3 Performance Bond and Payment BondProperty Insurance

§ 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract. Unless otherwise provided for in this Agreement, the Contractor shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the state of Kansas, property insurance written on a builder's risk "all-risk" completed value or equivalent policy form in the amount of the initial Contract Sum plus the total value of the entire Project on a replacement cost basis subject to the Owner's policy deductible. The Contractor's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 15.7 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 17.3 to be covered, whichever is later. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 17.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. Substantial Completion, the Owner, at Owner's sole discretion, may require Contractor to continue the insurance required by Section 17.3.1 or replace the insurance policy required under Section 17.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.3.3 Intentionally Omitted

§ 17.3.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ 17.3.5 Prior to commencement of the Work, the Contractor shall secure the insurance, and provide evidence of the coverage, required under this Section 17.3 and, upon the Owners's request, provide a copy of the property insurance policy or policies required by this Section 17.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.3.6 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.3, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. At Owner's sole discretion, upon receipt of notice from the Contractor, Owner shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Contractor or the Owner. The Contract Time and Contract Sum shall be equitably adjusted. The Contractor waives all rights against the Owner, Subcontractors, and Sub-subcontractors to the extent any loss to the Contractor would have been covered by the insurance had it not

expired or been cancelled. If the Owner purchases replacement coverage, the cost of the insurance shall be charged to the Contractor by an appropriate Change Order. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide required insurance.

§ 17.3.7 Waiver of Subrogation

§ 17.3.7.1 The Contractor and Owner waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Contractor and Owner, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.3.7.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.3.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, and if not caused by the negligence of the Contractor, the Owner waives all rights in accordance with the terms of Section 17.3.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 17.3.8 A loss insured under the Contractor's property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay the Owner and Architect their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, the Owner and Architect shall make payments to their consultants and Subcontractors in similar manner.

§ 17.3.9 Other Insurance Provided by the Owner

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

§ 17.4 Bonds

§ 17.4.1 The Contractor shall furnish a Performance Bond and Statutory Bond on forms supplied by the Owner and contained in the Bidding Documents in amounts each equal to one hundred percent (100%) of the initial Contract Sum as well as subsequent modifications thereto. Such bonds shall be executed by a surety company authorized to do business in the State of Kansas and require the appointment of a Kansas Resident Agent. The Statutory Bond shall be filed with the Clerk of the District Court of Johnson County, Kansas and receipt of filing furnished to the Owner. In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 17.4.2 Intentionally Omitted

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§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work otherwise provided in the Contract Documents

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor at Contractor's expense shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor ~~a~~ an express written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

...

§ 18.6 UNCOVERING WORK If a portion of the Work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract Time.

§ 18.6.1 If a portion of the Work has been covered which the Architect has not specifically requested to observe prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or one of the other Contractors in which event the Owner Shall be responsible for payment of such costs.

...

~~Neither party to the Contract shall~~ The Contractor shall not assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment. ~~Owner.~~

...

~~The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 21.6 laws of the state of Kansas.

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Dean Allman Assistant Facilities Manager
9875 W. 87th St., Overland Park, KS 66212
913.826.4341 (desk) | 913.645.2679 (cell) | 913.826.4600 (office)

...

Mark Cooper
816-352-2328
mark@andersonmechanicallc.com
108 E 125th Place, KC, MO 64145

...

§ 19.7 The following provisions shall apply to this and all resulting contracts and subcontracts with and between all contractors, subcontractors, vendors, and /or suppliers connected with this Project, except (i) those whose contracts with the Owner cumulatively total five thousand dollars (\$5,000) or less during the Owner's fiscal year or (ii) those contracts with and between all contractors, subcontractors, vendors and/or suppliers who employ fewer than four (4) employees during the term of this contract.

- 1 The Contractor shall observe the provision of the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq., and amendments thereto, the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111 et seq., and amendments thereto, and the applicable provisions of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., and amendments thereto and shall not discriminate against any person in the performance of work under present contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin or ancestry.
- 2 In all solicitations or advertisements for employees, the Contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Commission on Civil Rights ("Commission");
- 3 If the Contractor fails to comply with the manner in which the Contractor reports to the Commission in accordance with the provisions of K.S.A. 44-1031, and amendments thereto, the Contractor shall be deemed to have breached the present Contract, and it may be canceled, terminated or suspended, in whole or in part, by the Owner; and
- 4 If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination, the Kansas Age Discrimination in Employment Act or the ADA under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present Contract, and it may be cancelled, terminated or suspended, in whole or in part, by the Owner.

§ 19.8 Notwithstanding anything to the contrary contained in this Contract or represented by either party to the other or by the Architect to either the Owner or Contractor, the Contractor warrants that each and every chemical substance or product offered, sold, handled, or used for the Work under this Contract, or otherwise, transferred by the Contractor to officers, employees, agents or authorized representatives of the Owner as the date of such offer, sale, transfer or use shall comply with the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard 29 CFR 1910.1200.

§ 19.9 Right to Examine and Audit Records, Contract Change Order Procedures; Overcharges.

§ 19.9.1 The Contractor agrees that the Owner, or any of its authorized representatives, shall have access to, and the right to examine and audit, any and all books, documents, papers and records (collectively the "Records") of the Contractor involving transactions related to the contract (the "Contract") between the Owner and Contractor hereunder, or any change order or Contract modification thereto, or with compliance with any clauses thereunder. Such Records shall include hard copy as well as computer readable data. The Contractor shall require all of its payees including, but not limited to, subcontractors, insurance agents or material suppliers (collectively the "payee(s)") to comply with the provisions of this clause by including the requirements hereof in a written agreement between the Contractor and payee(s). Further, the Contractor agrees to cooperate fully and will require all of its payees to cooperate fully in furnishing or making available to the Owner any and all such Records. The Owner's right to examine and audit any and all Records hereunder shall survive termination of the Contract.

§ 19.9.2 The Contractor agrees to follow the quality control change order processing system (the "System") utilized by Architect and Owner to ensure that any and all Contract change orders or Contract modifications (collectively the "Change Order(s)") that may be necessitated and result during the course of the performance of work or services rendered (the "Work") pursuant to, and under the requirements of, the Contract are warranted and properly processed. The System shall serve as a means for Owner and Contractor representatives to ensure the propriety, justification and timeliness of the Change Order(s), and dill documentation to enable the parties to examine how the price was determined, reviewed, evaluated, negotiated, and accepted or rejected.

§ 19.9.3 The Contractor agrees that is at any time following thirty-six (36) months of termination of the Contract (the "audited period"), an audit performed by or for the Owner hereunder of the Records and/or Change Order(s) pertaining to, or in connection with, the Work and/or the Contract reveals that any overcharges were paid by the Owner and were attributable to any error, omission, negligence, misrepresentation, or willful act on the part of the Contractor, or an of its officers, employees, subcontractors, agents or payees, then the Contractor, or any of its assigns or successors shall, within thirty (30) days of receipt of written notice from the Owner, refund upon demand, and be and remain liable to the Owner for payment of, any such overcharges revealed, including interest thereupon, for the audited period, as well as

any and all out-of-pocket costs incurred by the Owner with the respect to conducting the audit and collecting the overcharges. Neither shall the making and acceptance of final payment under the Contract nor the termination of the Contract constitute a waiver of any claim on the part of the Owner to make demand upon the Contractor for any such overcharges and related costs thereto; provided, further, that any such demand of the Owner made upon the Contractor shall not be subject to claims and disputes procedural requirements or provisions, if any, of the Contract, but shall remain a continuing obligation of the Contractor until satisfied.

§ 19.10 Definitions:

Baseline Schedule – a cost loaded schedule defining all submittals and all significant construction activities and milestones necessary for the commencement and Final Completion of the Work by the Contractor or Construction Manager (if retained) and the work of the Owner's own forces and separate contractors. The Baseline Schedule shall be prepared by the Scheduling Consultant, Contractor, or Construction Manager (if retained) and shall be mutually accepted by the Owner, Architect and Contractor or Construction Manager (if retained) prior to issuance of a Notice To Proceed.

Construction Schedule – Originating from the Baseline Schedule, including cost loading and updates to reflect change in the Cost of Work, and modified by the Contractor or Construction Manager (if retained) as they deem necessary to perform the Work thereafter, however, increases in time to achieve: 1) milestones, 2) completion of phases, 3) Substantial Completion or 4) Final Completion, shall require approval through the Claims and Disputes process identified in AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor, as modified. If a Scheduling Consultant is responsible for maintaining and modifying the Construction Schedule, the Contractor or Construction Manager (if retained) shall provide all necessary information to the Scheduling Consultant so that he can perform his duties.

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If the Architect fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages executed.

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§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 ~~When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.~~ **Intentionally Omitted**

~~The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:~~

§ 20.3.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

1. cease operations as direction by the Owner in the notice;

2. take actions necessary, or that the Owner may direct, for the protection and preservation of the Work, and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 20.3.2 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed in accordance with the Contract Documents and costs reasonable incurred by reason of such termination, along with reasonable overhead and profit thereon.

§ 20.3.3 Upon termination by a court of competent jurisdiction that termination of the Contractor pursuant to Section 20.2 as wrongful or otherwise improper, such termination shall be deemed a termination for convenience pursuant to the Section 20.3 and the provisions of this Section SC 20.3 shall apply.

§ 20.4 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 20.4.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 20.4.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

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§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for initial decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation shall require an initial decision by the Architect as a condition precedent to binding dispute resolution. Unless the Architect and all affected parties agree, the Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Architect within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. **Intentionally Omitted**

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party. **Intentionally Omitted**

§ 21.3 Time Limits on Claims **Intentionally Omitted**

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines. The

Architect will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, or (4) suggest a compromise.

§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. 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. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense

§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished or (3) advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will render an initial decision.

§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). The Architect will render an initial decision that either rejects or approves the Claim in whole or in part. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to binding dispute resolution.

§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent. Either party may, within 30 days from the date of an initial decision, file for binding dispute resolution within 60 days of the initial decision. Failure to demand binding dispute resolution within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor, and shall result in a waiver by both parties of their rights to pursue binding dispute resolution proceedings with respect to the initial decision

§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof. Intentionally Omitted

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§ 21.11 Waiver of Claims for Consequential Damages Intentionally Omitted

~~The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

- ~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- ~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

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Bethany Griffith, Chair

...

Board of Directors of the Johnson County Library

Attest:

Secretary of the Board of Directors of the Johnson
County Library

APPROVED AS TO FORM:

Fred J. Logan, Jr.
Counsel to the Board of Directors of the Johnson County Library

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Juan Lopez-Tamez, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:15:30 ET on 06/25/2019 under Order No. 3834430064 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A104™ – 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

To: Johnson County Library Board of Directors

From: Sean Casserley, County Librarian

Date: July 11, 2019

Re: **Consider approving two items relating to the Central Staffing and Space Consolidation (CSSC) project.**

Issue: Consider approving the recommendation of Option 3 for the Central Staffing and Space Consolidation (CSSC) project in an amount not to exceed \$8,707,000 with the intent to use a combination of existing project funds, Public Building Commission (PBC) debt, and Library reserves.

Suggested Motion:

I move to approve the recommendation of Option 3 for the Central Staffing and Space Consolidation (CSSC) project in an amount not to exceed \$8,707,000 with the intent to use a combination of existing project funds, Public Building Commission (PBC) debt, and Library reserves.

Background: In 2014-2015, the Central Library Building Upgrade project addressed renovations and infrastructure improvements to the public space. The Library Board of Directors approved the Comprehensive Library Master Plan (CLMP) in May 2015, with a mill levy approved by the Board of County Commissioners (BOCC) in August of 2015. In 2016, a materials handling study was performed in which materials handling was evaluated for the Library system. Some operational changes have been made and the remaining needs have been incorporated into the CSSC project to be located at Central.

In 2017, the Library Board recommended amending the 2016 CIP request to cash fund this project for \$1,700,000, which would only accomplish improvements to the materials handling aspect and not staff spaces. The 2020 Capital Replacement Plan (CRP) includes cash funding for \$900,000 for Central Resource Library, which can be bundled with work accomplished by this project.

In May and June of 2019, the Library Board heard three potential options for this project, as well as the staff recommendation to approve option 3.

Future agenda items regarding project costs will come to the Library Board as more information is known about the PBC bonding timeline.

Analysis: The Central Resource Library has existed for over 25 years and in that time the Library, system and the County have grown. Where possible, the Library has adapted and managed the existing spaces. Option 3 will fully address the change and growth the system has experienced in the last 20 years by creating spaces that can meet the current needs and easily adapt to future changes, improving both internal and external efficiencies, bring Central staff spaces up to the standard used at our new buildings, and making better use of space.

Funding Overview: The Finance Director and County Budget have reviewed and approved this request.

Alternatives: 1) Approve a different CSSC option. This action would cause the Library to revise our funding strategy and would not realize as many efficiencies. 2) Not approve any option. This

action would cause the Library to look for other means to gain space and material handling efficiencies and would result in future funding requests.

Budget Review: This item has been reviewed and approved by the Library Finance Director and County Budget.

Legal Review: This item has been reviewed and approved by JCL Legal Counsel.

Recommendation: Staff recommends the approval of the recommendation of Option 3 for the Central Staffing and Space Consolidation (CSSC) project in an amount not to exceed \$8,707,000 with the intent to use a combination of existing project funds, Public Building Commission (PBC) debt, and Library reserves.

To: Johnson County Library Board of Directors

From: Sean Casserley, County Librarian

Date: June 13, 2019

**Re: Informational Item: Initial draft of a Memorandum of Understanding between
Johnson County Library, City of Prairie Village and the YMCA**

Issue: Following this briefing sheet is an updated draft of a Memorandum of Understanding (MOU) between the City of Prairie Village, the Board of Directors of the Johnson County Library, and the YMCA. The MOU would form an agreement between the parties to study “the possibility of constructing a new Johnson County Library facility on land that is in closer proximity to the City’s parks, swimming pools and tennis courts”.

Suggested Motion: This is an informational item; there is no suggested motion at this time.

Legal Review: JCL Legal Counsel has drafted and approved this item.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is entered into this ____ day of _____, 2019, by and between the **City of Prairie Village, Kansas** with its principal office located at 7700 Mission Road, Prairie Village, Kansas 66208 ("the City"), the **Board of Directors of the Johnson County Library, Johnson County, Kansas**, with administrative offices located at 9875 W. 87th St., Overland Park, Kansas 66212 ("JCL"), and the **YMCA of Greater Kansas City** ("the YMCA"). The City, JCL, and the YMCA are occasionally referred to in this MOU individually as "Party" and collectively as "Parties."

RECITALS

A. The City is a Kansas municipal corporation and is authorized to enter this MOU by the powers vested in it by Article 12, Section 5 of the Kansas Constitution.

B. JCL is a quasi-municipal corporation organized under the laws of the state of Kansas and is authorized to enter this MOU by the powers vested in it by K.S.A. 12-1223 *et seq.* JCL presently operates the Corinth Library at 8100 Mission Road in the City.

C. The YMCA is a charitable organization exempt from federal taxation pursuant to section 501(c)(3) of Title 26 of the United States Code. The YMCA owns property on which the Paul Henson Family YMCA is operated at 4200 W. 79th Street, Prairie Village, Kansas.

D. JCL, the City, and the YMCA desire to study the possibility of constructing a community recreation and wellness center ("Center") and a new Johnson County Library branch facility ("Branch") (collectively Center and Branch are "Project") on land that is in closer proximity to the City's Harmon Park, swimming pools, and tennis courts, including a study of the market sustainability of undertaking such a Project, taking into account the needs of JCL, the YMCA, and the City.

F. The parties accordingly desire to enter into this MOU to set forth the terms pursuant to which they will collaborate in studying the market feasibility of constructing the Project, including a new Branch operated by JCL and Center operated by YMCA.

AGREEMENTS

NOW, THEREFORE, for the mutual promises and covenants contained herein, the Parties incorporate by reference the Recitals set forth above in this MOU and agree as follows:

1. PROJECT STUDY.

A. The Parties agree to collaborate on a plan to study the possibility of constructing the Project on City land that is in close proximity to the City's Harmon Park, swimming pools, and tennis courts ("Project Study"), taking into account the plans of JCL, City, and YMCA.

B. The area designated for the Project Study ("Project Study Area") is shown as indicated on the attached diagram attached hereto and incorporated herein by reference as Exhibit A.

C. The Project Study may consist of three phases: (I) Market Sustainability Study; (II) Community Engagement Evaluation; and (III) Project Site Design Study. This MOU provides for the Parties to participate in a Market Sustainability Study as part of the Project Study.

2. MARKET SUSTAINABILITY STUDY.

A. The Parties will procure third-party consultants or professionals to provide and conduct a market sustainability study of the Project to begin not later than September 30, 2019 ("Market Sustainability Study"). City, JCL, and YMCA will cooperate to select consultants or professionals to conduct the Market Sustainability Study.

B. The Market Sustainability Study's purpose is to provide a thorough analysis of the current level of services and amenities in the area similar to those that would exist at the Project; identify existing gaps in services and recommend methods where the Project can fill those gaps; propose what the Project may provide patrons in terms of services and function; explore how City, JCL, and YMCA could mutually benefit from locating a Center and Branch at the Project on the Project Study Area; describe how the Center could be operated in an economically viable manner; and seek feedback from participants as to which services and amenities they would use and to what extent they would be willing to pay for such services and amenities.

C. The Parties estimate the cost to procure the Market Sustainability Study will be not more than \$50,000. The Parties commit to share in the costs of this Market Sustainability Study in amounts not more than the following (or in equivalent portions if the total cost is less than \$50,000):

1. JCL – \$20,000.00;
2. City - \$20,000.00; and
3. YMCA - \$10,000.00.

D. City, JCL, and YMCA will collaborate on messaging and communications during the Project Study and the Market Sustainability Study. The Parties' messaging and communications with the Public will be cohesive and coordinated by the City.

E. Upon completion of the Market Sustainability Study, the City, JCL, and YMCA will consider the results of the Market Sustainability Study. Each Party, at that Party's sole discretion, will determine the feasibility of that Party participating in the Project or further studying the Project in future phases of the Project Study as described in Section 1.C.

3. SCHEDULE. City, JCL, and YMCA agree to diligently pursue the Market Sustainability Study. In the event the Parties intend, based upon each Party's sole, respective discretion, to proceed with future Phases II and III of the Project Study for Community

Engagement Evaluation and Project Site Design Study, then the Parties will consider additional memoranda of understanding to initiate those phases of the Project Study.

4. APPROVAL OF THIS MOU. The Governing Body of the City, the Board of Directors of the Johnson County Library, and the Board of Directors of the YMCA must approve this MOU for it to be effective.

5. NO LIMITATION OF POWER.

A. Nothing in this MOU shall be construed as a limitation on the ability of the City to exercise its governmental functions or to diminish, restrict or limit the police powers of the City granted by the Constitution of the state of Kansas and the United States, statutes, or by general law.

B. Nothing in this MOU shall be construed as a limitation on the powers, rights, authority, duty and responsibility conferred upon and vested in JCL, the City, or the YMCA by the laws and Constitution of the state of Kansas and the United States.

6. COOPERATION. The Parties agree to exercise good faith and cooperate with each other to conduct the studies contemplated herein.

7. NOTICES. Any notice, request, approval, demand, instruction, or other communication to be given to either party hereunder, unless specifically stated otherwise herein, shall be in writing and shall be conclusively deemed to be delivered (i) when personally delivered, (ii) when deposited in the U.S. mail, sent by certified mail return receipt requested, (iii) when sent by overnight courier, or (iv) when sent by facsimile with a confirmed receipt, but in all cases addressed to the parties as follows:

To JCL: Sean Casserley, County Librarian
Johnson County Central Library
9875 W. 87th St.
Overland Park, KS 66212
Phone: 913-826-4600
Fax: 913-826-4730
Email: CasserleyS@jocolibrary.org

With a Copy to: Fred J. Logan, Jr.
Logan, Logan & Watson, L.C.
8340 Mission Rd., Suite 106
Prairie Village, KS 66206
Phone: 913-381-1121
Fax: 913-381-6546
Email: flogan@loganlaw.com

To CITY: Wes Jordan, City Administrator
7700 Mission Road
Prairie Village, KS 66208

Phone: (913) 385-4621
Fax: (913) _____
E-mail: wjordan@pvkansas.com

With a Copy to: David E. Waters
Lathrop Gage LLP
10851 Mastin Blvd., Suite 1000
Overland Park, Kansas 66210
Phone: 913-451-5112
Email: dwaters@lathropgage.com

To YMCA: _____

8. GENERAL MATTERS.

A. This MOU shall be governed by and construed under the laws of the state of Kansas.

B. No party shall assign this MOU without the written consent of all Parties.

C. The recitals set forth above are true and correct and are incorporated herein by reference and made a part of this MOU. This MOU constitutes the entire agreement between the Parties and supersedes all prior agreements, whether written or oral, covering the same subject matter. This MOU may be modified or amended only upon written instrument executed by the Parties required to consent to such amendment.

D. No member of the Governing Body, official or employee of the City shall be personally liable to JCL, or any successor in interest to JCL, pursuant to the provisions of this MOU or for any default or breach of the MOU by the City.

E. No member of the Board of Directors, official or employee of JCL shall be personally liable or obligated to perform the obligations of JCL, pursuant to the provisions of this MOU or for any default or breach of the MOU by JCL.

F. The signatories to this MOU covenant and represent that each is fully authorized to enter and to execute this MOU on behalf of the named party.

G. It is agreed that nothing in this MOU is intended to, nor does it create or establish a joint venture between the Parties, or as constituting any agency relationship.

H. Nothing contained in this MOU shall be construed to confer upon any other party the rights of a third-party beneficiary.

The parties have executed this MOU on the date first written above.

[Remainder of page intentionally left blank; Signature Pages and Exhibit A follow]

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Eric Mikkelson, Mayor

Attest:

City Clerk

Approved As To Form:

**BOARD OF DIRECTORS OF JOHNSON
COUNTY LIBRARY**

By: _____
Bethany Griffith
Chair

Attest:

Amy Amos Ruo
Secretary

Approved as to Form:

Fred J. Logan, Jr., Board Attorney

YMCA OF GREATER KANSAS CITY

By: _____

Name: _____

Title: _____

EXHIBIT A
PROJECT STUDY AREA DIAGRAM

