



**Board Report  
May 9, 2019**

AGENDA

JOHNSON COUNTY LIBRARY BOARD OF DIRECTORS  
REGULAR MEETING, MAY 9, 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, Jennifer Curtiss
  - 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) Levels of Purchasing and County Request for Proposal process
  - B. County Librarian Report – Tricia Suellentrop, Deputy County Librarian
    - 1. Finances and Statistics – Nicki Neufeld, Finance Director .....5
      - a) Planned replacement for Technology and Furniture – Nicki Neufeld
      - b) Expenditure Trends – Adam Wathen, Associate Director of Systemwide Services .....11
    - 2. Comprehensive Library Master Plan – Scott Sime, Project Coordinator
      - a) Antioch update – Tricia Suellentrop
      - b) CSSC Options with Rick Wise – Clark Enersen .....15
      - c) Lenexa City Center – Scott Sime .....37
        - i. Grand Opening Project – Ben Sunds, Associate Director of Customer Experience .....41
      - d) Corinth update, Memorandum of Understanding with the City of Prairie Village
    - 3. Updates – Tricia Suellentrop
      - a) Elementia – Kate McNair, Teen Services Librarian
      - b) Race Project KC - Kate McNair
      - c) Ta-Nehisi Coates event – Joseph Keehn, Event Producer
      - d) Summer Reading – Joseph Keehn
      - e) Website software upgrade - Michelle Beesley, IT Manager
      - f) Budget presentation to the BOCC May 16
      - g) Lenexa City Center Stakeholder Tours
- V. Consent Agenda
  - A. Action Items:
    - 1. Minutes of the April 11, 2019, Library Board meeting .....47
  - B. Information Items
    - 1. Financial and Personnel
      - a) The County Librarian and the Finance Director certify those payment vouchers and personnel authorizations for March 2019 were handled in accordance with library and County policy.
      - b) The March 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 Report .....	52
VI.	New Business	
A.	Action item: Consideration of approval to purchase two chiller units and cooling coil for the Gardner Library in the amount of \$116,041. ....	53
B.	Action item: Consideration of approval of the Amendment to the MOU between Johnson County Library and the Johnson County Facilities Management Department. ....	100
VII.	Adjournment	

### **Suggested Motions**

#### **Consent Agenda**

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

#### **Consideration of approval to purchase two chiller units and cooling coil for the Gardner Library in the amount of \$116,041.**

Suggested Motion: I move the Library Board of Directors approve the purchase of two chillers and a cooling coil for the Gardner Library in the amount of \$116,041.

#### **Consideration of approval of the Amendment to the Memorandum of Understanding between Johnson County Library and the Johnson County Facilities Management Department.**

Suggested Motion: I move that the Library Board of Directors approve the amendment to the memorandum of understanding between Johnson County Library and the Johnson County Facilities Management Department.

**JOHNSON COUNTY LIBRARY: Summary of Expenditures by Cost Category (.75 Increase Only)**  
**March 2019**  
**25% of year lapsed**

**OPERATING FUND**

<b>Programs</b>	<b>2019 Budget</b>
Revenue	4,430,838

Administrative Services  
Information Technology  
Collection Development  
Branch/Systemwide Services  
Transfer to Capital Projects  
Interfund Transfers

<b>TOTAL OPERATING FUND EXPENDITURES</b>	<b><u>\$0</u></b>
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<b>TOTAL .75 INCREASE FUNDS REMAINING OPERATING</b>	<b><u><u>\$4,430,838</u></u></b>
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**SPECIAL USE FUND**

**2017  
Budget**

Revenue:	1,871,476
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Expenses:	
Contractual Services (General Maintenance)	
Commodities (Capital Equipment)	
Transfer to Debt Payment	18,958
Transfer to Debt Payment - CLMP	
Transfer to Capital Projects	

<b>TOTAL SPECIAL USE FUND EXPENDITURES</b>	<b><u>\$18,958</u></b>
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<b>TOTAL .75 INCREASE FUNDS REMAINING SPECIAL USE</b>	<b><u><u>\$1,852,518</u></u></b>
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<b>TOTAL .75 INCREASE FUNDS REMAINING ALL FUNDS</b>	<b><u><u>\$6,283,356</u></u></b>
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## Expenditure of Friends of the JCL Donations 2019

<i><b>Expenditure Details</b></i>	<i><b>Current Month</b></i>	<i><b>YTD</b></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	387.12	387.12
Miscellaneous	0.00	0.00
<b>Total Expenditures</b>	<b>\$ 387.12</b>	<b>\$ 387.12</b>

# JOHNSON COUNTY LIBRARY TOTAL REVENUE REPORT

March 2019  
25% 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	26,415	99,255	27%	26%
Library Generated - Overdues / Fees	155,783	725,000	21%	20%
Sale of Library Books	0	50,000	0%	22%
Misc Other	444	18,703	2%	0%
Reimbursement	15,123	330,043	5%	0%
Library Generated - Other Charges	0	3,570	0%	2%
Investment	185,926	304,911	61%	71%
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	0	250,389	0%	50%
<b>TOTAL REVENUE</b>	<b>20,436,340</b>	<b>38,339,457</b>	<b>53%</b>	<b>50%</b>

Expenses ALL FUNDS with Collection Encumbrance	2019 Year to Date	2019 Budget	% Categories Expended
Categories			
Salaries and Benefits	4,855,393	21,323,420	23%
Contractual Services	1,258,111	4,710,131	27%
Commodities	3,495,624	4,385,684	80%
Risk Management Charges	31,351	126,252	25%
Capital / Maintenance / Repair	0	3,487,289	0%
Transfer to Debt Payment	0	827,916	0%
Transfer to Capital Projects	541,344	2,738,276	20%
Grants	0	250,389	0%
Interfund Transfer	0	490,100	0%
<b>TOTAL EXPENDITURES</b>	<b>10,181,822</b>	<b>38,339,457</b>	<b>27%</b>

Revenue - Expenses as of January 31, 2019 10,254,518

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

## 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	

<b>Total Revenue</b>	<b><u>3,327,100</u></b>
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### **2019**

Contractual Services	1,345,586
Building Repair	211,954
Architectural Services	85,305
Furnishings and Office Equipment	73,032
HVAC	178,193
Sorter Parts and Labor	4,113
Security System Maint & Repair	33,549
Vehicles	66,488
AED Equipment	9,613
	<b>2,007,833</b>

<b>Budget Remaining</b>	<b>1,319,267</b>
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**JOHNSON COUNTY LIBRARY: Summary of Expenditures by Cost Category**  
**March 2019**  
**25% Year Lapsed**

<b>OPERATING FUND</b>		<b>2019</b>	<b>2019</b>	<b>% Program</b>
	<b>Programs</b>	<b>Year to Date</b>	<b>Budget</b>	<b>Expended</b>
	Administrative Services	1,006,539	5,072,528	20%
	Information Technology	916,250	2,951,965	31%
	Collection Development	1,012,510	3,467,822	29%
	Branch/Systemwide Services	4,153,923	18,595,615	22%
	Risk Management Charges	31,351	126,252	25%
	Grants *	0	250,389	0%
	Transfer to Capital Projects	0	3,487,289	0%
	Interfund Transfer	0	490,100	0%
<b>TOTAL OPERATING FUND EXPENDITURES</b>		<b>7,120,572</b>	<b>34,441,960</b>	<b>21%</b>

<b>SPECIAL USE FUND</b>		<b>2019</b>	<b>2019</b>	<b>% Budget</b>
		<b>Year to Date</b>	<b>Budget</b>	<b>Expended</b>
	Contractual Services (General Maintenance)	39,452	16,305	242%
	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%
<b>TOTAL SPECIAL USE FUND EXPENDITURES</b>		<b>605,938</b>	<b>3,897,497</b>	<b>16%</b>

<b>TOTAL EXPENDITURES</b>	<b>7,726,510</b>	<b>38,339,457</b>	<b>20%</b>
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**JOHNSON COUNTY LIBRARY: Summary of Expenditures by Type**  
**March 2019**  
**25% Year Lapsed**

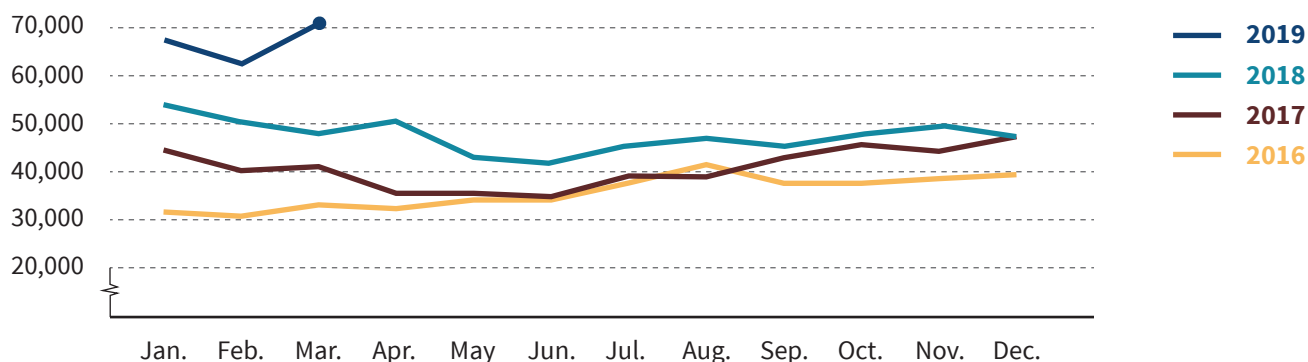
<b>ALL FUNDS</b>		<b>2019</b>	<b>2019</b>	<b>% Categories</b>
	<b>Categories</b>	<b>Year to Date</b>	<b>Budget</b>	<b>Expended</b>
	Salaries and Benefits	4,855,393	21,323,420	23%
	Contractual Services	1,258,111	4,710,131	27%
	Commodities	1,040,312	4,385,684	24%
	Risk Management Charges	31,351	126,252	25%
	Capital / Maintenance / Repair	0	3,487,289	0%
	Transfer to Debt Payment	0	827,916	0%
	Transfer to PBC Capital Leases	541,344	2,738,276	20%
	Grants	0	250,389	0%
	Interfund Transfer	0	490,100	0%
<b>TOTAL EXPENDITURES</b>		<b>7,726,510</b>	<b>38,339,457</b>	<b>20%</b>

GRANTS*	Expenditures through 03/31/2019	Source	Received	Expenditures	Grant Award	Budget Remaining
285000079	2019 State Aid Grant	State	3/5/2019	\$144.64	\$126,657.28	\$126,512.64

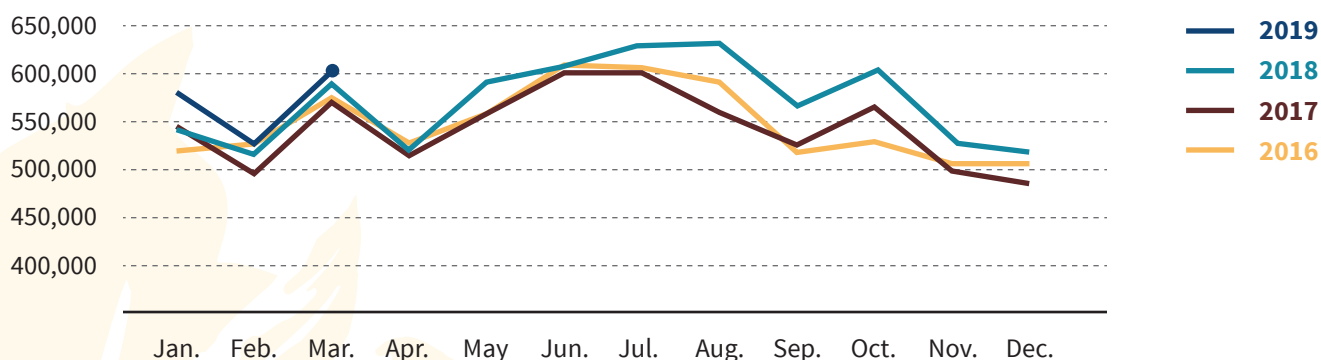
\*Includes all expenditures and revenues over the life of the grant. (Includes multiple years due to the grants crossing fiscal years).

## Core Operational Statistics

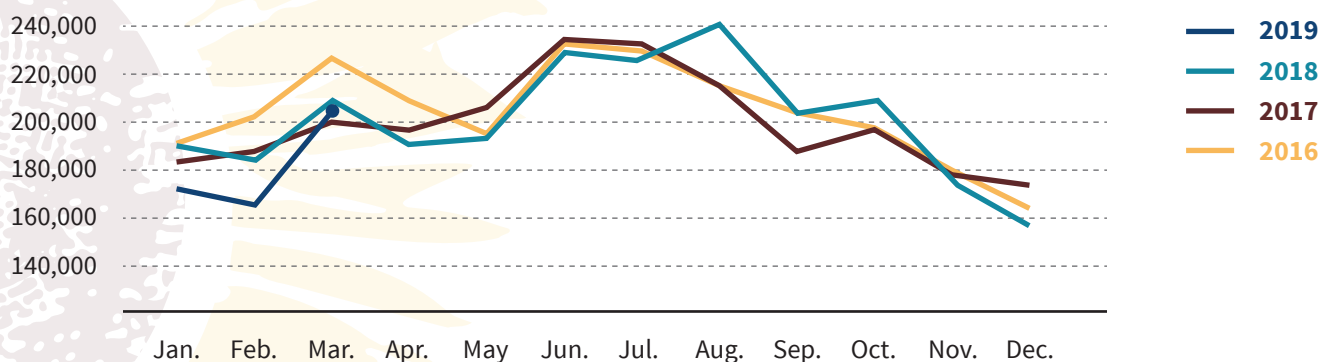
### 3 Year Digital Circulation Trend



### 3 Year Physical Circulation Trend

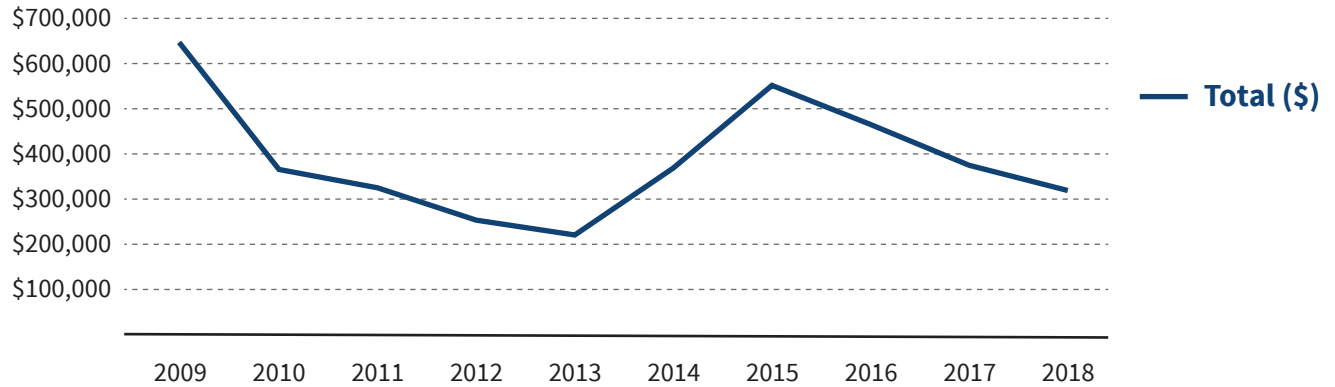


### 3 Year Visitation Trend

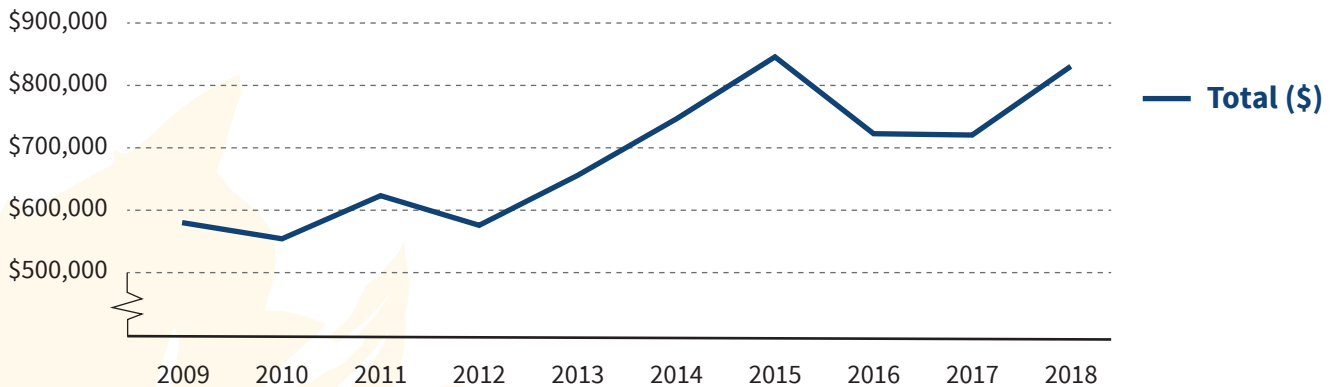


## Trends in Buildings and Maintenance

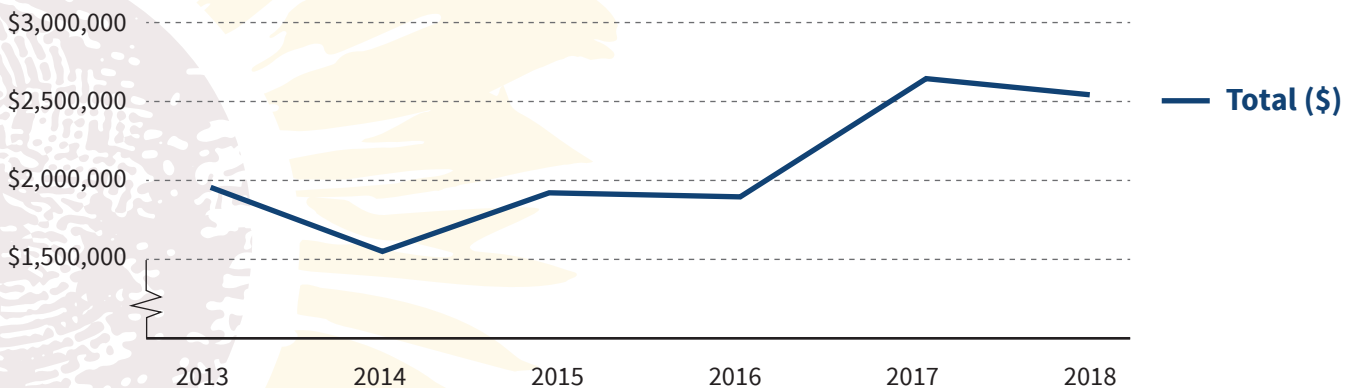
### General Maintenance Expenditure



### Utilities Expenditure

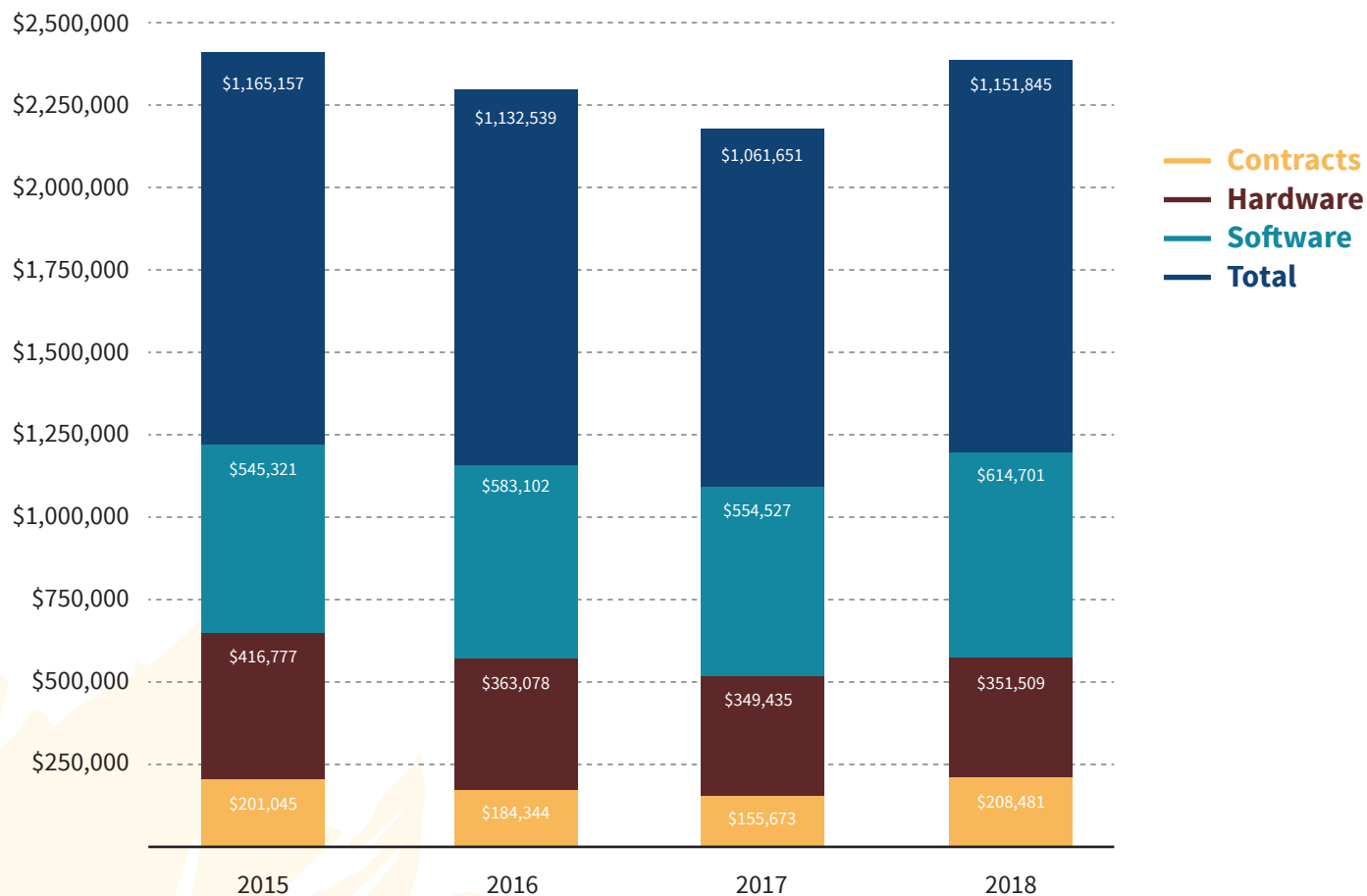


### Library Debt Expenditure



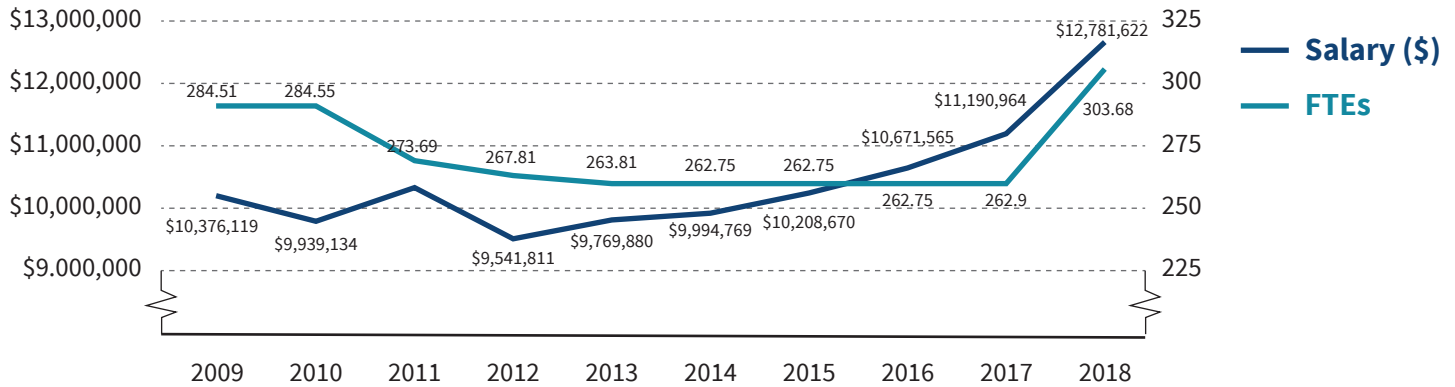
## Expenditures in Information Technology and Personnel

**Trend in Information Technology Expenditure**

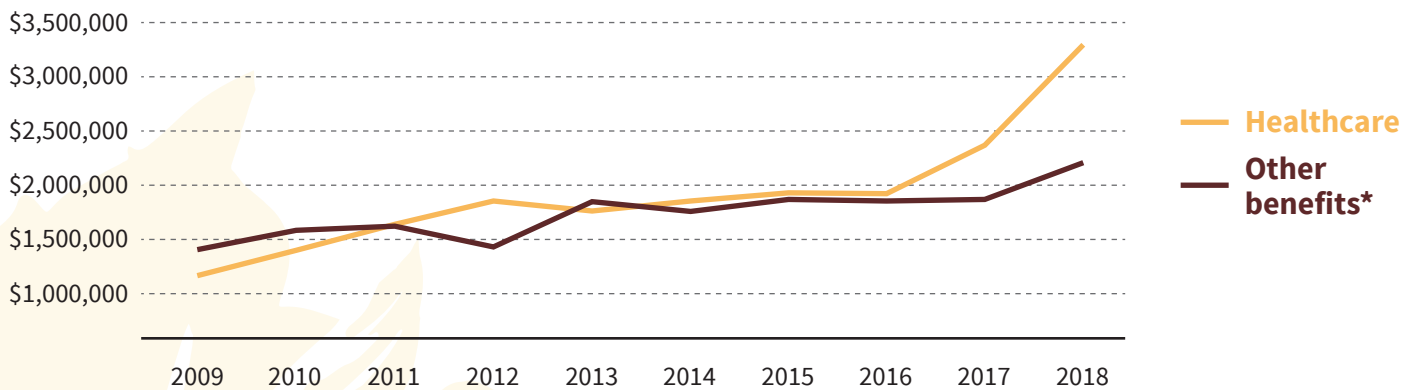


## Personnel Expenditure

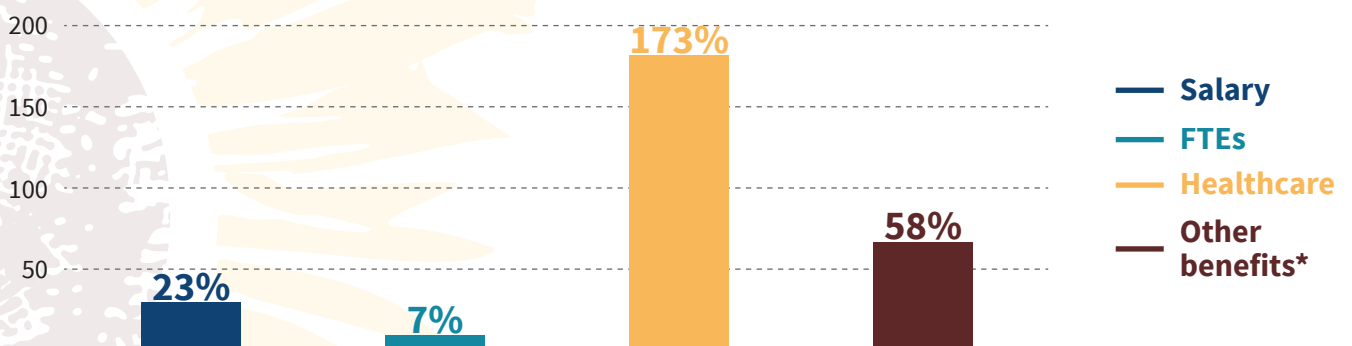
**Trend in Salary compared to Staff FTE**



**Trend in Benefits Expenditure**



**% Change over 10 years**



# CENTRAL RESOURCE LIBRARY

## CENTRAL STAFFING & SPACE CONSOLIDATION



# AGENDA

- Project Background & Project Goals
- Review Three Proposed Plan Options
- Review Associated Project Costs for each Option
- Questions



# PROJECT BACKGROUND

The staff space at Central Resource Library is in need of an upgrade to extend the useable life of the building. The library system has grown over the last 25 years making do with the space available, though the 'work' of the library has changed significantly - department sizes have fluctuated as the Library has embraced some electronic collections over print. **The staff space must function well in order to support employees who support the public.** This project would transition the staff spaces from an outdated way of working, improving efficiencies and making better use of space.

# PROJECT GOALS

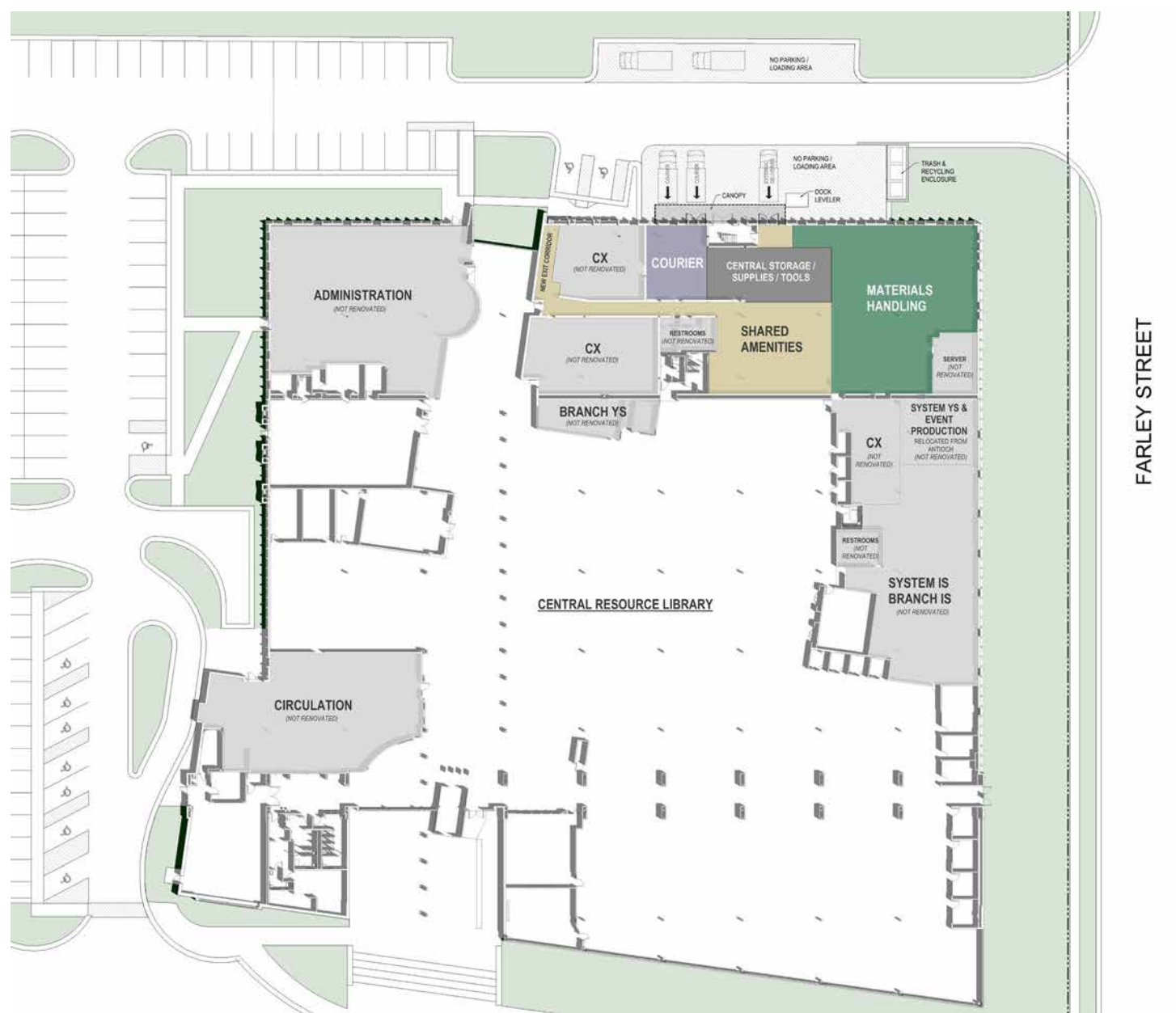
- **Improve system and branch material flow.**
- **Accommodate incoming system wide staff from Antioch.**
- **Create workspaces that facilitate collaboration and allow future flexibility** - to change as needed by lower impact means - furnishings updates rather than physical. The Administration team 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.

# PROPOSED OPTIONS

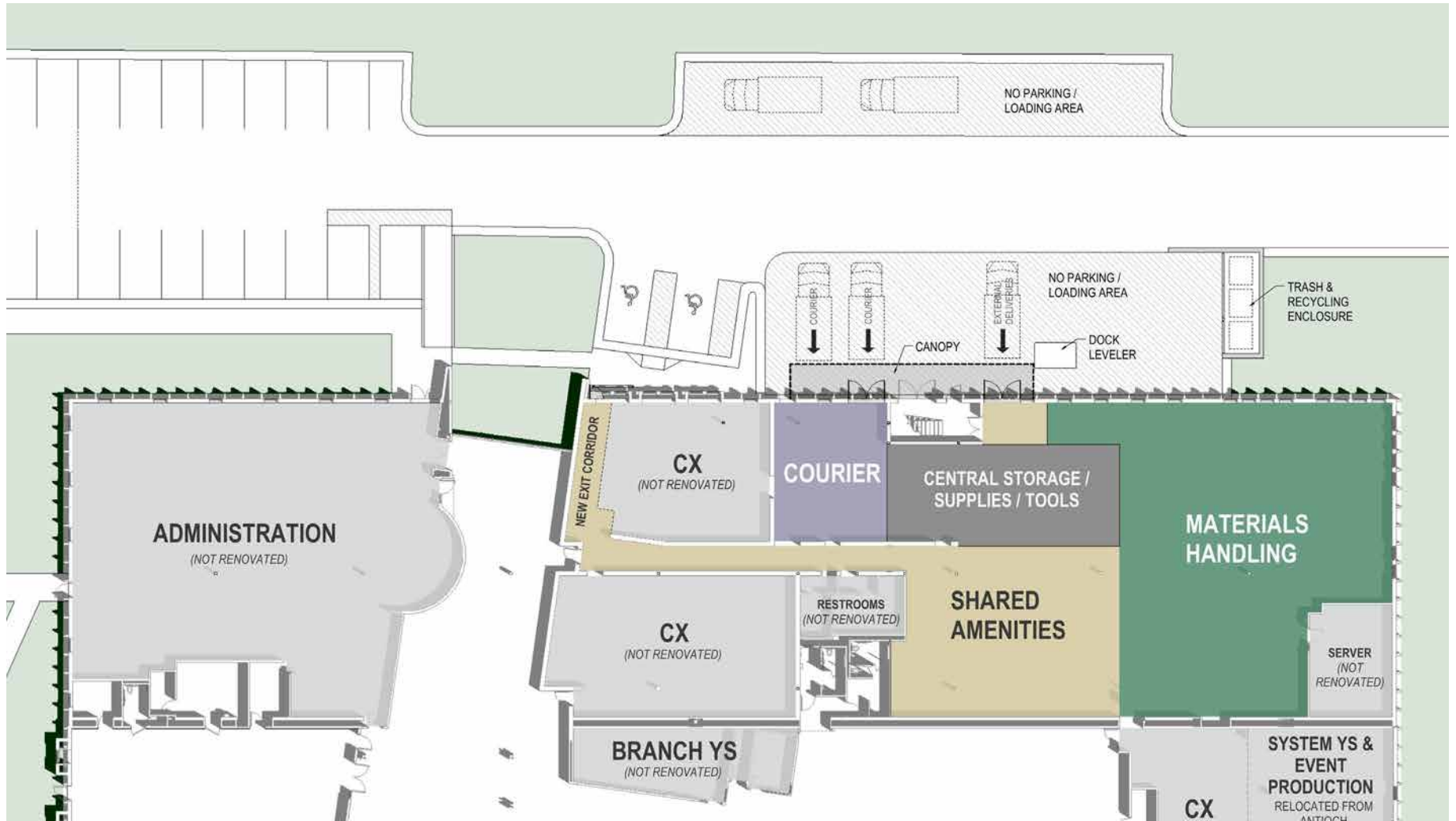
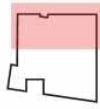
# OPTION 1

# OPTION 1

- 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

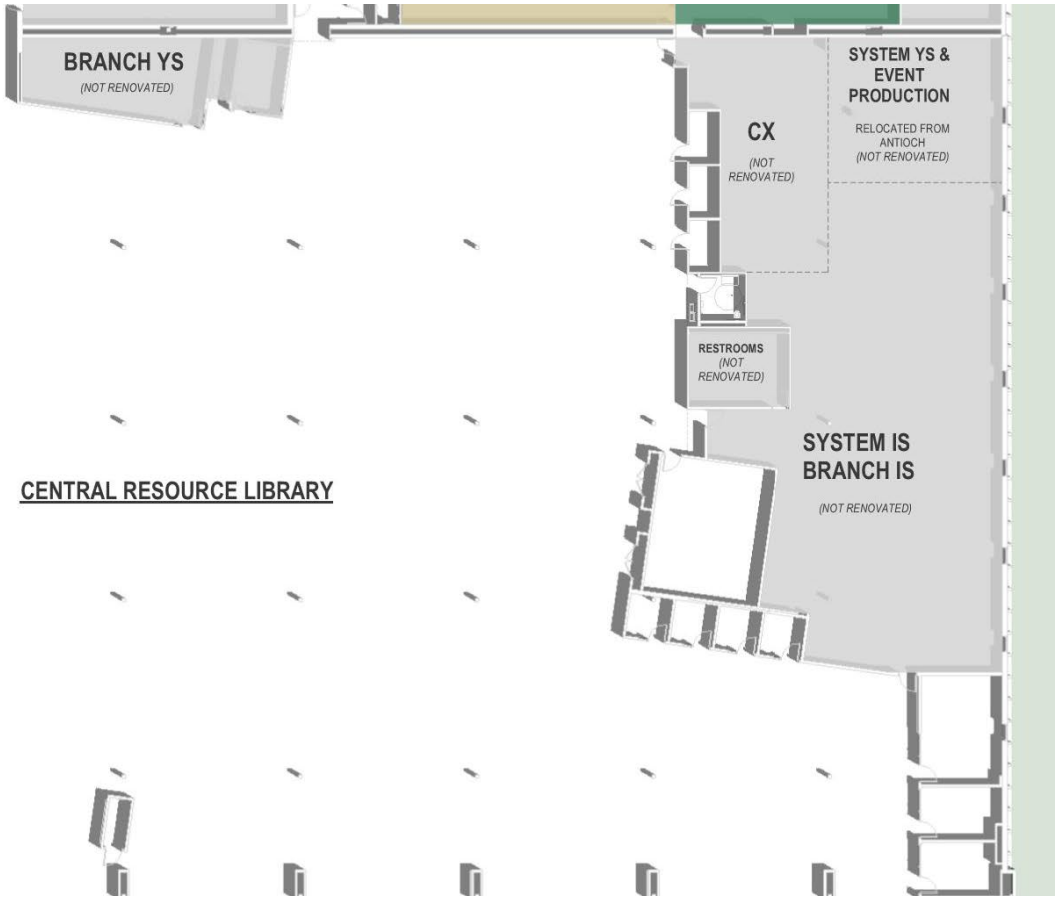
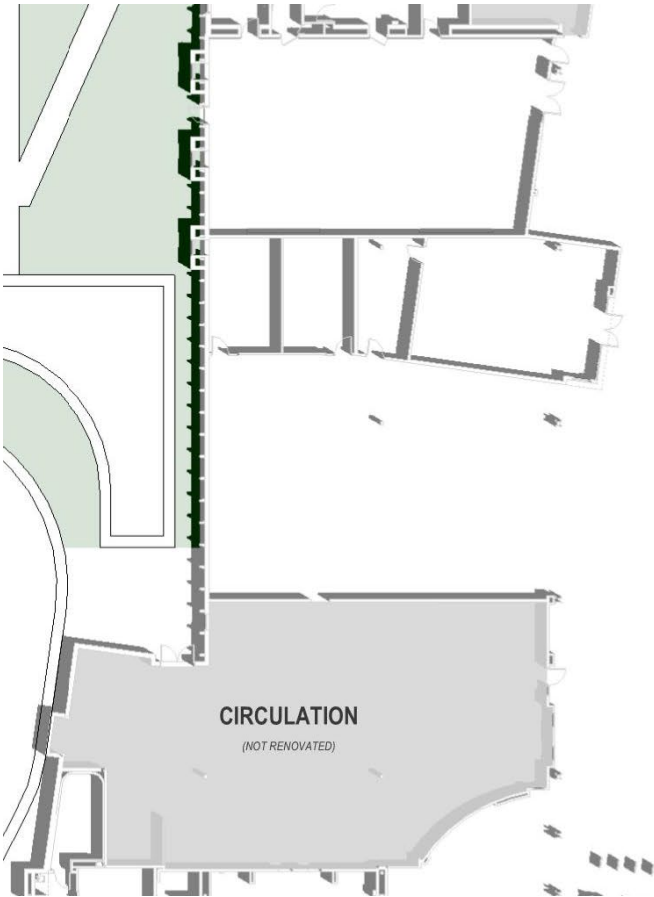


# OPTION 1





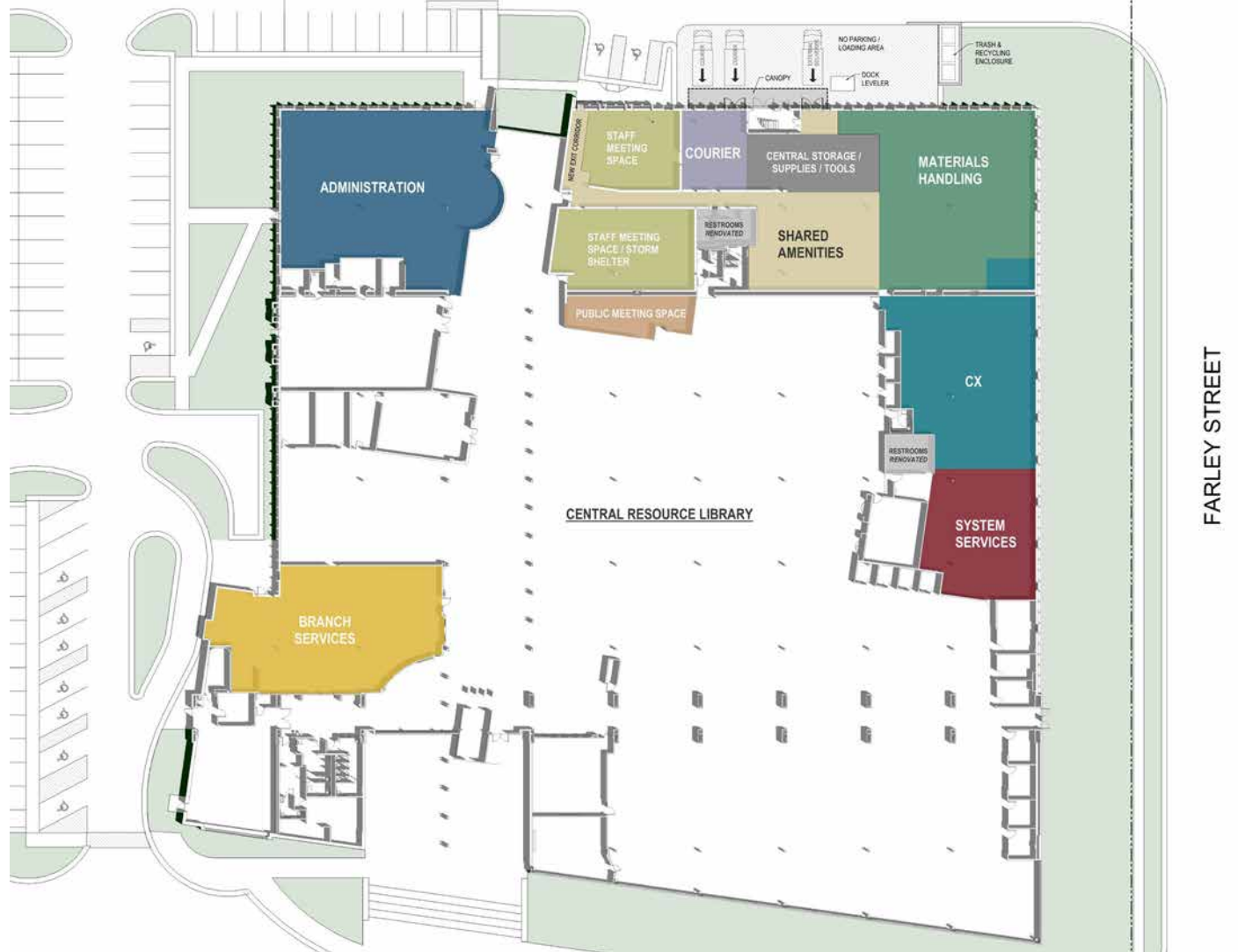
OPTION 1



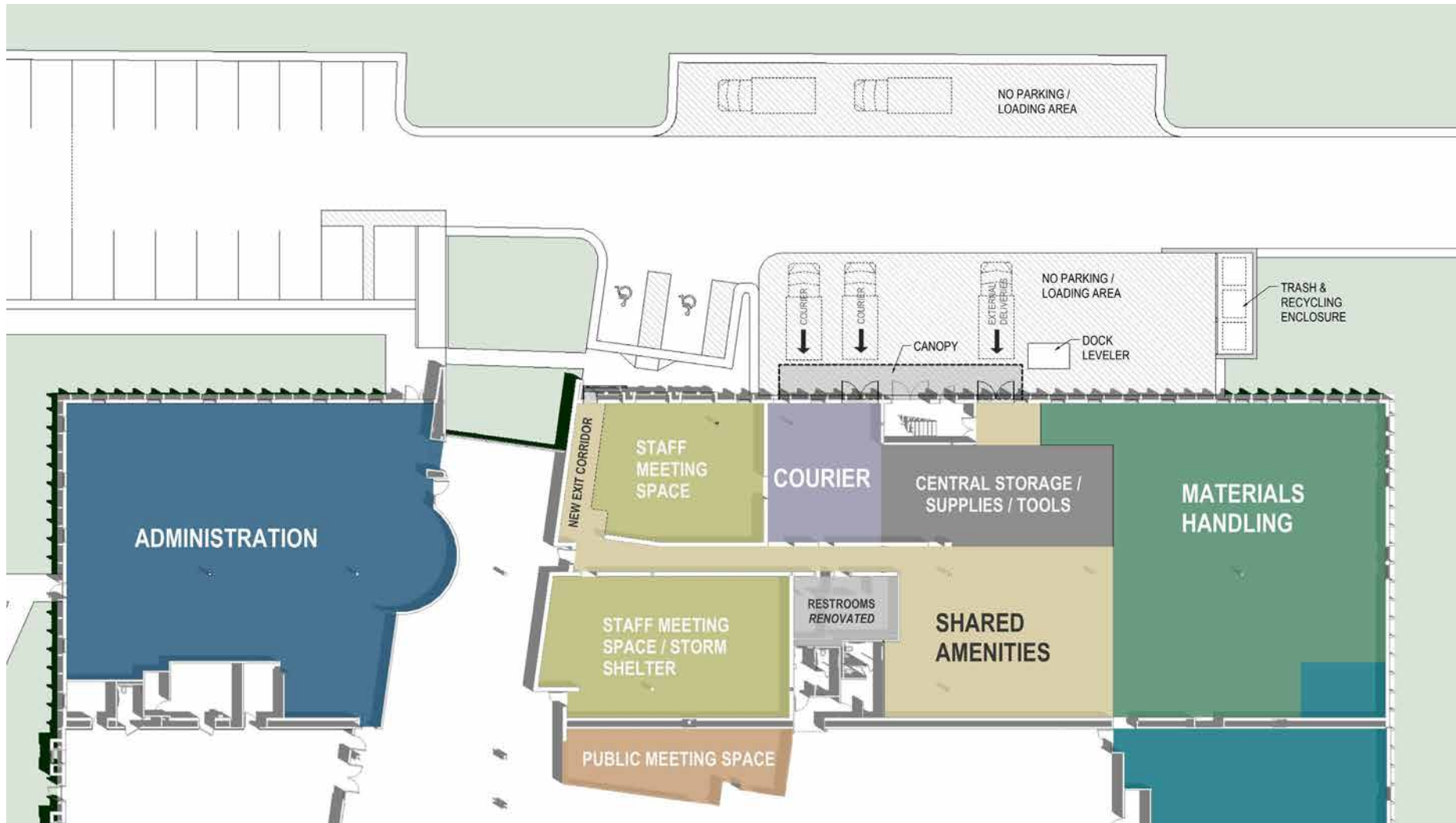
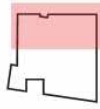
# OPTION 2

## 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 2



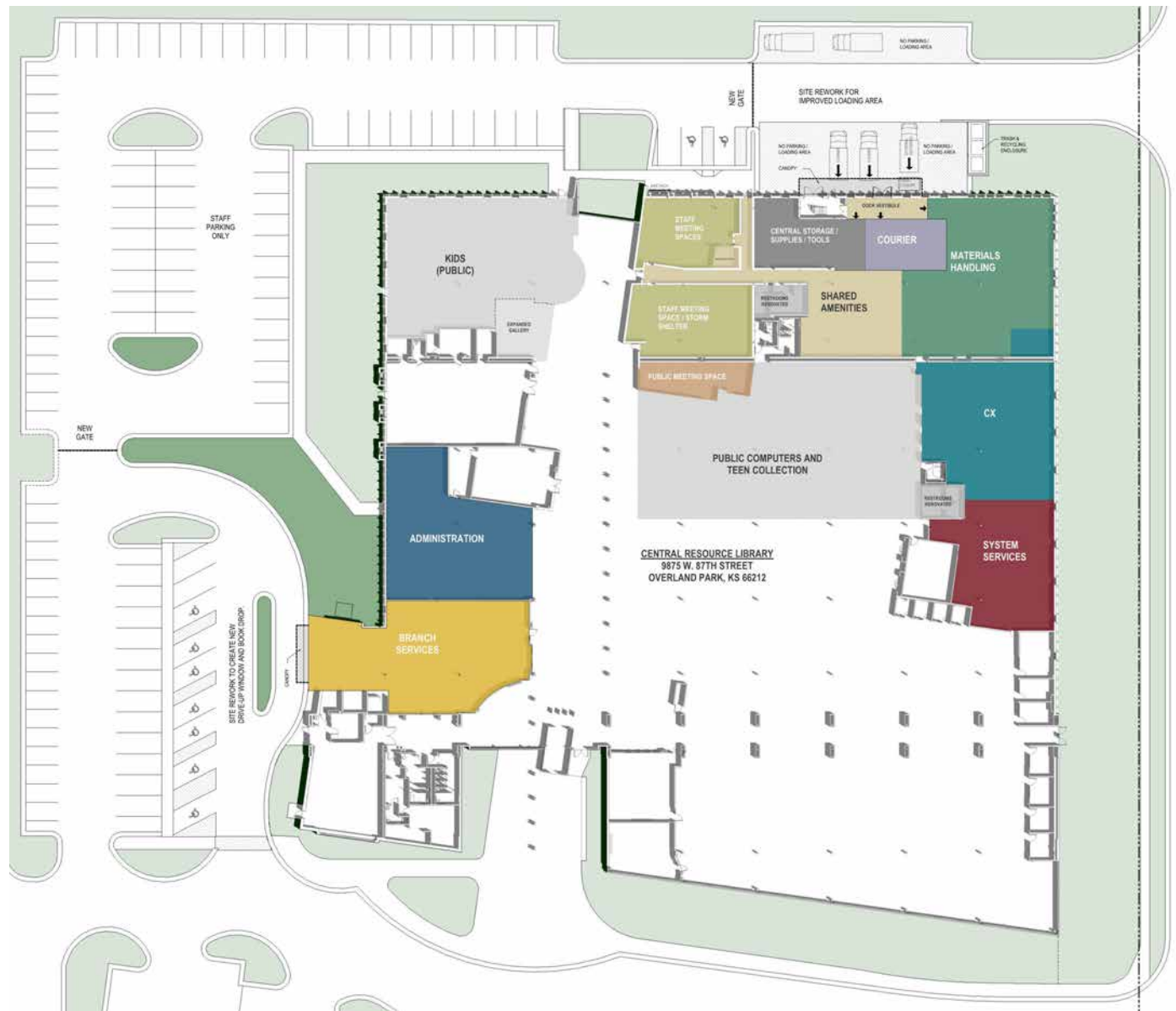
## OPTION 2



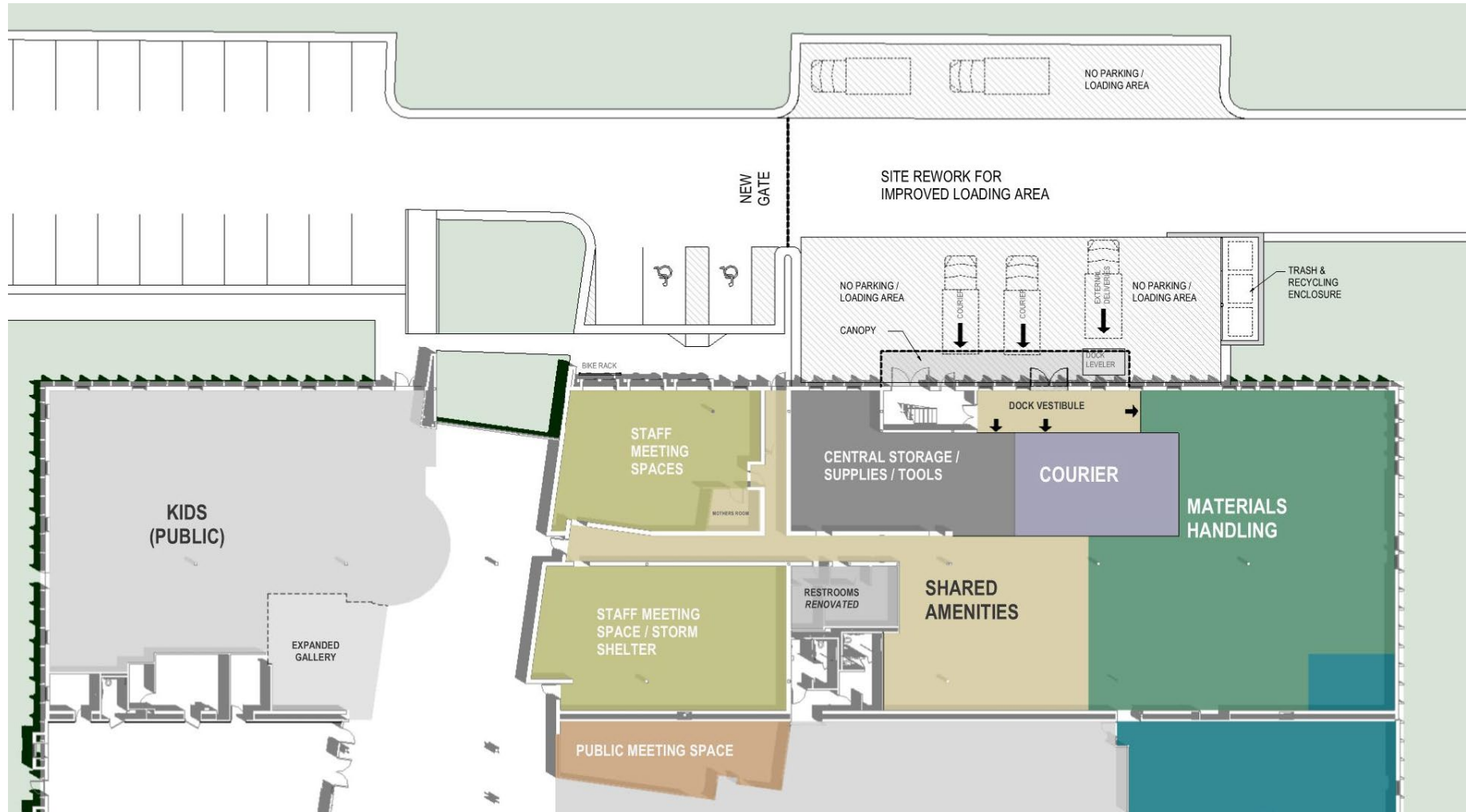
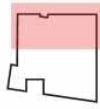
# OPTION 3

### 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.



# OPTION 3





# OPTION 3



# PROJECT COSTS

## **OPTION 1 PROJECT COST:**

\$2,600,000

## **OPTION 2 PROJECT COST:**

\$6,600,000

## **OPTION 3 PROJECT COST:**

\$8,300,000

# QUESTIONS

# Lenexa City Center Library

Update – May 2019



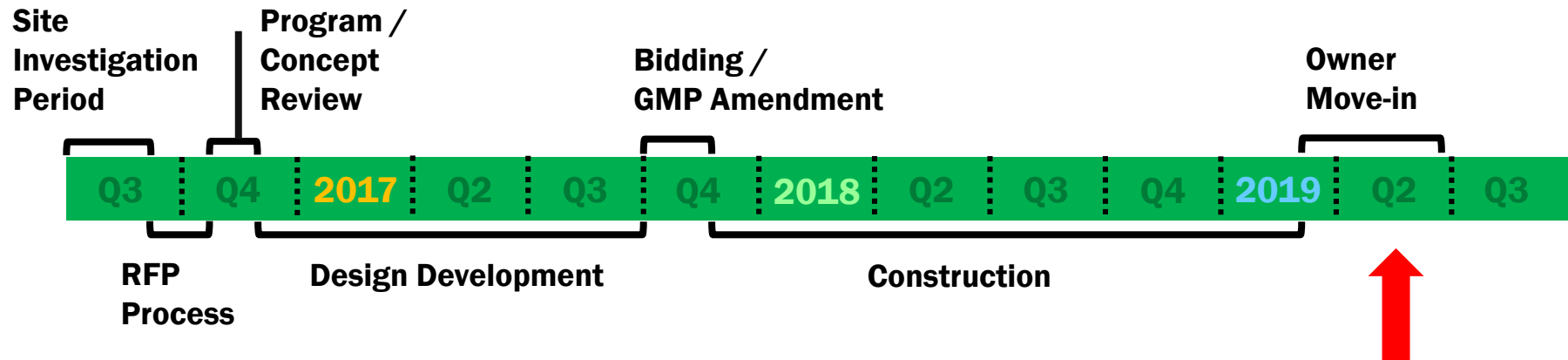
# Updates

- Move-in Update
- Next Steps
- Timeline

# Next Steps

- Move-in activities
- Site / building tours

# Lenexa City Center Library Anticipated Timeline



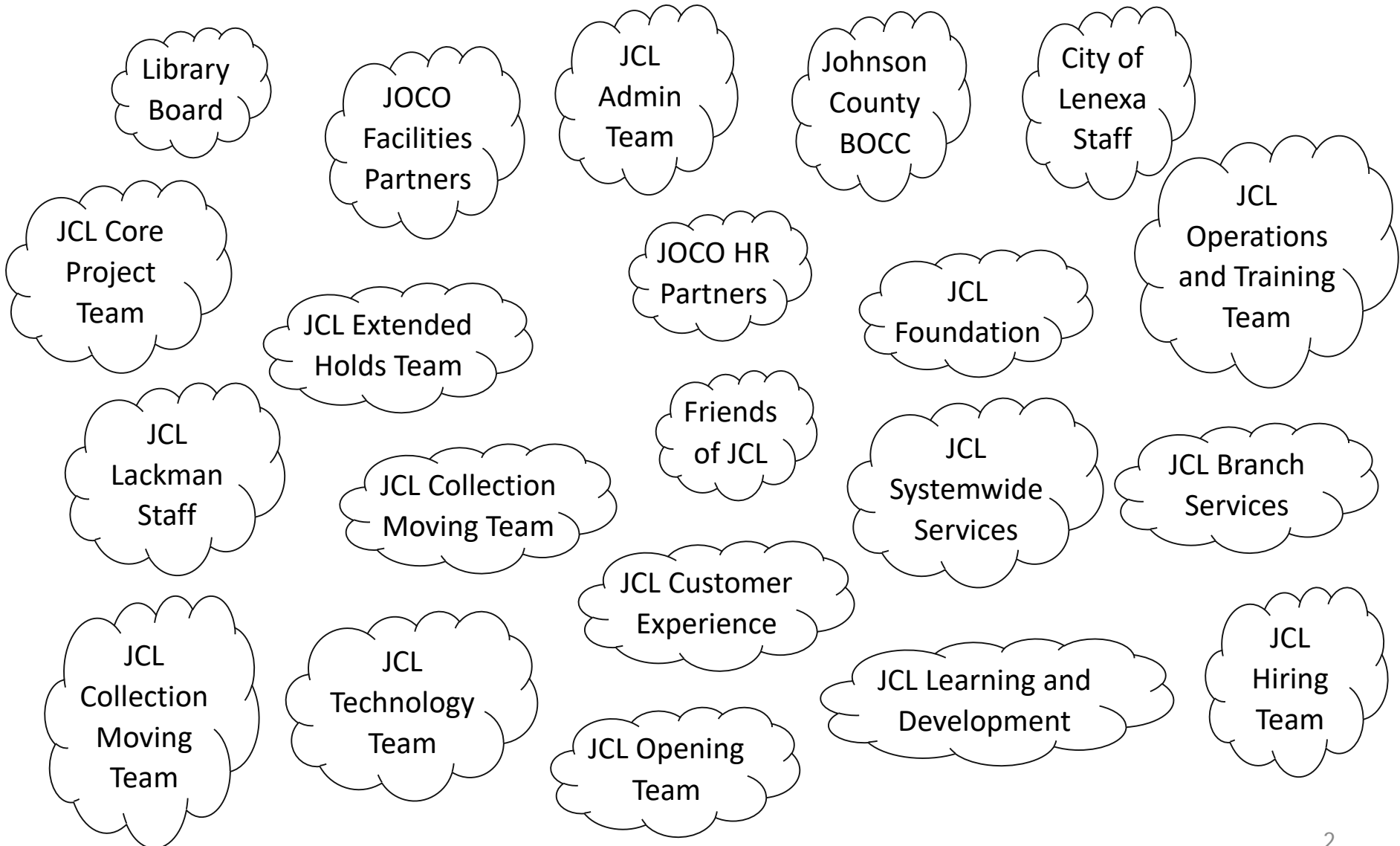


# Lenexa City Center Library

Opening – June 2<sup>nd</sup>, 2019



# Lenexa City Center: Who was involved?



# Lenexa City Center Opening: The Team

Roxanne Belcher-  
Branch Manager, Oak  
Park

Robin Carol-External  
Communications  
Manager

Ben Oglesby-  
Marketing Specialist

Christopher Leitch-  
Community Relations  
Coordinator

Joseph Keehn II-  
Program and Event  
Coordinator

Kate McNair-Teen  
Services Coordinating  
Librarian

Dave Carson-Web  
Content Developer

Ben Sunds-Associate  
Director, Customer  
Experience

Christian Madrigal-  
Branch Manager,  
Monticello

Mary Cummings-Web  
Content Developer

# Project Scope

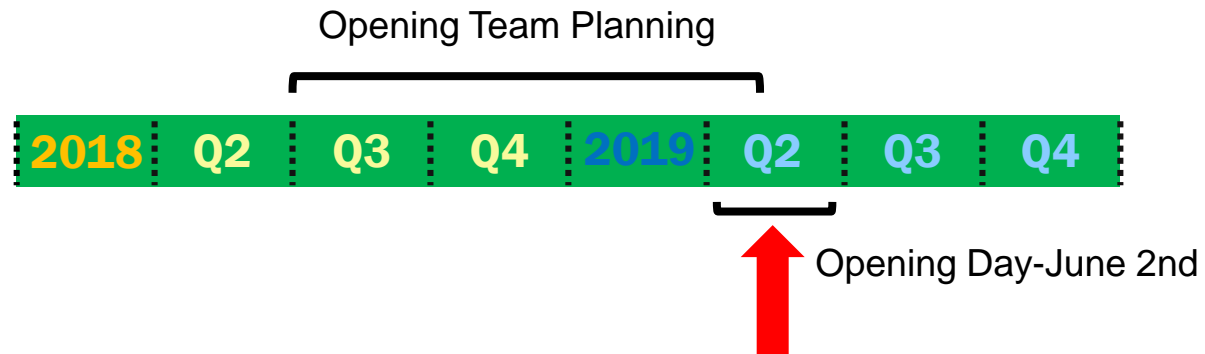
- Opening day
- Stakeholder tours
- Coordination of communications

# Opening day schedule (1-5 PM)

- Flag raising and Pledge of Allegiance
- Ribbon cutting – Market level entrance
- Doors open, remarks
- Reading of poem
- Tours on the ½ hour

\*And refreshments and snacks!

# Lenexa City Center Timeline



**MINUTES JOHNSON COUNTY LIBRARY BOARD  
REGULAR MEETING  
April 11, 2019  
Central Resource Library  
4:00 p.m.**

**BOARD:** Brandy Butcher, Bethany Griffith, Nancy Hupp, Donna Mertz, JR Riley, Amy Ruo, Sheryl Spalding

**BOARD ATTORNEY:** Andrew Logan

**BOCC:** Commissioner Hanzlick

**FRIENDS OF THE LIBRARY:** Julie Steiner

**STAFF:** Nancy Birmingham, Sean Casserley, Lacie Griffin, Laura Hunt, Beth Markowitz, Steph Neu, Nicki Neufeld, Abigail Powers, Cheryl Sickels, Scott Sime, Georgia Sizemore, Tricia Suellentrop, Julie Timmins, Adam Wathen

**GUESTS:** Joe Waters, Chris Anderson, Mandy Hunter

Board Chair, Nancy Hupp called the meeting to order at 4:00 p.m.

**CITIZEN COMMENTS:** There were none.

**BOARD OF DIRECTORS COMMENTS:** Bethany Griffith commented that last week she and her son read “Self-Reliance” by Ralph Waldo Emerson. She was struck by the idea of balancing individual needs with the needs of the community. She shared that libraries are a perfect cross section of both of those things. In a library, an individual can find anything you want to know or need to know. The library is also a place of community. At today’s meeting, we get to celebrate artists of all ages who participated in a community project. She welcomed the bookmark contest winners and their families and thanked them for their participation and their whimsical artwork.

Ms. Griffith thanked outgoing Board Chair, Nancy Hupp, for being a mentor and for her tireless dedication and striving for good on behalf of the community and the Johnson County Library system.

Ms. Hupp commented that it is hard to say goodbye to a service she loves. She thanked Early Literacy Coordinating Librarian, Bradley Debrick and the Youth Services Staff for the invitation to the Growing Futures Luncheon; it was a great event.

**BOARD OF COUNTY COMMISSIONERS REPORT:**

Commissioner Hanzlick thanked Ms. Hupp for her wonderful service. She shared she is jealous that Ms. Hupp will have more time for recreational reading.

Commissioner Hanzlick reported that she has been a participant in the Johnson County Citizens Academy. Mr. Casserley recently gave a wonderful presentation to the new Academy class about the Library. The next session of the Johnson County Citizens Academy will be in the fall, she encouraged all citizens to apply and learn more about the community.

**FRIENDS OF THE LIBRARY:**

Friends of the Library President, Julie Steiner reported that the Friends are working on their strategic plan. At their most recent meeting, they met in their newly formed committees. The committees are focused on the Friends’ strategic initiatives of advocacy, membership growth and development, fundraising, operational excellence and marketing and communications. The committees will meet monthly. The Friends are preparing for the Sizzlin’

Summer Book Sale. Ms. Steiner, thanked the Library Board for allowing the Friends to use the Lackman building for the sale.

The Bookmark Design contest winners were presented. Twelve winning bookmarks were selected. Each of the 2019 winners received a modest cash prize, a set of their bookmarks and a poster of the winning bookmark designs.

Bookmark winners:

- Preschool-Kindergarten: Alice Dunbar
- Grades 1-2: Audrey McInnes
- Grades 1-2: Athena Grigsby
- Grades 3-4: Katherine Feng
- Grades 3-4: Cora Durman
- Grades 5-6: Danielle Gold
- Grades 5-6: Beau Highfill
- Grades 7-8: Tommy Gaffney
- Grades 7-8: Brynna MacAdam
- Grades 9-12: Teresa Koehn
- Grades 9-12: Nina Kulikov
- Adult: Virginia Taylor

## **JOHNSON COUNTY LIBRARY FOUNDATION:**

Foundation Executive Director, Stephanie Stollsteimer welcomed Foundation board member Mandy Hunter. Ms. Hunter is a dedicated community volunteer and leader and Ms. Stollsteimer thanked her for her work.

Ms. Stollsteimer shared that she recently attended the National Association of Fundraising Professional conference. She anticipated learning about money and securing donations and found that the sessions were more about story-telling, trust and loyalty. She shared that storytelling, trust and loyalty are central to the Library and the Foundation's job is to tell the stories and exude appreciation.

There are two appreciation events upcoming:

- The 1952 Society event will be on April 27 for longtime volunteers and donors.
- The Breakfast at the Library event will be on May 1 and is geared for key community supporters, major donors and foundations.

Both events are special and Ms. Stollsteimer invited the Board to attend either or both.

Library Lets Loose planning is going well. This year the event will offer new guest experiences. In-Kind vendors have all been secured.

## **BOARD COUNSEL REPORT**

No Report this month.

## **COUNTY LIBRARIAN REPORT**

### **Finance Report**

Finance Director, Nicki Neufeld, reported that the Library has received 50% of revenue expected for the year. The Library is at 20% expended including the collection encumbrance for the year. Not including the collection



encumbrance, the Library is at 13% expended. Ms. Neufeld shared that the County budget department finalized the reserve balance as of December 31, 2018 to \$10,200,000. Our bond council recommends that we keep 5-10% in reserve balances to protect any debt we might have. Another use of reserve balances could be for capital expenditures.

Mr. Casserley commented that we have been strategically building up reserves as part of our capital library master plan. This provides options and opportunities.

### **Expenditure Trends**

Associate Director for Systemwide Services, Adam Wathen, reviewed the core operational statistics including the three year digital circulation trend, three year physical circulation trend and three year visitation trend.

This month the report focuses on expenditure data. Mr. Wathen reviewed trends in collection and programming expenditures. There has been an increase in physical collection expenditures over the last two years. This is primarily because of expenditures for the Monticello Library collection. eBook expenditures were increasing and then dipped because we shifted focus to the physical Monticello collection.

The Library has been intentionally increasing expenditures in programming over the last few years as we work to increase the quality and profile of our programming. We have a team who works on strategic collaboration of programming.

Mr. Casserley presented Ms. Hupp with flowers and a book that will be added to the collection in her honor. Mr. Casserley shared that Ms. Hupp the only remaining Board member who hired Mr. Casserley. She was kind from the very beginning, and in fact was the person who delivered Mr. Casserley and his wife to the airport after his first interview. Ms. Hupp has supported Mr. Casserley and has been the rudder and guide for the Library. She has been a rock and is a huge part of why the Library is successful. She exhibits grace, style and a true commitment to public service. Mr. Casserley thanked Ms. Hupp for her dedication to the Library and this community.

Ms. Hupp thanked everyone for the flowers and the book, *The American Revolution: A World War*. She looks forward to reading it, as she is a history buff.

## **COMPREHENSIVE LIBRARY MASTER PLAN**

### **Lenexa City Center**

Scott Sime, Project Coordinator, reported on behalf of the Lenexa building project core team. The punch list items are nearly complete. The artwork by Stephen T. Johnson is being installed in the building. IT installations are also occurring.

Next steps: IT installations will continue. The Lackman location will close and the materials currently at Lackman will move to the Lenexa Library.

The next site tour is April 17 at 3:00 p.m.

Mr. Sime shared photos of the assembly and installation of the mosaic panels.

Ms. Hupp commented that Mr. Sime has brought a new standard on communication on construction projects. She has appreciated his approach and the tours.

### **Lenexa City Center, Operations and Training**

Cheryl Sickels, Project Lead of the Operations and Training team reported to the Library Board. This team is dedicated to ensuring the readiness of Lenexa staff to welcome patrons into the building.

Staff readiness involves multiple aspects:

1. On the Job Training, helps give staff both hands-on experience and classroom content regarding library roles and processes, such as knowing how to place holds for patrons.
2. Building Specific Training is focused on technology and services specifically available at the Lenexa City Center Library, such as the sorter and drive-thru service point.
3. The last component of this project handles the development of procedures for services at Lenexa, along with equipping the building with supplies needed for day-to-day operation.

The project team created two new procedures to give guidance to staff for components included at Lenexa City Center Library.

1. The Outdoor Space Procedure helps frame when to close the Lenexa balcony and Monticello terrace, regarding inclement weather.
2. The Drive-Thru Procedure outlines the types of service provided at the Lenexa (and other) drive-thrus. The team also put together guidelines for processes specific to the Lenexa drive-thru.

These procedures took into consideration best practices from other locations that offer similar services.

In response to a question, Ms. Sickels reported there are 8 to 10 people on the Operations and Training team.

Ms. Hupp commented that she has been impressed on the training given to staff. The public has no idea how much goes into creating a smooth, functional and highly effective Library.

## **UPDATES**

### **Board Liaisons for the Central Staff Space Consolidation project**

Amy Ruo and JR Riley agreed to serve as Board Liaisons for the Central Staff Space Consolidation project.

### **New Antioch Update**

Mr. Casserley reported that the Memorandum of Understanding with the City of Merriam for the Antioch project will be brought before the Board of County Commissioners for ratification. Mr. Casserley reported that we are at a procedural stage.

### **Capstone Award for Monticello Library**

The Library received a Capstone Award for Monticello Library in the category of Community Impact. Mr. Casserley stated that Monticello Library will be a legacy for the community; the building is contemporary and leads the region in design. The award was given by the KC Business Journal.

### **Elementia**

The reception for elementia, the teen literary magazine published by the Library, will be held April 26. The keynote speaker is Jacqueline Woodson, author of *Brown Girl Dreaming*. elementia recently received national recognition in the New York Times.

Author Ta-Nehisi Coates will also be here on April 26, in conversation about his new book, *We Were Eight Years in Power*. The event will be held at the Unity Temple on the Plaza. This event is Co-Presented by Johnson County Library, Rainy Day Books, with Freedom's Frontier National Heritage Area, Metropolitan Community College-Penn Valley, Nelson Atkins Museum of Art and the Office of the Mayor, Kansas City, Missouri.

Mr. Casserley welcomed the April New Employee Orientation class.

## CONSENT AGENDA

Minutes of the March 14, 2019, Library Board meeting

**Motion:** Amy Ruo moved to approve the consent agenda

**Second:** Brandy Butcher

**Motion carried unanimously**

## NEW BUSINESS

Administrative regulation ARM 10-50-10, Bylaws of the Board of Directors, guides the annual election of officers. The officers of the board include a chair, vice chair/secretary, and treasurer. Officers serve a term of one-year commencing immediately upon election.

The Johnson County Library nominating committee, Donna Mertz and JR Riley, presented the following nominations for 2019 to 2020 officers:

Chair: Bethany Griffith

Vice-Chair/Secretary: Amy Amos Ruo

Treasurer: Sheryl Spalding

**Motion:** JR Riley moved that the Johnson County Library Board of Directors elect the recommended slate of officers for the 2019-2020 year.

**Second:** Brandy Butcher

**Motion carried unanimously**

Ms. Hupp commented that she was appointed to the Library Board by Commissioner Peterson and Commissioner Shaffer, and it has been a pleasure to serve. In her first few months on the Library Board discussions started about the Monticello Library. It has been exciting to watch the first construction for the Library system in over 20 years. Another exciting experience has been developing the capital library master plan.

Ms. Hupp appreciated Mr. Casserley's recollections about his interview. She found it easy to relate to Mr. Casserley and his wife, and connected quickly. Ms. Hupp thanked all of the Library staff who make it easy to ask questions. She thanked Ms. Neufeld and Mr. Wathen and stated she will miss the monthly updates. She thanked the administrative team for making it easy to lead the Board of Directors. Her time on the Board has been rewarding and she will miss working with everyone, although she will still be around.

## ADJOURNMENT

**Motion:** Amy Ruo moved to adjourn the meeting.

**Second:** JR Riley

**Motion approved unanimously**

Meeting adjourned at 4:51 p.m.

SECRETARY \_\_\_\_\_  
Amy Ruo

CHAIR \_\_\_\_\_  
Bethany Griffith

SIGNED \_\_\_\_\_  
Sean Casserley

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

			Receipts	Payments	Balance
	<b>Opening cash balance</b>				<b>\$73,094.95</b>
		Add Receipts	\$412.07		
		Less Payments		\$7,268.75	
	<b>Ending Cash balance</b>				<b>\$66,238.27</b>
		Less Liabilities		\$0.00	
	<b>Unobligated cash balance</b>				<b>\$66,238.27</b>

**APPROVED:**

\_\_\_\_\_

**DATE:**

\_\_\_\_\_

Briefing Sheet

**To:** Johnson County Library Board  
**From:** Sean Casserley, County Librarian  
**Date:** May 9, 2019

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**Issue:** Consideration of replacement of the two chiller units and the cooling coil at the Gardner Branch Library in the amount of \$116,041.

**Background:** Johnson County Library opened the Gardner Branch in 2001. The equipment that will be replaced is original installation.

The replacement of this equipment will result in substantial operating savings. Due to advancements in technology, the refrigerant used in the current equipment is no longer being produced. There has also been a substantial increase in prices for reclaimed refrigerant. The last addition of refrigerant cost \$2200.00 and it is getting more difficult to locate.

County Purchasing bid this project and this is the low satisfactory bid. One bid was lower, but it was not completed to the specifications of the Request for Proposal.

**Alternatives:** No alternatives to recommend at this time.

**Legal Review:** The contract has been reviewed and approved by legal counsel.

**Budget Approval:** The funds identified are approved capital replacement plan funds.

**Recommendation:** We recommend the Library Board of Directors approve the purchase of the two chillers and cooling coil for Gardner Library.

**Suggested Motion:** I move the Library Board of Directors approve the purchase of two chillers and a cooling coil for the Gardner Library in the amount of \$116,041.

# 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 87<sup>th</sup> St  
Overland Park, KS 66212

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

BCI Mechanical Inc.  
341 S. Poplar Dr.  
Gardner, KS 66030  
913-856-6747

the following Project:  
(Name, location and detailed description)  
Gardner Library.  
137 E Shawnee St.  
Gardner KS 66030

The Architect OR the Engineer, hereinafter 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.

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

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

Init.

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User Notes:

(1112963150)

## TABLE OF ARTICLES

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.

☐ 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: **July 5<sup>th</sup>, 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 sixteen thousand fourteen dollars and zero cents \$ 116,014.00** ), 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:



(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 Intentionally Omitted

§ 3.4 Intentionally Omitted

§ 3.5 Liquidated damages, if any:

(Paragraph 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)

(Paragraphs 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:

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

*(Paragraphs deleted)*

**INTENTIONALLY OMITTED**

### § 6.1.3 INTENTIONALLY OMITTED

(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 & Drawing Index	March 22, 2019
M0.01	Penthouse / Roof HVAC	March 22, 2019
M1.01	Penthouse/Roof HVAC Plan	March 22, 2019
M1.02	Mechanical Schematics, Controls, & Schedules	March 22, 2019
E0.01	Electrical Penthouse / Roof electrical	March 22, 2019
E1.01	Power & Auxiliary Plan	March 22, 2019

**§ 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:

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

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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**.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. 2019-043  
Executed Bid Form  
Executed Bid Bond  
Executed Performance Bond  
Executed Statutory Bond to the State of Kansas  
AIA Document A701-2018, as modified, Instructions To Bidders

**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.

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### § 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.

### § 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 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.

**§ 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.

**§ 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.**

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 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

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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

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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.

§ 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.

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**§ 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.
- .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

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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.

**§ 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.

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§ 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;
- .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

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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 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 the expiration of the period required by Section 17.1.1.

Board of Directors of the Johnson County Library , Johnson County, KS, its officers, Commissions, Agencies and

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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 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 Contract.

**§ 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 Contract 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, 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 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

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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** If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Contractor shall be responsible for payment of the deductible or self-insured retention, which shall not exceed Five Thousand Dollars, (\$5,000) per occurrence, and shall not be reimbursable by Owner or included in Article 3, Contract Sum.

**§ 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, 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

### 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

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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:**

*(Name, address, email address and other information)*

Dean Allman Assistant Facilities Manager

9875 W. 87<sup>th</sup> 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)

Justin Bambach  
341 S Poplar Dr.  
Gardner, KS 66030  
913 856 6747  
913 215 9890

**§ 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.

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

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**§ 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)

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

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- .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.

### **§ 21.11**

*(Paragraphs deleted)*

INTENTIONALLY OMITTED.

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

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
**CONTRACTOR** *(Signature)*

\_\_\_\_\_  
Board of Directors of the Johnson County Library  
*(Printed name and title)*

\_\_\_\_\_  
BCI MECHANICAL, INC  
*(Printed name and title)*

Attest:

\_\_\_\_\_  
Deputy County Clerk

APPROVED AS TO FORM:

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

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## 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.

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### PAGE 1

**AGREEMENT** made as of the                      day of                      in the year 2019

...

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

...

BCI Mechanical Inc.  
341 S. Poplar Dr.  
Gardner, KS 66030  
913-856-6747

...

~~for~~ the following Project:

...

Gardner Library.  
137 E Shawnee St.  
Gardner KS 66030

~~The~~ The Architect OR the Engineer, hereinafter the Architect:

...

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.

### PAGE 2

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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.

PAGE 3

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

...

☒ By the following date: July 5<sup>th</sup>, 2019

...

☒ Stipulated Sum, in accordance with Section 3.2 below

...

§ 3.2 The Stipulated Sum shall be (\$ One hundred sixteen thousand fourteen dollars and zero cents \$ 116,014.00), subject to additions and deductions as provided in the Contract Documents.

PAGE 4

Item N/A

Price

...

**§ 3.3 Cost of the Work Plus Contractor's Fee Intentionally Omitted**

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

**§ 3.4 Intentionally Omitted**

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

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

**§ 3.4.2** 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.)*

**§ 3.4.3 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:**

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

**§ 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 as follows: 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 Certificate for Payment, or as follows:

approved Certificate for 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



☒ 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>Number</u>	<u>Number</u>	<u>Title</u>	<u>Date</u>
	<u>G0.00</u>	<u>Title Sheet &amp; Drawing Index</u>	<u>March 22, 2019</u>
	<u>M0.01</u>	<u>Penthouse / Roof HVAC</u>	<u>March 22, 2019</u>
	<u>M1.01</u>	<u>Penthouse/Roof HVAC Plan</u>	<u>March 22, 2019</u>
	<u>M1.02</u>	<u>Mechanical Schematics, Controls, &amp; Schedules</u>	<u>March 22, 2019</u>
	<u>E0.01</u>	<u>Electrical Penthouse / Roof electrical</u>	<u>March 22, 2019</u>
	<u>E1.01</u>	<u>Power &amp; Auxiliary Plan</u>	<u>March 22, 2019</u>

...

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

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

Invitation For Bid, Bid Request No. 2019-043

Executed Bid Form

Executed Bid Bond

Executed Performance Bond

Executed Statutory Bond to the State of Kansas

AIA Document A701-2018, as modified, Instructions To Bidders

...

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.

PAGE 8

**§ 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:

PAGE 9

**§ 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.

#### **PAGE 10**

§ 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.

PAGE 11

§ 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 scheduled 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 perform no portion of the Work for which the Contract Documents require submittal and 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. 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** **PAGE 12**

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.

**PAGE 13**

**§ 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.

**PAGE 14**

**§ 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.

...

~~§ 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.~~

#### PAGE 15

~~§ 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.

#### PAGE 16

**§ 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 ~~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.

PAGE 17

**§ 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.

PAGE 18

**§ 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.

PAGE 19

**§ 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.

Briefing Sheet

**To:** Johnson County Library Board  
**From:** Sean Casserley, County Librarian  
**Date:** May 9, 2019

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**Issue:** We are presenting an amendment to the Memorandum of Understanding (MOU) between Johnson County Library and the Johnson County Facilities Management Department.

**Background:** The Library and the Facilities Management Department have a successful MOU that represents a collaborative arrangement between both entities.

The Facilities Department has expertise in the management, construction and renovation of public facilities and has been providing services to and on behalf of the Library through the use of one full-time Project Manager IV and two Project Managers II. The Library has provided the budgeted funding to cover the costs of these positions.

The position of one of the Project II Managers is being reclassified to a Project Manager III position. With this amendment, the Library agrees to continue to provide funding for three full-time Project Managers.

**Alternatives:** There are no alternatives to recommend at this time.

**Legal Review:** The MOU and amendment have been reviewed and approved by legal counsel.

**Recommendation:** We recommend the Library Board approve the first amendment of the MOU between the Johnson County Library Board of Directors and the Johnson County Facilities Management Department.

**Suggested Motion:** I move the Library Board of Directors approve the amendment to the Memorandum of Understanding between Johnson County Library and the Johnson County Facilities Management Department.



## First Amendment to Amended and Restated Memorandum of Understanding

This First Amendment to the Amended and Restated Memorandum of Understanding (MOU) dated the \_\_\_\_ day of \_\_\_\_\_, 2019, between the Board of Directors of the Johnson County Library (the Library) and the Johnson County Facilities Management Department (the Department) is made this \_\_\_\_ day of \_\_\_\_\_, 2019, by the Library and the Department.

The Library and the Department agree that section 4 of the MOU is amended to read as follows:

4. The Department has been providing the Services to and on behalf of the Library through the use of one full-time Project Manager IV and two Project Managers II. The Library has provided the budgeted funding to cover the costs of such positions. The position of one of those Project II Managers is being reclassified to a Project Manager III position. The Library accordingly agrees to continue to provide that funding for three full-time Project Managers, one at level IV and two at level II until one of the level II positions is reclassified to level III, and then one at level II, one at level III, and one at level IV, throughout the term of this MOU by transfer of funds out of the Library Operating Fund to the General Fund for the benefit of the Department.

The parties agree that the MOU is otherwise in full effect, with the amendment set forth above.

_____ Brad Reinhardt Director, Johnson County Facilities Management Department	_____ Date
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_____ Penny Postoak Ferguson Johnson County Manager	_____ Date
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_____ Sean Casserley, County Librarian	_____ Date
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_____ Bethany Griffith, Chair, Library Board of Directors	_____ Date
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