



**Board Report
October 10, 2019**

AGENDA

JOHNSON COUNTY LIBRARY BOARD OF DIRECTORS REGULAR MEETING, OCTOBER 10, 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
 - a) Welcome to new Board member Fabian Shepard
 - C. Friends of the Library, Karen Ristau
 - 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) Memorandums of Understanding (MOUs) with County
 - B. County Librarian Report – Sean Casserley, County Librarian
 - 1. Finances and Statistics – Nicki Neufeld, Finance Director5
 - a) Trends in Learning and Development – Adam Wathen, Associate Director of Systemwide Services and Training Specialist, Julie Timmins 11
 - 2. Comprehensive Library Master Plan – Scott Sime, Project Coordinator 14
 - a) Antioch update 14
 - b) Central Staff Space Consolidation (CSSC) 18
 - 3. Updates – Sean Casserley
 - a) Blue Valley
 - b) Women’s Public Service Network Panel – Tricia Suellentrop, Deputy County Librarian
 - c) Census 2020 – Melissa Horak-Hern, Civic Engagement Librarian 22
 - d) KLA Conference Tours and Olathe Branch Opening
 - e) Women and Money Day, Oct. 12
 - f) 6 by 6 Proclamation
- V. Consent Agenda
 - A. Action Items:
 - 1. Minutes of the September 12, 2019, Library Board meeting 28
 - B. Information Items
 - 1. Financial and Personnel
 - a) The County Librarian and the Finance Director certify those payment vouchers and personnel authorizations for August 2019 were handled in accordance with library and County policy.
 - b) The August 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 35
- VI. Old Business
 - A. Action Item: Consideration of approval of the Property Conveyance Agreement with the City of Merriam 36
 - B. Action Item: Consideration of approval of temporary closing of Cedar Roe for roofing work 78
 - C. Action Item: Consideration of approval of the Cedar Roe roofing contract 79

VII.	New Business	
	A. Information Items: MOU with County Facilities Management Department	112
VIII.	Executive Session: Personnel	
VIII.	Adjournment	
	Adjournment	

Suggested Motions

Consent Agenda

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

Consideration of approval of the Property Conveyance Agreement with the City of Merriam

Suggested Motion: I move that the Library Board approve the Property Conveyance Agreement between the Board of Directors of the Johnson County Library (JCL) and the City of Merriam, providing a site for a 16,000 square foot library facility in the Vavra Development.

Consideration of approval of temporary closing of Cedar Roe for roofing work

Suggested Motion: I move that the Johnson County Board of Directors approve the temporary closure of Cedar Roe library to allow replacement of the flat portion of the roof.

Consideration of approval of the Cedar Roe roofing contract

Suggested Motion: I move to authorize a contract to Godard & Son Roofing Co., Inc. for roofing replacement at the Cedar Roe Library, for a total amount not to exceed \$58,391.00 per Invitation for Bid (IFB) 2019-100.

Adjournment

Suggested Motion: I move the Library Board of Directors adjourn.

JOHNSON COUNTY LIBRARY: Summary of Expenditures by Cost Category (.75 Increase Only)
August 2019
67% of year lapsed

OPERATING FUND

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

SPECIAL USE FUND

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

Expenditure of Friends of the JCL Donations 2019

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

JOHNSON COUNTY LIBRARY TOTAL REVENUE REPORT

August 2019
67% of Year Lapsed

REVENUE ALL FUNDS	2019 Year to Date	2019 Budget	% Budget Year to Date	% Budget YTD Prior Year
Ad Valorem	32,431,765	33,045,236	98%	99%
Ad Valorem Delinquent	348,673	289,253	121%	91%
Motor Vehicle	1,616,048	3,103,349	52%	52%
Library Generated - Copying/Printing	71,374	99,255	72%	72%
Library Generated - Overdues / Fees	373,925	725,000	52%	54%
Sale of Library Books	25,000	50,000	50%	65%
Misc Other	1,496	18,703	8%	49%
Reimbursement	138,196	330,043	42%	42%
Library Generated - Other Charges	0	3,570	0%	2%
Investment	287,762	304,911	94%	155%
Unencumbered Balance Forward	0	10,000	0%	0%
Recreational Vehicle Tax	10,780	10,608	102%	77%
Commercial Vehicle Tax	49,165	61,191	80%	101%
Heavy Trucks Tax	4,497	2,307	195%	29%
Rental Excise Tax	17,417	35,642	49%	65%
State and Federal Grants	126,997	250,389	51%	50%
TOTAL REVENUE	35,503,095	38,339,457	93%	93%

Expenses ALL FUNDS with Collection Encumbrance	2019 Year to Date	2019 Budget	% Categories Expended
Categories			
Salaries and Benefits	13,566,047	21,323,420	64%
Contractual Services	2,987,323	4,710,131	63%
Commodities	3,456,147	4,385,684	79%
Risk Management Charges	94,052	126,252	74%
Capital / Maintenance / Repair	0	3,487,289	0%
Transfer to Debt Payment	18,958	827,916	2%
Transfer to Capital Projects	2,781,240	2,738,276	102%
Grants	127,037	250,389	51%
Interfund Transfer	0	490,100	0%
TOTAL EXPENDITURES	23,030,804	38,339,457	60%

Revenue - Expenses as of January 31, 2019 12,472,291

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

Scheduled Replacement Account

REVENUE RECEIVED TO DATE

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

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

2019

Contractual Services	1,461,693
Building Repair	526,954
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
	<u>2,438,940</u>

Budget Remaining	<u>888,160</u>
-------------------------	-----------------------

JOHNSON COUNTY LIBRARY: Summary of Expenditures by Cost Category
August 2019
67% Year Lapsed

OPERATING FUND	2019	2019	% Program
Programs	Year to Date	Budget	Expended
Administrative Services	2,943,410	5,072,528	58%
Information Technology	1,630,796	2,951,965	55%
Collection Development	2,300,591	3,467,822	66%
Branch/Systemwide Services	11,741,474	18,595,615	63%
Risk Management Charges	94,052	126,252	74%
Grants *	127,037	250,389	51%
Transfer to Capital Projects	0	3,487,289	0%
Interfund Transfer	0	490,100	0%
TOTAL OPERATING FUND EXPENDITURES	18,837,360	34,441,960	55%

SPECIAL USE FUND	2019	2019	% Budget
	Year to Date	Budget	Expended
Contractual Services (General Maintenance)	0	16,305	0%
Commodities (Capital Equipment)	264,422	315,000	84%
Transfer to Debt Payment	18,958	827,916	2%
Transfer to Capital Projects	2,742,833	2,738,276	100%
TOTAL SPECIAL USE FUND EXPENDITURES	3,026,212.7	3,897,497	78%

TOTAL EXPENDITURES	21,863,572	38,339,457	57%
---------------------------	-------------------	-------------------	------------

JOHNSON COUNTY LIBRARY: Summary of Expenditures by Type
August 2019
67% Year Lapsed

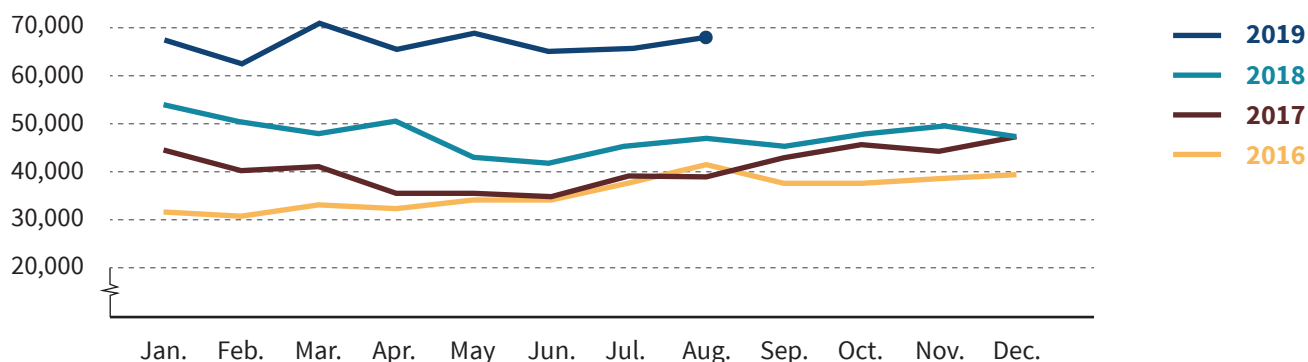
ALL FUNDS	2019	2019	% Categories
Categories	Year to Date	Budget	Expended
Salaries and Benefits	13,566,047	21,323,420	64%
Contractual Services	2,987,323	4,710,131	63%
Commodities	2,288,916	4,385,684	52%
Risk Management Charges	94,052	126,252	74%
Capital / Maintenance / Repair	0	3,487,289	0%
Transfer to Debt Payment	18,958	827,916	2%
Transfer to PBC Capital Leases	2,781,240	2,738,276	102%
Grants	127,037	250,389	51%
Interfund Transfer	0	490,100	0%
TOTAL EXPENDITURES	21,863,573	38,339,457	57%

GRANTS*						
	Expenditures through 08/31/2019	Source	Received	Expenditures	Grant Award	Budget Remaining
285000082	State Aid 2019	State	3/15/2019	\$51,355.03	\$126,997.06	\$75,642.03

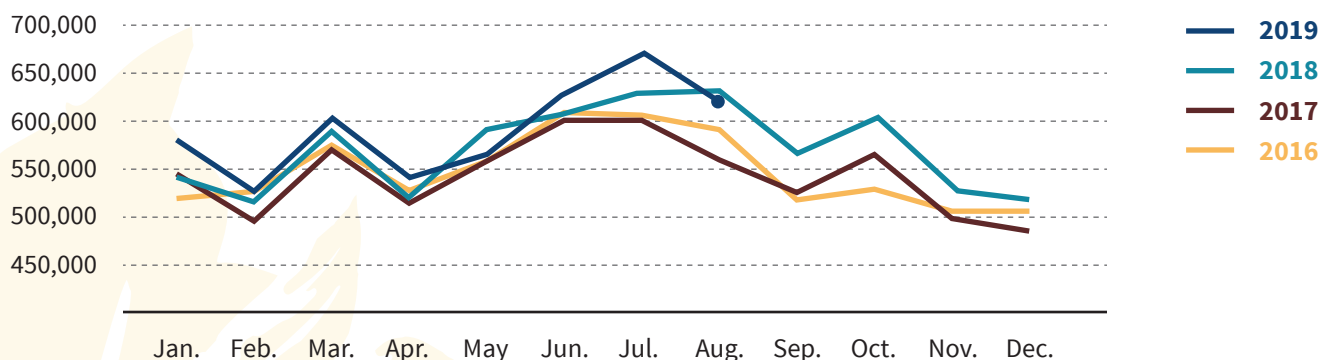
*Includes all expenditures and revenues over the life of the grant.

Core Operational Statistics

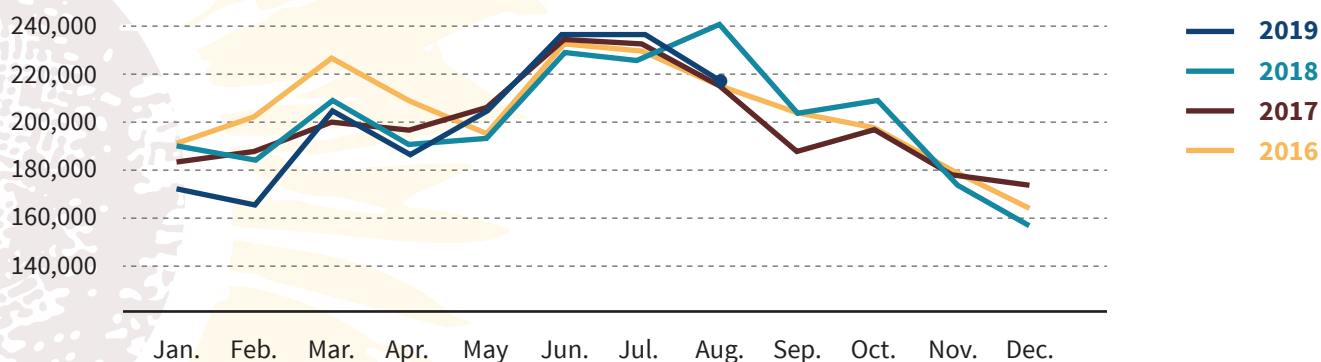
3 Year Digital Circulation Trend



3 Year Physical Circulation Trend

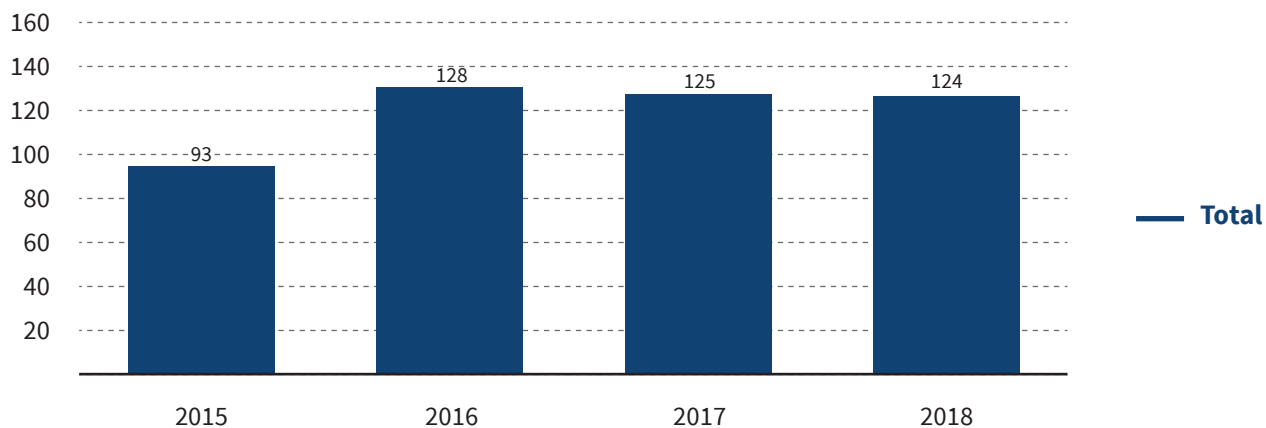


3 Year Visitation Trend

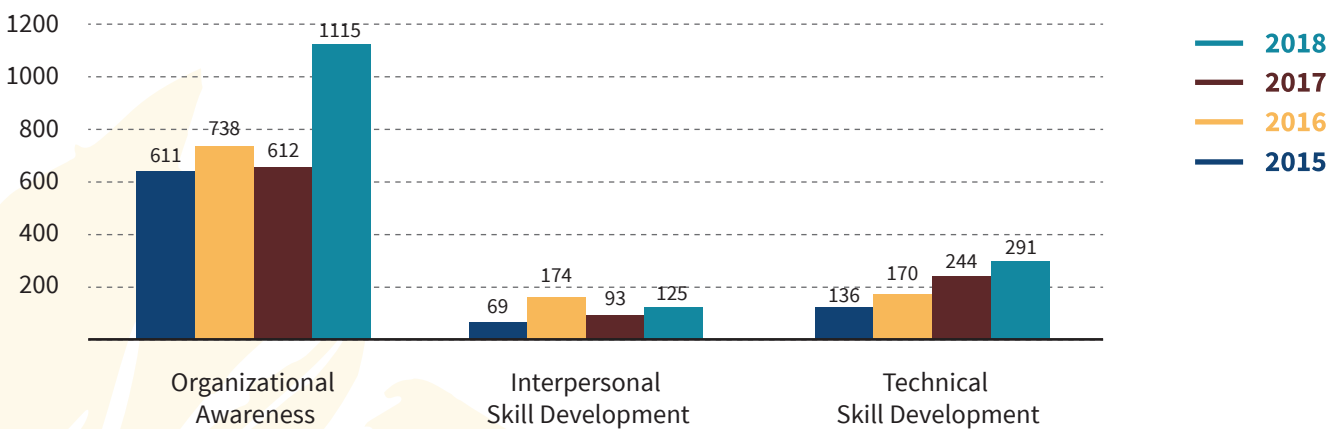


Trends in Learning and Development

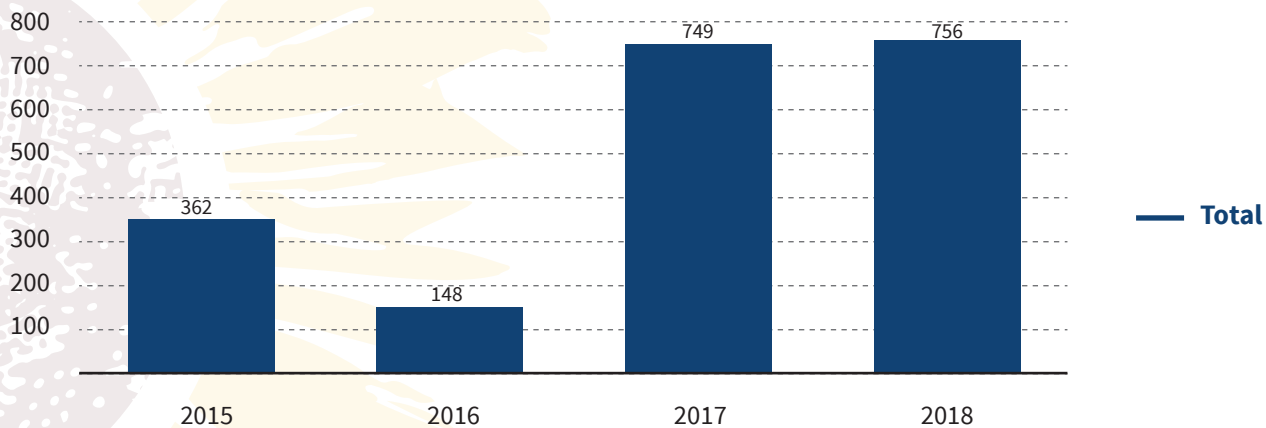
Number of JCL Training Sessions



Staff Attendance in Training Sessions by Outcome

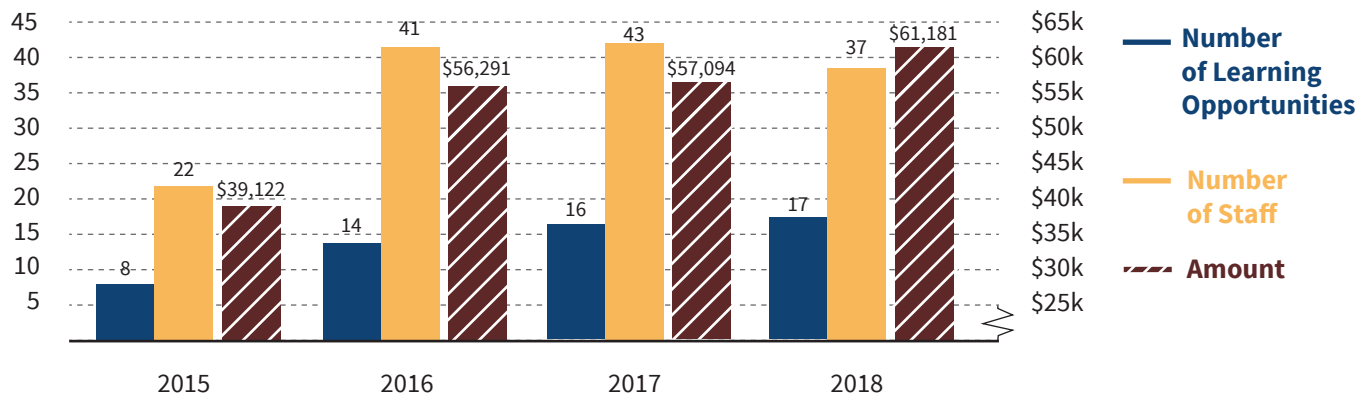


County Trainings Attended by Library Staff

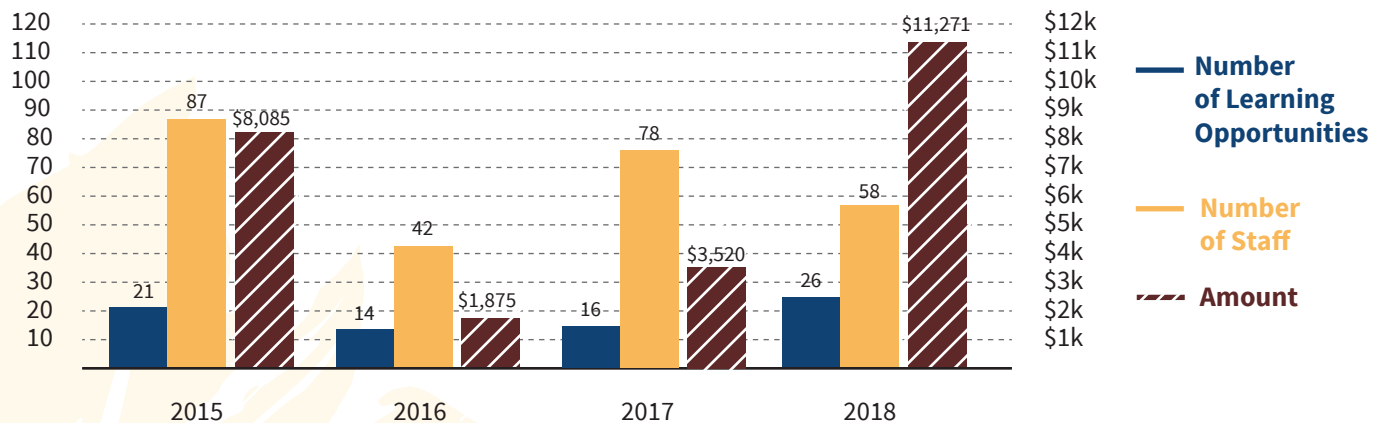


Conferences

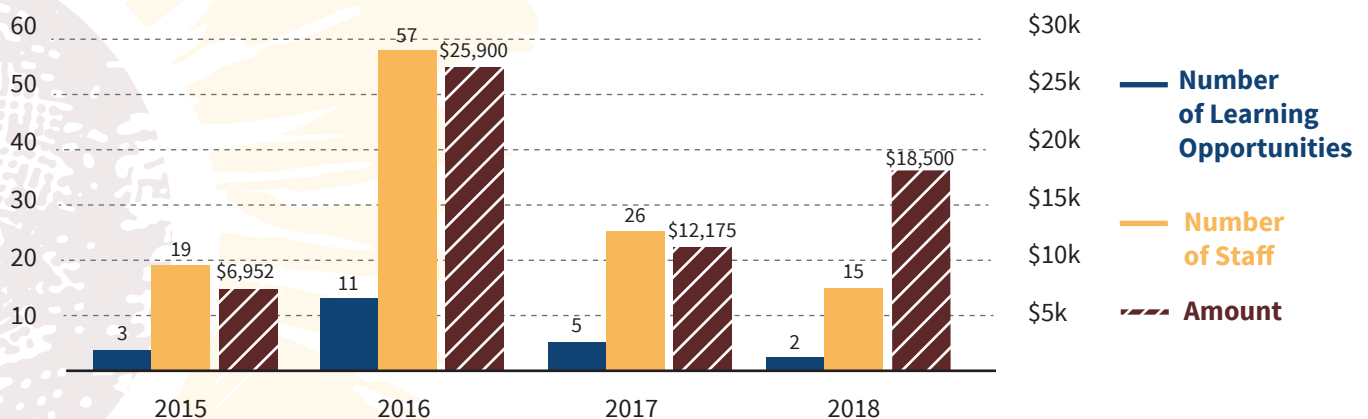
Conference Attendance and Cost



External Events Attendance and Cost



Outsourced Development Attendance and Cost



Antioch Library Replacement

Update – October 2019



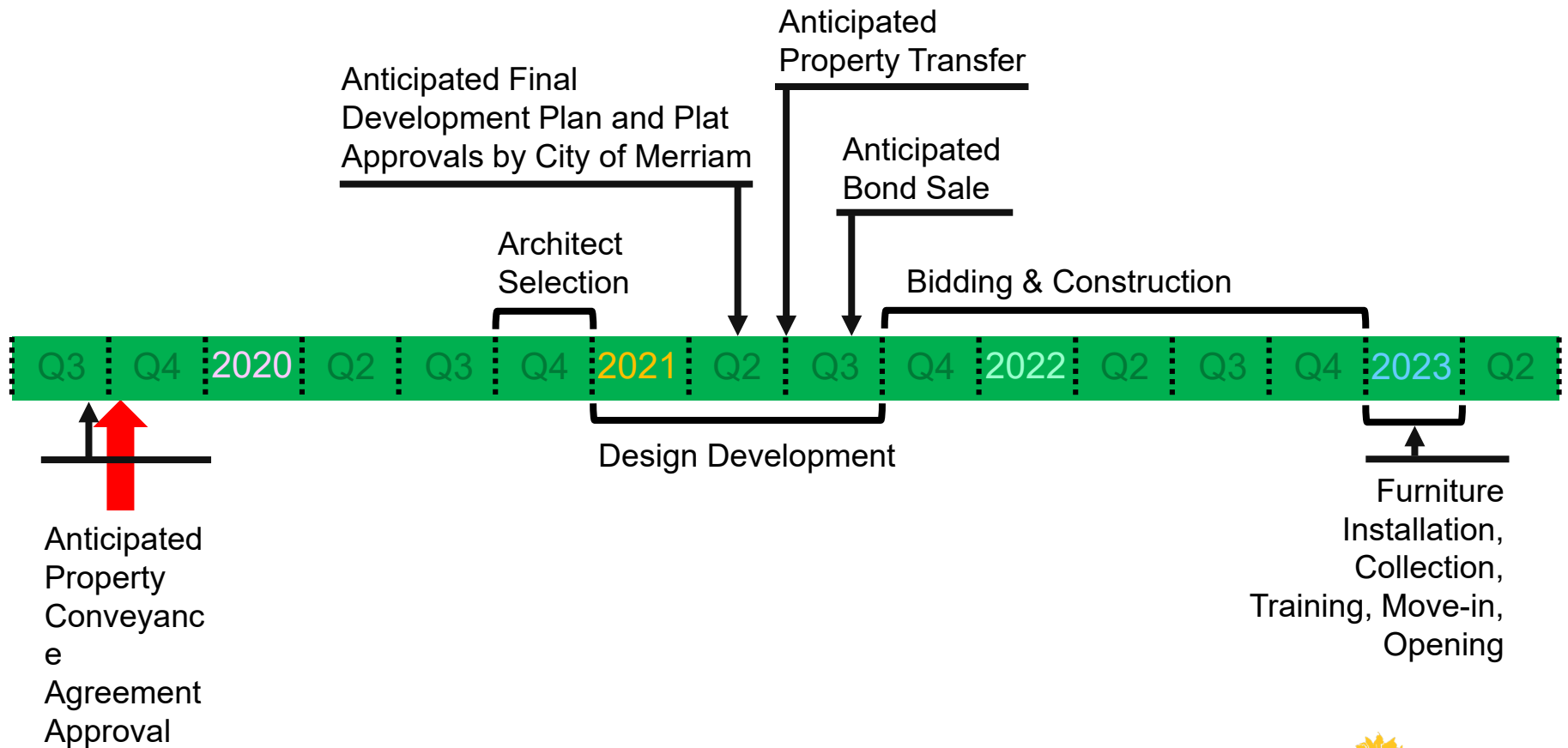
Updates

- Property Conveyance Agreement
- Next Steps
- Timeline

Next Steps

- Shared Parking and Maintenance Agreement
- Architect RFP – anticipated Q4 2020

Antioch Replacement Anticipated Timeline



Central Staffing & Space Consolidation (CSSC)

Update - October 2019



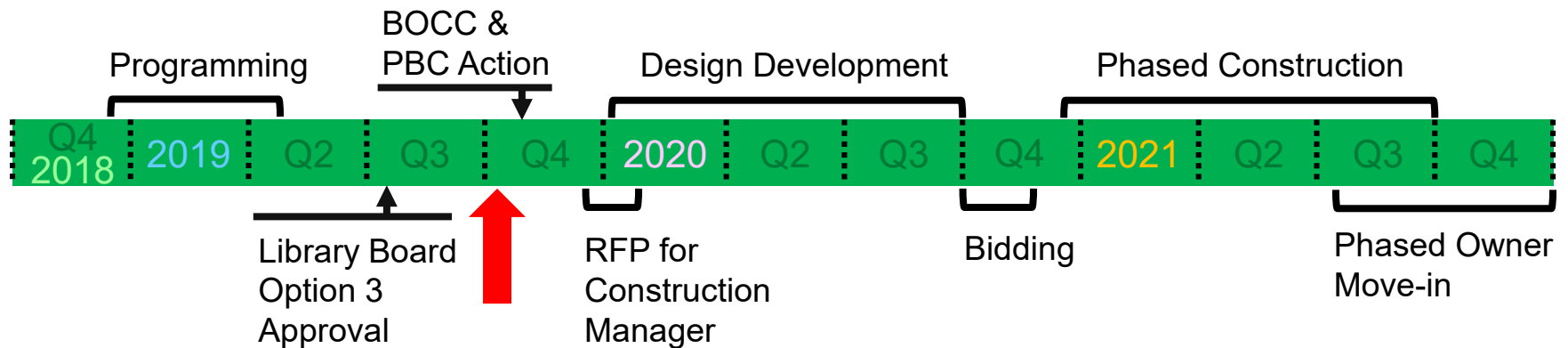
Updates

- BOCC and PBC items
- Next Steps
- Timeline

Next Steps

- RFP for Construction Manager
(anticipated Dec. 2019)
- Design development begins
(anticipated Jan. 2020)

Central Staffing & Space Consolidation (CSSC) Anticipated Timeline



JCL and the 2020 Census

Melissa Horak-Hern, Civic Engagement Librarian



Count Me In JoCo!

Familiarize stakeholders with process

Identify hard-to-count populations

Educate citizens on importance

Educate citizens on changes



Count Me In JoCo

Everyone counts for the 2020 Census

JCL's Role

Official Census Assistance Sites

- Staff training
- Sponsored Tablets



JCL's Role

Employee Recruitment Support

- Community Info and Career Areas
- Space for Census events



JCL's Role

Leverage Our Trust

- Outreach
- Information



Thank you!
Questions, please?

**MINUTES JOHNSON COUNTY LIBRARY BOARD
REGULAR MEETING
September 12, 2019
Central Resource Library
4:00 p.m.**

BOARD: Brandy Butcher, Bethany Griffith, Donna Mertz, Amy Ruo, David Sims

Absent: Wayne Burke

BOARD ATTORNEY: Fred Logan, Andrew Logan

BOCC: Commissioner Hanzlick

FRIENDS OF THE LIBRARY: Not present

STAFF: Brian Berrens, Nancy Birmingham, Robin Carol, Sean Casserley, Bradley Debrick, Abby Giersch, Lacie Griffin, Mike Heffernan, Christopher Leitch, Juan Lopez-Tamez, Jennifer Mahnken, Michelle Olsen, Michaela Scruggs, Kari Sime, Scott Sime, Georgia Sizemore, Tricia Suellentrop, Ben Sunds, Julie Timmins, Angel Tucker, Adam Wathen, Ken Werne

GUESTS: Anne Blessing, Meredith Hauck, Nancy Hupp

Board Chair Bethany Griffith called the meeting to order at 4:00 p.m.

BOARD OF DIRECTORS COMMENTS: Board Chair Bethany Griffith shared that she recently read about a “people check-out” that had been implemented at another library system. Patrons can “check-out” a person and have a conversation with them. Ms. Griffith was interested to read about this innovative community idea and thought it would be a fantastic community engagement project that is low-cost and connects to the mission.

Ms. Griffith announced that the Library Board has a new member, Fabian Shepard.

This year members of the personnel committee will be Amy Ruo, Brandy Butcher and Donna Mertz.

FRIENDS OF THE LIBRARY:

Christopher Leitch, Community Relation Coordinator and liaison to the Friends reported.

Annual revenue for the Friends is derived largely from the sale of used books. That inventory comprises two streams: books purchased from the Library, and donations from the community. From June 2018 – July 2019, the Friends have received 276,000 books as donations and 200,000 as books. An additional 112,000 items are dropped directly at the Sorting Center.

Each of these 588,000 items is touched by hand several times before sale or disposal. A portion of the books are not salable because of condition issues and are immediately recycled. The remainder are scanned for internet sale value; those reaching the minimum level are then consigned to be listed by our volunteers at the Pine Ridge Sorting Center. Others are put through a second sort for quality and destination: one of the 3 bookstores, or one of the 3 seasonal sales. They are boxed and shipped, to a store or to storage awaiting a sale.

The Friends sales and stores have a reputation for quality in the regional used book marketplace – in no small part owing to the value added in the sort process. That’s what helps the Friends generate annual sales of \$350,000. The goal of the Friends is to increase that number while keeping costs down. They are revisiting processes with help from the Library to potentially automate where possible.

July sales totaled \$11,000, the large majority through Amazon, bringing the year-to-date total to \$73,000.

Top selling items included:

- A 10 Volume *Beacon Bible Commentary* published in 1967 sold for \$140.
- *The Black Badge: Deputy United States Marshal Bass Reeves, from Slave to Heroic Lawman* purchased for \$130
- A signed copy of *An American Life* by former president Ronald Reagan came in at \$245.

The board committees continue preparing 2020 activities for review and approval by the executive committee. Activities are intended to help realize the goals approved in the recently completed Strategic Plan.

JOHNSON COUNTY LIBRARY FOUNDATION:

Executive Director, Stephanie Stollsteimer, welcomed and acknowledged Past Board President, Anne Blessing. She is a dedicated leader and good counsel to the Foundation.

The Library Lets Loose is fast approaching. The event will be held September 28, from 6:00 to 10:00 p.m. The event is coming together beautifully and will be a unique fundraiser with activities, food, drink and live music. Nearly 70 companies, small businesses and individuals have joined in providing support to help reach the goal of \$100,000.

The Library Lets Loose is a significant undertaking. Ms. Stollsteimer thanked the team of people who make it happen. They are a combination of ready, willing and remarkable library staff members and community volunteers.

Honorary Hosts, Asher and Audrey Langworthy have been wonderful volunteers and sponsors.

The Foundation received a grant from Dollar General for Homework Help for \$4,000.

The Foundation board is looking forward to the Tri Board event in November.

COUNTY COMMISSIONER REPORT

Commissioner Hanzlick reported that the Board of County Commissioners (BOCC) approved Fabian Shepard as a new member of the Library Board.

The County recently approved the 2019 solid waste management plan, a requirement of the federal government. Public forums were held to discuss what the community would like to see in the plan. The plan focuses on the reduction of food waste. Commissioner Hanzlick shared that food waste represents 23% of the Johnson County landfill.

The new Johnson County sustainability committee is going strong. It's an internal committee of department heads. Commissioner Hanzlick will be writing an article about the initiative for publication in the Shawnee Mission Post.

Johnson County Community College is hosting the metro action sustainability conference this Saturday. Commissioner Hanzlick is sponsoring the event. The event is organized, in part, around the book *Drawdown: The Most Comprehensive Plan Ever Proposed to Reverse Global Warming* by Paul Hawken. Mr. Hawken will be speaking at the conference.

Commissioner Hanzlick recently learned that Johnson County Library is the repository of documents relating to the Sunflower Army Ammunition Plan near De Soto. The Sunflower Army Ammunition Plant was a munitions plant in World War II.

Commissioner Hanzlick is currently listening to the audio book of *How to Win Friends and Influence People* by Dale Carnegie.

BOARD COUNSEL REPORT

Mr. Logan reported on the Library's suspension policy. Several months ago, the Board approved revisions to the policy that clarified due process aspects of the regulation. More specifically, the policy was revised to put the suspension decision in the hands of Library staff and clarify the role of the Board as more like that of an appellate court.

Mr. Logan reported that with any new regulation there are challenges. Mr. Logan indicated page 14 of the Library Board report that highlights incident reports by category. Disruptive and threatening behavior incidents have doubled in the last two years. Mr. Logan will be proposing revisions to the policy that will allow an immediate suspension to be placed on a patron for a brief period. The patron will then go through the normal suspension process. Policies are constantly reviewed to make sure they serve the best interest of the Library.

CITIZEN COMMENTS:

Billy Crook from the City of Merriam addressed the Library Board. Mr. Crook stated he is looking forward to seeing the new Library in the community center area. He would like a right of first refusal to be included in the agreement between the City of Merriam and Johnson County Library so that the land will stay in the civic sphere and in the community plaza if the Library was ever to be sold.

Mr. Casserley thanked Mr. Crook for his comments.

COUNTY LIBRARIAN REPORT

Finance Report

Deputy County Librarian, Tricia Suellentrop reported to the Library Board. As of July 2019, the Library has received 92% of projected revenue. This is on track and as expected. The budget at the end of 2019 has been spent down to 49%. We are 58% through the year and this is on track for the year.

Trends in Programming, Outreach and Information Services

Associate Director of System Wide Services, Adam Wathen, and Facilities Manager, Mike Heffernan, reported to the Board.

Mr. Wathen showed the core operational statistics including digital circulation, physical circulation and visitation. All three statistics are trending up over past years.

Mr. Wathen also reported on general maintenance expenditures and utilities expenditures. The charts show a spike in expenditures in 2015. The spike tracks with the improving economy and shows the Library catching up for the years of deferred maintenance.

Mr. Wathen showed a chart of maintenance requests by branch. In general, the number of requests aligns with the size of the branch.

Mr. Wathen also reviewed charts showing the number of vehicles in the Library fleet and their function, cost of fleet maintenance, branch square feet per custodian and number of security cameras and guards.

Mr. Sims asked why Shawnee and De Soto have outsourced custodial services. Mr. Heffernan answered that this is due to being slightly short staffed. He noted that outsourcing De Soto also provides efficiencies. We constantly evaluate the number of custodial staff at each branch to make sure the buildings are appropriately staffed.

Mr. Wathen showed a final chart tracking incident reports. The increase in incident reports can be explained, in part, by an increased attention to documentation. In 2017, we asked that every witness to an incident complete an

incident report. This was done to provide multiple perspectives and evidence. Due to this change we occasionally receive multiple reports on a single incident.

COMPREHENSIVE LIBRARY MASTER PLAN

Antioch update

Project Coordinator, Scott Sime reported to the Library Board. The property conveyance agreement was approved by the Merriam City Council on Monday. Assistant City Administrator Meredith Hauck did a great job representing the agreement and answering questions.

Mr. Sime reviewed the timeline.

Mr. Casserley thanked the City of Merriam for extending the invitation for the Library to join the campus. Antioch was our first location in 1953 and we are committed to having a Library in the City of Merriam. He thanked the elected officials.

Central Staff Space Consolidation (CSSC)

Mr. Sime provided some background on the history of improvements at Central. The spaces in the Central Building Upgrade (CBU) project were designed for maximum future flexibility to enable the Library to respond easily and inexpensively to the needs of community as those needs change over time. With the Central Space Staff Consolidation project, we now have the opportunity to experience how the flexibility that was designed into the CBU project 5 years ago allows us to make changes to the existing spaces with minimal cost and time.

1993-2012

- Building purchased, expanded, and renovated (1993-1995)
- Limited changes were made to staff and public areas

2012-2013

- Library Administration recognized a need to make upgrades to public and staff spaces, limited funds were available
- The Library prioritized completing the public spaces – making them flexible for future changes – and planned to complete the staff side later

Since 2013:

- The Central Building Upgrade (CBU) project was completed
- The Comprehensive Library Master Plan (CLMP) was approved – providing the Library resources to complete the Central project
- The Materials Handling study with CapRock was completed. Process efficiencies were identified – some have been implemented and CSSC offers the opportunity to implement more
- The addition of Monticello and a larger Lenexa location
- The addition of nearly 80 staff to the system

CBU goals:

To upgrade / replace infrastructure in public spaces:

- HVAC and Lighting
- Public restrooms
- Public power availability

To create public spaces that can meet the current needs and easily adapt to future changes.

- Updating layout of public space (shelving, additional meeting rooms)
- Refreshing surfaces in public spaces (carpet, paint)

CSSC goals:

To implement improvements to Materials Handling flow.

- To make the best use of space, increasing efficiencies and optimizing adjacencies between departments
- To centralize storage areas
- Improve temperature control in the dock and efficiencies for couriers

To refresh staff spaces to the standard used at our new buildings.

- To accommodate systemwide staff from Antioch
- To add staff meeting rooms

To create spaces that can meet the current needs and easily adapt to future changes.

Mr. Sime showed a graphic representing the work completed during CBU and the anticipated work of CSSC. There is very minimal overlap between the spaces.

Mr. Sime showed a timeline for CSSC and the Antioch replacement projects.

Ms. Griffith asked if we will need more project staff. Mr. Casserley responded that the projects have been staged with current capacity in mind.

Corinth

The Library Board, City of Prairie Village and YMCA have signed a Memorandum of Understanding. All have met to review proposals for administering the survey. We anticipate completion of the survey by November.

Mr. Casserley stated the company selected will use a sample size of 400.

The Prairie Village Councilmembers will be touring Lenexa City Center to see the possibilities of a mixed-use site.

UPDATES

Connecting with the Community

Mr. Casserley reported that he and Ms. Stollsteimer recently attended the Shawnee Mission School District annual breakfast, the Blue Valley Education Foundation annual event, the Overland Park Chamber legislative event and an event at the Lenexa City Chamber.

6 by 6 Anniversary

Youth Services Manager, Angel Tucker reported to the Board.

6 by 6 is based on a national program that was researched and created by Association for Library Service to Children, Public Library Association, and the National Institute for Child Health and Human Development.

The transition from the national program to our local one occurred in 2008-2009. Staff kept the curricular content but changed the wording to make it easier to understand and share with patrons. The official launch was on September 15, 2009. It was a two-day event at Antioch.

Ten years later, we estimate over 400,000 kids and caregivers have attended story times and countless more have practiced the pre-reading skills by visiting our activity spaces.

Next week nationally recognized special guest, Jose Luis Orozco will be helping us celebrate the 10-year anniversary of 6 by 6.

The Library will receive a proclamation by the Board of County Commissioners on Thursday September 19, recognizing the 6 by 6 anniversary.

Summer Reading 2019

The Library's Summer Reading initiative provides a free book to every participating child aged birth to 18 (adults not excluded). Programs offered during the summer months aim to connect elementary students and their families with local presenters and educators.

NASA turned 60 this year. The Apollo Moon Landing was 50 years ago. Summer Reading this year at Johnson County Library highlighted this history and planned programs to inspire kids of all ages to dream big, believe in themselves and create their own stories. This year's Summer Reading art was from a series of illustrations by artists Kevin and Kristen Howdeshell.

21,407 books were distributed this summer. We have seen an incredible increase - this represents 15% of youth in our county. Monticello gave away 18% of our books.

Kids who read beat the summer slide. This summer we piloted a program at Merriam Park Elementary and Shawanoe Elementary. Led by JCL's Latino Outreach Youth Librarian, we distributed 3 books to every 3rd grader at each school. The transition from third to fourth grade is a pivotal bridge for elementary students. Students go from learning to read to reading to learn. Both Merriam Park and Shawanoe have a high number of latinx students and both are title one schools in Shawnee Mission.

The total cost at each school was \$700 and total cost is about \$5.00 per book. The Foundation funds this program.

Mr. Sims expressed his support for the pilot program and is interested in how it could continue to grow and impact more children.

Ms. Griffith asked if we connect with childcare programs through Johnson County Park and Recreation. Ms. Tucker answered that we don't at this time, there are many opportunities and we continuously look to partner with other organizations.

Summer Event program, Astronaut, Mike Massimino

This event was overseen by the Library's Program and Event Coordinator and planned by a team of Youth, Adult, and Maker Space staff. Partners included the Museum of Prairie Fire and the Cosmo sphere – out of Hutchison, KS. Astro Mike was the first astronaut to tweet from Space.

The events were enormously successful and over 400 people attended. Astro Mike had over 600 people in attendance.

Public Building Commission update for CSSC

In October the Library will go before the BOCC to discuss CSSC project funding.

Strang Park

Strang Park is adjacent to the Central Resource Library. The City of Overland Park is making plans to renovate the park and will hold two open-house public meetings at the Central Resource Library to discuss the plan with residents and get feedback.

The Library is interested in joint programming and integrating the Library with the park.

Cedar Roe Roof

Next month the Board will review a contract to replace the Cedar Roe roof. The location will need to be closed for 6 to 8 weeks due to the extensive amount of work that will be completed.

CONSENT AGENDA

Minutes of the August 8, 2019 Library Board meeting

Motion: Amy Ruo moved to approve the consent agenda.

Second: Brandy Butcher

Motion approved unanimously.

ADJOURNMENT

Motion: Amy Ruo moved to adjourn

Second: Brandy Butcher

Motion approved unanimously

Meeting adjourned at 5:11 p.m.

SECRETARY _____
Amy Ruo

CHAIR _____
Bethany Griffith

SIGNED _____
Sean Casserley

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

			Receipts	Payments	Balance
	Opening cash balance				\$66,145.58
		Add Receipts	\$80,536.26		
		Less Payments		\$0.00	
	Ending Cash balance				\$146,681.84
		Less Liabilities		\$0.00	
	Unobligated cash balance				\$146,681.84

APPROVED: _____

DATE: _____

Briefing Sheet

To: Johnson County Library Board of Directors
From: Sean Casserley, County Librarian
Date: October 10, 2019
Re: **Consider approving a Property Conveyance Agreement between the Board of Directors of the Johnson County Library (JCL) and the City of Merriam.**

Issue: Consider approving a Property Conveyance Agreement between the Board of Directors of the Johnson County Library (JCL) and the City of Merriam, providing a site for an approximately 16,000 square foot library facility within the Vavra Development.

Suggested Motion: I move that the Library Board approve the Property Conveyance Agreement between the Board of Directors of the Johnson County Library (JCL) and the City of Merriam, providing a site for a 16,000 square foot library facility in the Vavra Development.

Background: The Johnson County Library Board of Directors approved the Comprehensive Library Master Plan (CLMP) in April 2015, and in August 2015, the Board of County Commissioners (BOCC) approved funding for the CLMP through an increase of 0.75 mills for the Library. The Antioch Library Replacement is the third priority from the CLMP, after the Monticello and Lenexa City Center libraries. In late 2018, the City of Merriam commenced construction on its Community Center Project, located within the Vavra Development which was previously used as Lucyann C. Vavra Memorial Park. The project is a development incorporating a community center, outdoor aquatic center, and shared parking structure. The City has an approximately 0.94 acre site adjacent to the Community Center and parking structure, and is willing to provide that land for the relocation and construction of the Antioch Library Replacement.

Analysis: In January 2019, the JCL and City of Merriam approved an MOU stating the intent in cooperating to locate and construct an approximately 16,000 square foot library. This library would replace the existing Antioch library. The Property Conveyance Agreement was approved by the City of Merriam in September 2019. The Library has conducted and received acceptable phase I environmental studies and geotechnical studies. Under this agreement, the Library will have 180 days to undertake any further necessary studies.

Property conveyance is anticipated to occur within 30 days of approval of resolutions to issue bonds by the Public Building Commission (anticipated in 2021). Development plans and approvals are intended to be submitted and reviewed between the approval of the Property Conveyance Agreement and the final conveyance. The construction of the library will occur under a planned timeline, with construction anticipated to start in 2021.

Since the conveyance agreement involves the acquisition of real property, the BOCC will be asked to approve the Property Conveyance Agreement.

At a later date, the Library will bring a Shared Parking and Maintenance Agreement before the Library Board and City of Merriam for approval.

Alternatives: 1) Not approve the Property Conveyance Agreement with the City of Merriam.

Legal Review: JCL Counsel has reviewed the Property Conveyance Agreement.

Briefing Sheet

Funding Review: Funding for the Antioch Replacement project was included in the FY 2020 Adopted Budget.

Recommendation: Approve the Property Conveyance Agreement between the Board of Directors of the Johnson County Library (JCL) and the City of Merriam, providing a site for a 16,000 square foot library facility in the Vavra Development.

PROPERTY CONVEYANCE AGREEMENT
BY AND BETWEEN
THE BOARD OF DIRECTORS OF THE JOHNSON COUNTY LIBRARY
and
CITY OF MERRIAM, KANSAS

PROPERTY CONVEYANCE AGREEMENT

THIS PROPERTY CONVEYANCE AGREEMENT (“Agreement”) is made as of this _____ day of _____, 2019 (“**Effective Date**”), by and between **THE BOARD OF DIRECTORS OF THE JOHNSON COUNTY LIBRARY**, Johnson County, Kansas (“**JCL**”) and **CITY OF MERRIAM, KANSAS** (“**City**”). Collectively, JCL and the City are referred to as the “**Parties**”.

RECITALS:

A. City and JCL are parties to that certain Memorandum of Understanding dated January 10, 2019, a copy of which is attached as **Exhibit A (“MOU”)**; and

B. City is the owner of real property located west of Slater Street and east of Ikea Way (“**Property**”) which is on land that is currently used as Lucyann C. Vavra Memorial Park and is shown and legally described on **Exhibit B**, which is entitled “Legal Description and Survey of the Property to Be Conveyed by the City of Merriam to the Board of Directors of the Johnson County Library,” and which is attached to and incorporated in this Agreement by reference; and

C. City has proposed a redevelopment plan for a project area contiguous with the Property, referred to as the Vavra Park Project (“**Vavra Development**”), which will be a development incorporating a community center, outdoor aquatic center, and shared parking structure serving the Vavra Development and which may include infrastructure improvements on the Property in contemplation of the redevelopment plan for such project area; and

D. JCL desires to acquire Property and develop a new library facility within the Vavra Development as a possible enhancement of existing library services and to provide a unique and beneficial opportunity for both Parties and the community; and

E. City desires to grant and convey the Property to JCL, subject to and upon the terms and conditions set forth in this Agreement; and

F. City’s conveyance of the Property is in consideration of JCL’s intention to construct upon the Property an approximately sixteen thousand (16,000) sq. ft. library facility (“**Project**”) in approximately the location and form as shown on the Project site diagram attached to and incorporated in this Agreement as **Exhibit C (“Development Diagram”)** and in accordance with the terms and subject to the conditions contained in the MOU, the approved Final Development Plan, as provided in **Section 5**, and other applicable Project documents.

NOW, THEREFORE, for valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged by the parties, City and JCL agree as follows:

1. Transfer of Property.

1.1 General. City agrees to grant, transfer and convey to JCL, and JCL agrees to accept transfer of marketable fee simple title from City to the Property, together with all easements, rights of way or other agreements affecting the Property and approved by JCL, and improvements thereon, and all tangible and intangible personal property, leases, contracts and agreements used in connection with the land and improvements on the Property and approved by JCL, if any, subject to the Permitted Exceptions as defined in **Section 6.3**.

1.2 Consideration. The parties agree that consideration for the City's transfer of the Property is One Dollar (\$1.00) and JCL's obligation to construct the Project.

1.3 Internal Access Drive. The parties agree that a internal access drive may be constructed on the Property east of the Project in substantially the form and location as shown on the Development Diagram. City shall be solely responsible for the cost of constructing the internal access drive. JCL shall own the internal access drive and underlying real property. JCL shall dedicate to the City at no charge, the required access easement as reflected on the approved preliminary or final plat for the Project. JCL and City shall share in the costs of maintenance in amounts proportional to the City's and JCL's use of the internal access drive, as more specifically provided in the Maintenance Agreement described in **Section 3.1**.

1.4 Legal Description. The Parties agree that the legal description of the Property for conveyance purposes shall conform to the legal descriptions as accepted by the City and JCL on the Property Survey prepared in accordance with **Section 6.2**, subject to adjustment for dedicated right of way and appurtenances upon terms reasonably acceptable to JCL and the City.

1.5 City Use of Property. Until Closing, as defined in **Section 7.1**, the City maintains all rights and obligations of ownership with respect to the Property, including but not limited to, the right to use such Property and to landscape the Property, including constructing and providing sidewalks or similar pedestrian access as the City deems necessary and appropriate (collectively, "**City Use**") provided such City Use does not create any liens or other encumbrances on the Property or create any detrimental environmental issues on the Property. The City acknowledges that City Use may be interrupted or destroyed by JCL Project construction. JCL shall have no responsibility to compensate City for damage or destruction to City Use on the Property by JCL for Project Construction, except as provided in **Section 2.3**.

1.6 Property Grading. The parties acknowledge that the City's contractor has been utilizing the Property as a construction staging area. Unless otherwise agreed to in writing by both parties, no later than ninety (90) days before the date of Closing, the City shall grade, at its sole expense, in accordance with grading plans incorporated into the Final Development Plan, as defined in **Section 5 ("Grading Plans")**. City shall convey

the Property to JCL at Closing in a clean, graded condition in accordance with the Grading Plans.

1.7 Parking Structure and Parking Agreement. City shall permit JCL to utilize the sixty-six thousand eight hundred (66,800) sq. ft. shared parking structure serving the Vavra Development (“**Parking Structure**”) to satisfy the daily parking needs of the Project. The City shall construct the Parking Structure at no cost to JCL as part of the Vavra Development. The City shall provide free parking to JCL patrons. The Parties shall agree upon terms for shared Parked Structure use and maintenance by executing an agreement not later than ninety days (90) before the Closing Date (“**Parking Agreement**”) setting forth the terms and conditions under which JCL will participate in an annual payment to assist with the maintenance of the Parking Structure. The annual payment shall be strictly for maintenance and will not include costs relating to Parking Structure construction. City shall allot parking stalls in the Parking Structure for JCL’s use. City and JCL shall cooperate to determine the number of JCL-allotted parking stalls based upon JCL’s actual staff needs at the Project. JCL and City shall determine JCL’s annual fee based on the approximate number of JCL’s allotted parking stalls and patron use of parking stalls in the Parking Structure compared to the overall number of parking stalls in the Parking Structure, as will be more specifically provided in the Parking Agreement. The Parties agree the Parking Agreement will be incorporated as part of the comprehensive Maintenance Agreement, more specifically described in **Section 3.1**.

1.8 Project Timeline. JCL agrees it will timely update a project and construction timeline with anticipated dates and schedule for construction plans on the Project as it makes progress on its site development (“**Detail Project Timeline**”), attached and incorporated in this Agreement as **Exhibit D**.

1.9 Development TIF District. The parties acknowledge that portions of the Property that will be conveyed by the City to the Library lie in a tax increment financing redevelopment district (“**TIF District**”) created by the City. The City agrees no redevelopment project plan has been approved for the Property and the City will not undertake any approval of redevelopment project plan for the Property. The City further agrees that JCL shall in no way have any obligations arising under the TIF District for the Property and that the City shall indemnify and hold the Library harmless on any claims arising from such portions of the Property lying within the TIF District. Any depiction of TIF District boundary line shown on the Final Development Plan or other diagram shall have no effect on the Library or cause the Property to become subject to any TIF District.

2. Construction of Project and Property.

2.1 Construction. The Parties acknowledge and agree JCL will begin Project construction during or after the third (3rd) quarter of calendar year 2021 after Closing, unless the City provides written consent to commence construction at a different time. JCL shall timely update the Detail Project Timeline with reasonably anticipated changes or confirmations of construction scheduling on the Project. JCL shall be responsible for the design, approval, construction, improvement, equipping, and installation of the Project and all improvements and infrastructure on the Property , including the public sanitary sewer,

water, electric, telecom, gas, and all other utilities (“Utilities”) located on the Property that serve the Project. City shall cause to be constructed at City’s cost Utilities located outside the Property boundaries within the Vavra Development for purposes of connecting Utilities to the Property to serve the Project, including points of connection for Utilities. JCL agrees, at its sole expense, to modify the irrigation installed on the Property to accommodate construction of the Project.

2.2 Laydown Area. The City and JCL shall cooperate to designate for JCL the use of an area of ground or paved space of not less than fifteen thousand square feet (15,000 sq. ft.), adjacent to and outside the bounds of the Property within the Vavra Development in approximately the location shown on the Laydown Area Diagram attached to and incorporated in this Agreement as **Exhibit E (“Laydown Area”)**. The City shall permit JCL to utilize the Laydown Area for construction offices, receiving, storing, and assembling Project construction equipment and materials before and after Closing in conjunction with construction of the Project. JCL agrees that the City shall not be liable or obligated to JCL for any loss or damage to the construction offices or Project construction and materials. JCL shall operate and maintain the Laydown Area in a safe and controlled manner and repair any damage caused by JCL usage of the Laydown Area.

2.3 Construction Damage. The Parties acknowledge and understand construction of the Project may result into damage to landscaping, improvements, or facilities adjacent to the Property in the Vavra Development, including but not limited to the Laydown Area and the Internal Access Road. JCL shall use reasonable efforts to mitigate the risk of damage to landscaping, improvements, or facilities in the Vavra Development during Project construction. JCL, at its sole expense, shall cause Project construction damage to be repaired and returned to the same or similar condition existing before Project construction.

2.4 Indemnification.

(a) **JCL.** To the extent permitted by Kansas law, JCL agrees to indemnify, defend, assume all responsibility for, and hold the City and its respective elected and appointed officers and employees and agents, harmless from and against all costs (including reasonable attorney’s fees and costs), claims, demands, liabilities, or judgments arising out of or resulting from any accident, injury, or damage to any person or property because of: (1) any failure by JCL to perform or comply with the terms of this Agreement, and (2) any accidents, injuries, or damages, which are proximately caused by any of JCL’s activities under this Agreement, including the construction of the Project; provided, that in no event shall JCL be subjected to any liability greater than found in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.* and amendments thereto. This indemnity shall survive the expiration or earlier termination of this Agreement.

(b) **City.** To the extent permitted by Kansas law, City agrees to indemnify, defend, assume all responsibility for, and hold JCL and its

respective appointed officers, employees, and agents, harmless from and against all costs (including reasonable attorney's fees and costs), claims, demands, liabilities, or judgments arising out of or resulting from any accident, injury, or damage to any person or property because of: (1) any failure by City to perform or comply with the terms of this Agreement, and (2) any accidents, injuries, or damages, which are proximately caused by any of City's activities under this Agreement, including City's construction of the Vavra Development; provided, that in no event shall City be subjected to any liability greater than found in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.* and amendments thereto. This indemnity shall survive the expiration or earlier termination of this Agreement.

2.5 Construction Fence. JCL shall erect a temporary construction fence in approximately the location of the Property boundaries ("**Construction Fence**") after Closing and before commencement of Project construction. The Construction Fence is a construction barrier that substantially encloses the Property. The Construction Fence will be made of (1) jersey barrier material starting at the ground and extending vertically to a height of four feet (4') and (2) a solid plywood or similar material starting at the top of the jersey barrier and extending vertically to a height of eight feet (8'). JCL will work with the City on communication or images on the Construction Fence that would generate interest in the Project. JCL, at its sole expense, shall cause the Construction Fence to be erected and maintained at all times until its removal at completion of the Project construction.

2.6 Stormwater Maintenance. City shall construct, at the City's sole cost, stormwater maintenance facilities ("**Stormwater Facilities**") that adequately serve the Vavra Development and the Property in accordance with industry requirements. City shall not cause to be constructed Stormwater Facilities on the Property or the Vavra Development that would affect the Project design or construction. JCL shall repair, at JCL's sole cost, any damage to Stormwater Facilities on the Property or in Vavra Development caused by Project construction. City represents and warrants that the Stormwater Facilities will be adequate to manage and maintain the Project and Property's stormwater.

2.7 Project Structure Setbacks. City shall permit JCL to construct and design the Project per the approved Final Development Plan as provided in Section 5 without imposing building or setback line requirements between the Project structure and the Public Road or the Property boundary line.

2.8 Regular Mail Receptacle. City and JCL acknowledge that delivery of regular postal mail to the Project facility is not possible by the United States Postal Service. City shall permit JCL to install a receptacle ("**Mail Receptacle**") to exclusively serve the needs of the Project for receipt of regular postal mail. City shall permit JCL to install the Mail Receptacle along Slater Street adjacent to the Vavra Development in a location mutually agreed upon by JCL and City. JCL shall be solely responsible for all costs to install and maintain the Mail Receptacle.

3. Project and Property Maintenance.

3.1 Maintenance Agreement. The Parties acknowledge this Agreement provides for ongoing obligations and activities by the Parties that will occur after Closing and construction of the Project for operation and maintenance of the Property and Vavra Development (“**Property Maintenance**”). Property Maintenance includes but is not limited to Waste Disposal and Exterior Improvements and Public Road maintenance. The Parties shall agree upon terms for Property Maintenance by executing an agreement not later than ninety days (90) before the Closing Date (“**Maintenance Agreement**”). City and JCL shall cooperate to agree upon terms and fees for maintenance and JCL use of Vavra Development’s Parking Structure and Plaza. The Parties agree fees and costs contemplated in this Agreement for Property Maintenance and Vavra Development or Parking Structure use and maintenance by JCL shall be for a five-year term and adjusted based on the previous year’s actual costs, as more specifically provided in the Maintenance Agreement.

3.2 Trash and Recycling Disposal from Property. The Parties acknowledge and understand the City will cause to be collected and removed trash and recycling waste from the Vavra Development. JCL anticipates requiring routine trash and recycling waste removal from the Property. The City shall provide trash and recycling removal and disposal (“**Waste Disposal**”) from the Property, including waste generated from the Project’s interior and exterior spaces on the Property as part of Property Maintenance. The Parties agree to cooperate to determine the actual cost for routine Waste Disposal and set an according fee for the Waste Disposal. The Parties shall memorialize the fee to be paid by JCL to the City and a procedure for Waste Disposal in the Maintenance Agreement.

3.3 Project Exterior Landscaping and Design. JCL shall design and pay the initial capital investment to improve the Property with landscaping and constructed hardscape improvements adjacent to the Project’s exterior (“**Exterior Improvements**”). JCL shall cooperate with the City to ensure the Exterior Improvements design is reasonably compatible with the City’s master plans, declarations, and design for the Vavra Development, as provided in the Final Development Plan. JCL acknowledges Exterior Improvements are subject to the approval of the City. City shall perform ongoing maintenance of the Exterior Improvements for a fee paid by JCL as part of Property Maintenance. JCL and City shall cooperate to determine the City’s actual costs to maintain the Exterior Improvements and memorialize terms for the maintenance and the corresponding JCL fee in the Maintenance Agreement.

3.4 Vavra Development Plaza. City is developing and constructing, at its sole cost, amenities and improvements to the Vavra Development. Adjacent to the Property in the Vavra Development is a public space with public right of way for pedestrians with access to the Project and other Vavra Development improvements, including but not limited to the community center, aquatic center, and Parking Structure (“**Plaza**”). City and JCL shall agree upon terms for Plaza management by City and use of the Plaza by JCL. City may make available the Plaza, or portions of the Plaza, for license to JCL for JCL programming purposes when City scheduling permits. The Parties acknowledge the Maintenance Agreement will address terms for Plaza use, management, and maintenance. In conjunction with construction of the Project, JCL shall construct a total of approximately

Five Hundred (500) square feet of pavement in two locations adjacent to the Property within the area of the Plaza in approximately the location depicted in the color red on the Development Diagram. JCL shall repair damage to the Plaza and Vavra Development caused by JCL's construction of the Project.

4. Investigation Period.

City acknowledges that, to enable JCL to proceed with this Property conveyance, JCL may undertake or cause to have undertaken various studies, including but not limited to feasibility, engineering and soil studies, and JCL has or will further engage design professionals to prepare engineering drawings, schematic plans and specifications, evaluations of the development potential of the site, and other reviews and approvals (hereinafter collectively referred to as "**Studies**") so as to determine whether, in JCL's sole discretion, it is feasible, economically or otherwise, to proceed with JCL's acquisition of the Property to develop the Project on the Property. As of the Effective Date, JCL has conducted and received acceptable phase I environmental Studies and geotechnical Studies. JCL is presently undertaking the Survey of the Property and adjacent area, including the Parking Structure, which if deemed acceptable by JCL, shall be incorporated in this Agreement as part of the Studies.

JCL shall have one hundred eighty (180) days from the Effective Date (herein, the "**Investigation Period**") in which to undertake any further Studies which JCL, in its sole discretion, deems necessary to determine the feasibility of its acquisition.

If, for any reason whatsoever during the Investigation Period, JCL elects, in JCL's sole and absolute discretion, not to proceed with the transaction contemplated by this Agreement, JCL may terminate the Agreement by notifying City of such election. A failure to so notify City on or before the expiration of the Investigation Period shall be deemed as notice to City that JCL has elected to proceed with the transaction contemplated hereby, subject to the Conditions Precedent (hereinafter defined) and the Permitted Exceptions.

JCL and its agents, contractors or employees shall have the right to enter upon the Property at all times for the purpose of performing its Studies, to take core samples, and to otherwise determine, in JCL's sole, reasonable discretion, the condition of the Property. JCL shall keep the Property free of all liens in connection with its inspection of the Property and shall cause all such liens to be removed promptly and with reasonable diligence upon its being notified of same. JCL shall repair and/or reimburse City for any damage to the Property arising from these Studies and indemnify, defend and hold harmless the City against all claims, costs, demands and expenses arising from these Studies. Provided, however, that the Parties agree that JCL shall have no obligation to indemnify City for acts for which JCL would otherwise be immune under the Kansas Tort Claims Act (K.S.A. 75-6104 *et seq.*), and amendments thereto, nor will the indemnity obligations set forth herein act as a waiver of JCL's protections under such provisions, and further that any liability of JCL shall be subject to the liability limitations under K.S.A. 75-6105, and amendments thereto. Additionally, and notwithstanding anything set forth herein to the contrary, the parties specifically agree that the terms of this section, and the terms of this Agreement, shall be subject to and limited by the Kansas Cash Basis Law (K.S.A. 10-1101 *et seq.*), and

amendments thereto, and the Kansas Budget Law (K.S.A. 75-2935 *et seq.*), and amendments thereto. JCL's obligations imposed by this **Section 4** shall survive termination of this Agreement.

5. Final Development Plan and Plat.

5.1 Final Development Plan. City and JCL shall cooperate to agree upon a development plan for the Project within the Vavra Development ("**Final Development Plan**"). The Final Development Plan will provide for the intended topography of the Property, Grading Plans, and establish the Parties' design expectations for the Project within the Vavra Development. JCL agrees the Project scale and aesthetic will be reasonably compatible with the City's master plans, declarations, and design for the Vavra Development, which will be reflected in the Final Development Plan. JCL acknowledges the Project design is subject to the approval of the City and that JCL is responsible for all costs associated with the Final Development Plan submittal. JCL and the City shall cooperate to agree upon this Final Development Plan not less than ninety (90) days before the Closing Date.

5.2 Plat. Closing will occur after JCL has filed the plat, including dedication of easements for the internal access road and drainage easements, with Johnson County. JCL will be responsible for all costs associated with filing the plat.

6. Title Requirements, Survey and Permitted Exceptions.

6.1 Title Evidence. JCL shall have the right, at JCL's expense, to obtain an owner's commitment for title insurance or an acceptable pro forma title policy ("**Title Commitment**"), by which a title company deemed acceptable by JCL ("**Title Company**") shall insure fee simple title to the Property to JCL in an amount to be determined by JCL and containing such endorsements as JCL may require and without exceptions for any matters except as described in this **Section 6**.

6.2 Survey. JCL is obtaining as of the Effective Date a boundary survey of the Property certified to ALTA requirements, to be prepared at JCL's cost and expense by a duly licensed Kansas land surveyor ("**Survey**").

6.3 Objections; Cure of Title and Survey Objections. JCL shall have until ninety (90) days before the Closing Date to make written objections ("**Objections**") to the form and/or contents of the Title Commitment or the Survey. JCL's failure to make objections within the Objection Period shall constitute JCL's waiver of Objections. Any matter shown on the Title Commitment or on the survey which is not objected to by JCL or which is affirmatively accepted by JCL is a permitted exception ("**Permitted Exception**"). City shall exercise reasonable efforts to remove any Objections raised by JCL, on or until the later of thirty (30) days after receipt of the Objections to attempt to cure the Objections ("**Cure Period**"). If City is unwilling or unable to cure the Objections within the Cure Period, JCL shall have the right to elect to: (1) terminate this Agreement by delivering written notice thereof to City and the Escrow Agent; or (2) may accept such title as City can deliver.

6.4 Conditions Precedent to Closing. Closing of the transfer of title to the Property shall be and hereby is conditioned upon the following (“**Conditions Precedent**”): (i) approval of this Agreement by the Board of Directors of the Johnson County Library; (ii) approval of this Agreement by the City Council of the City of Merriam, Kansas; (iii) approval of this Agreement by the Board of County Commissioners of Johnson County, Kansas; and (iv) JCL receiving all applicable planning, zoning, and plat approvals for the Project. If any Condition Precedent is not satisfied on or before the Closing Date, this Agreement may be canceled by City or JCL, or at JCL’s option, by written notice from JCL to City to extend the Closing Date provided the parties can reach a mutually agreeable Closing Date. Either Party shall have the right to unilaterally waive any Condition Precedent by providing written notice to the other. JCL shall be deemed to have waived the Conditions Precedent if JCL acquires the Property.

7. Closing.

7.1 Closing Date. The consummation of the transfer of title to the Property (“**Closing**”) shall take place at the offices of an escrow agent acceptable to both JCL and the City (“**Escrow Agent**”) on the date which is the earlier of the following dates: (i) the date which is thirty (30) days before the date upon which the Public Building Commission of Johnson County, Kansas is to meet to adopt resolutions to issue bonds in conjunction with the Project, (ii) on a date designated by JCL, provided JCL gives City notice of the designation at least 30 days prior to such designation dated, or (iii) a date JCL and City may agree to in writing, provided that, regardless of the foregoing, the Parties agree the Closing Date shall be after March 31, 2021 (“**Closing Date**”). Possession of the Property shall be granted by City to JCL on the Closing Date.

7.2 City’s Obligations at Closing. On the Closing Date, City shall execute and/or deliver to JCL, through the Escrow Agent as applicable, the following:

(a) **Deed.** Kansas Special Warranty Deed in a form reasonably acceptable to City and JCL (“**Special Warranty Deed**”), conveying the Property to JCL.

(b) **FIRPTA Affidavit.** A non-foreign affidavit properly executed and containing such information as is required by Internal Revenue Code Section 1445(b)(2) and its regulations.

(c) **Title Documents.** Such affidavits of City or other documents as may be reasonably required by Title Company or the Johnson County Register of Deeds, in order to record the closing documents and issue the Title Insurance Policy.

(d) **Additional Documents.** Such other documents as may be required by this Agreement, including an Affidavit of Real Property Value as required by law.

7.3 JCL's Obligations at Closing. On the Closing Date, JCL shall execute and/or deliver to City, through the Escrow Agent as applicable, the following with respect to the Project:

(a) **Title Documents.** Such affidavits of JCL or other documents as may be reasonably required by Title Company in order to record the closing documents and issue the Title Insurance Policy.

(b) **Additional Documents.** Such other documents as may be required by this Agreement or by law.

7.4 Closing Costs.

(a) City shall pay the following costs and expenses in connection with the Closing:

(i) Its costs of document preparation and its attorneys' fees; and

(ii) One-half of any escrow fees, if applicable.

(b) JCL shall pay the following costs arising in connection with the Closing:

(i) All recording fees, transfer taxes, if any, and all documentary stamps payable upon the recording of the Special Warranty Deed in connection with the conveyance of the Property;

(ii) All Studies, due diligence, or inspection costs incurred by JCL;

(iii) The premium payable for the owner's policy of title insurance and all endorsements thereto;

(iv) The cost of document preparation and its attorneys' fees; and

(v) One-half of any escrow fees, if applicable.

7.5 Prorations. City shall pay all general real estate taxes levied and assessed against the Property and all installments of special assessments for the years prior to the calendar year of Closing. All such taxes and installments of special assessments becoming due and accruing during the calendar year of Closing shall be pro-rated between City and JCL on the basis of such calendar year of Closing. The proration for taxes and assessments, if not known for the year of Closing at the time of Closing, shall be computed based upon the previous year's ad valorem taxes and assessments.

7.6 Damage. If, prior to the Closing Date, all or any part of the Property is substantially damaged by casualty, including act of God, the elements or any other cause, City shall immediately give notice to JCL of such fact and at JCL's option (to be exercised within fifteen (15) days after City's notice), this Agreement shall terminate, in which event neither party will have any further obligations under this Agreement, except for those obligations which expressly survive the termination hereof; or if JCL fails to elect to terminate despite such damage, or if JCL elects to proceed to Close on the Property, City and JCL shall proceed to Closing, and City shall assign to JCL at the Closing all of City's right, title and interest to receive any proceeds of insurance related to such damage.

7.7 Condemnation. If, prior to the Closing Date, the City obtains knowledge that eminent domain proceedings are commenced against all or any part of the Property by any entity having such authority, City shall immediately give notice to JCL of such fact and at JCL's option (to be exercised within fifteen (15) days after City's notice), this Agreement may, at JCL's option, terminate, in which event neither party will have further obligations under this Agreement, except for those obligations which expressly survive the termination of this Agreement. If JCL elects not to terminate, despite such eminent domain proceedings, City shall assign to JCL at the Closing all of City's right, title and interest in and to any award made or to be made in the condemnation proceedings.

8. Representations and Warranties.

8.1 Representations and Warranties of City. City, to the best of its knowledge, hereby represents and warrants to JCL that the following are true and correct as of the Effective Date and shall be true and correct as of the Closing Date:

(a) The execution of this Agreement and all documents and instruments executed pursuant to this Agreement by City, the delivery thereof to JCL, City's performance hereof and the transactions contemplated hereby have been duly authorized by all requisite action and approvals on the part of City and do not conflict with or result in a violation of any applicable statute, ordinance, law, or any judgment, order or decree of any court or proceeding to which City is a party and all such documents are valid and binding obligations of City and are enforceable in accordance with their terms.

(b) City is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.

(c) To City's knowledge, there is no action, litigation, investigation, condemnation or proceeding of any kind against any portion of the Property which would have a material adverse effect upon transfer of any portion of the Property to JCL.

(d) To City's knowledge, the Property has not been used for the production, storage, deposit or disposal of hazardous substances, no well is

located on the Property, no above ground or below ground gas storage tank is located on the Property, and City has not received any written notice from any applicable governmental authority or any third party that any such substances have been placed or located upon the Property in violation of applicable environmental laws.

(e) City is not aware of any existing options or rights of first refusal with respect to the Property, other than JCL's rights.

(f) To City's knowledge, the Property is not occupied by any tenant.

(g) To City's knowledge, other than debris or other construction-related material that is on the Property as a result of the use of the Property as a staging area for the construction associated with the City's construction of Vavra Development, there is no construction or other debris located in or on the Property and no dumping has occurred in or on the Property. As provided in **Section 1.6**, the City shall convey the Property to JCL in a clean condition and graded, at its sole expense, in accordance with the Final Development Plan.

Whenever any representation or warranty of City is stated in this Agreement to be "to City's knowledge" or "to the best of City's knowledge", such words shall mean the actual knowledge, without any obligation of inquiry or investigation.

Notwithstanding the foregoing provisions of this **Section 8.1**, if City learns of any actual or alleged material inaccuracy in such representations or warranties, City shall advise JCL thereof. City shall, on or before the earlier of the scheduled Closing Date or the date ten (10) days after receiving such written notice from JCL or of learning of such actual or alleged material inaccuracy, make commercially reasonable efforts, without cost or expense to City, to cure such inaccuracy.

Failing such cure by City, City shall, within the period described in the preceding sentence, notify JCL in writing of such failure to cure, and JCL's remedies shall be limited to an election, on or before the earlier of the scheduled Closing Date or the date five (5) business days after receiving such written notice from City, to either (i) waive such breach and proceed to consummate the transaction contemplated by this Agreement or (ii) terminate this Agreement. If JCL elects to terminate this Agreement pursuant to this **Section 8**, neither party will have any further rights or obligations regarding this Agreement or the Property except for any obligations which are to expressly survive the termination of this Agreement.

8.2 Representations and Warranties of JCL. JCL hereby represents and warrants to City that the following are true and correct as of the Effective Date and shall be true and correct as of the Closing Date:

(a) JCL is a quasi-municipal corporation organized under the laws of the state of Kansas and is authorized to enter into this Agreement.

(b) The execution of this Agreement and all documents and instruments executed pursuant to this Agreement by JCL, the delivery thereof to City, JCL's performance hereof and the transactions contemplated hereby have been duly authorized by all requisite action on the part of JCL and do not conflict with or result in a violation of JCL's Administrative Regulation Manual or any judgment, order or decree of any court or proceeding to which JCL is a party and all such documents are valid and binding obligations of JCL and are enforceable in accordance with their terms.

9. Default.

9.1 Default by City. If City fails to perform any of City's covenants under this Agreement, or if City otherwise defaults hereunder, JCL shall have the right of specific performance of City's obligation to convey title to the Property to JCL pursuant to this Agreement, or JCL, at its option, may elect to terminate this Agreement and in addition thereto, pursue any remedies at law or in equity available to JCL for City's breach or default.

9.2 Default by JCL.

(a) In the event JCL should fail to consummate the transaction contemplated herein for any reason except for (i) any permissible reasons set forth in this Agreement or (ii) City's failure to close in accordance with the requirements of this Agreement, City may, after giving JCL five (5) days prior notice of a default by JCL, terminate this Agreement, and the parties shall have no further obligations to each other, except as provided in this **Section 9**.

(b) As partial consideration for JCL's agreement to evaluate the Property for development, the parties specifically agree that in the event of a JCL default prior to Closing, City shall have no other recourse or claim to any claims, damages, losses, or any other rights, remedies, relief or recourse against JCL ("**Default Recourse**"), and in no event shall such Default Recourse in any case be collectible, enforceable or available to City, except as provided in this **Section 9**.

(c) Notwithstanding anything in this **Section 9** or this Agreement to the contrary, if after Closing and during or after the third (3rd) quarter of calendar year 2021, as provided in **Section 2.1**, JCL fails to commence construction of the Project within forty-five (45) days after issuance of a building permit and thereafter fails to diligently pursue construction of the Project, unless such dates and times are extended upon mutual agreement of the Parties as evidenced in writing, then JCL shall within thirty (30) days after written notice from City, unless such time is extended by written mutual agreement of both parties, convey the Property to the City ("**Re-Conveyance**"), such obligation to survive the Closing of this Agreement. Such Re-Conveyance shall be with no additional encumbrances or liens than existed when JCL received the Property, except for such encumbrances and liens

(A) for utility service related to the Project, or (B) consented to, in writing by the City.

9.3 Attorneys' Fees and Costs. In the event of any litigation between the parties arising out of this Agreement or the collection of any funds due JCL or City pursuant to this Agreement, each party shall bear its own costs incurred, including without limitation reasonable attorneys' and paralegals' fees and costs, whether such fees and costs are incurred at trial, on appeal or in any bankruptcy proceedings.

10. Brokerage Commission.

City and JCL warrant each to the other that they have not dealt with any real estate broker which is entitled to compensation or commission with regard to this transaction respecting conveyance of the Property. Each party agrees to indemnify and hold harmless the other party from any and all claims for commissions by any broker or third party arising by virtue of this transaction whose commissions might legally arise from acts of the indemnifying party. The obligations of indemnity of JCL and City as contained in this **Section 10** shall survive the Closing

11. Escrow.

Unless otherwise agreed to by the parties in writing, the Title Company shall be First American Title Insurance Company and Cheryl Fay shall be designated as the Escrow Agent to facilitate the deposit and payment from the escrow established hereby. The parties shall instruct the Escrow Agent to hold such funds and to disburse the same only in accordance with the terms and conditions of this Agreement.

12. Other Contractual Provisions.

12.1 Assignment. JCL may not assign its rights under this Agreement without the prior written consent of City. Any assignment shall be subject to all the provisions, terms, covenants and conditions of this Agreement.

12.2 Notices. All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be (notwithstanding lack of actual receipt by the addressee) (i) when delivered by personal delivery, (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid, or (iii) one (1) business day after having been deposited with an expedited, overnight courier service addressed to the party to whom notice is intended to be given at the address set forth below:

To JCL:	Sean Casserley, County Librarian Johnson County Central Library 9875 W. 87 th St. Overland Park, KS 66212 Phone: 913-826-4600 Fax: 913-826-4730
---------	---

Email: CasserleyS@jocolibrary.org

With a Copy to: Fred J. Logan, Jr.
Logan, Logan & Watson
8340 Mission Rd., Suite 106
Prairie Village, KS 66206
Phone: 913-381-1121
Fax: 913-381-6546
Email: flogan@loganlaw.com

To City: Meredith Hauck, Assistant City Administrator
City of Merriam
9001 W. 62nd Street
Merriam, KS 66202
Phone: 913-322-5515
Fax: 913-322-5505
mhauck@merriam.org

With a Copy to: City Attorney
City of Merriam
9001 W. 62nd Street
Merriam, KS 66202
Phone: 913-322-5500
Fax: 913-322-5505

Escrow Agent: _____

Any party may change the address to which its notices are sent by giving the other party written notice of any such change in the manner provided in this **Section 12.2**, but notice of change of address is effective only upon receipt.

12.3 Entire Agreement. This Agreement, subject to the applicable MOU provisions referenced herein, constitutes the entire understanding among the parties with respect to the Property conveyance transaction contemplated herein, and supersedes all prior or contemporaneous agreements, understandings, representations and statements, oral or written. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

12.4 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. The parties hereby consent to jurisdiction and venue in Johnson County, Kansas, and agree that such jurisdiction and venue shall be

sole and exclusive for any and all actions or disputes related to this Agreement or any related instruments.

12.5 Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

12.6 Binding Effect. Subject to the provisions of **Section 12.1**, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

12.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument.

12.8 Interpretation. Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and neuter and vice versa. This Agreement and any related instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts were made and prepared by counsel for one of the parties, it being recognized that this Agreement and any related instruments are the product of extensive negotiations between the parties hereto and that both parties hereto have contributed substantially and materially to the final preparation of this Agreement and all related instruments.

12.9 Severability. In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

12.10 Time of Essence. Time is of the essence of every term, provision and covenant of this Agreement. The expiration of any period of time prescribed in this Agreement shall occur at 11:59 p.m. of the last day of the period. Should any period of time prescribed herein end on a Saturday, Sunday or legal holiday (recognized by either the City or JCL), the period of time shall automatically be extended to 11:59 p.m. of the next full business day.

12.11 No Waiver. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof, and no waiver of one provision shall be construed as a waiver of that provision in the future or as a waiver of any other provision.

12.12 Exclusivity. City agrees that, until the termination or cancellation of this Agreement, City shall cease all negotiations for the sale or conveyance of the Property to any other party.

12.13 Incorporation into Agreement of Recitals; Incorporation by Reference of Exhibits. The recitals set forth above are incorporated herein by reference and made a part of this Agreement. Unless expressly provided herein, all exhibits attached hereto are incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth below their respective signatures.

[Remainder of page intentionally left blank; signature pages follow.]

CITY:

CITY OF MERRIAM, KANSAS

By: _____
Ken Sissom, Mayor

Attest:

Juliana Pinnick, City Clerk

Approved As To Form:

City Attorney

ACKNOWLEDGMENT

STATE OF KANSAS)
)ss.
COUNTY OF JOHNSON)

On this _____ day of _____, 2019 before me appeared Ken Sissom, who acknowledged himself to be Mayor of the City of Merriam, Kansas, and that he, as such and being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of said entity.

In Witness Whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

JCL:

**BOARD OF DIRECTORS OF THE
JOHNSON COUNTY LIBRARY**

By: _____
Bethany Griffith
Chair

Approved As To Form:

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

ACKNOWLEDGMENT

STATE OF_KANSAS)
)ss.
COUNTY OF JOHNSON)

On this _____ day of _____, 2019 before me appeared Bethany Griffith, who acknowledged herself to be Chair of the Board of Directors of the Johnson County Library, and that she, as such and being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of said entity.

In Witness Whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

EXHIBIT A

MEMORANDUM OF UNDERSTANDING (MOU)

[Remainder of page intentionally left blank; Exhibit A follows.]

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is entered into this 10th day of January, 2018, by and between the City of Merriam, Kansas with its principal office located at 9001 W. 62nd Street, Merriam, Kansas 66202 ("CITY") and the Board of Directors of Johnson County Library, Johnson County, Kansas, with administrative offices located at 9875 W. 87th St., Overland Park, Kansas 66212 ("JCL").

RECITALS

WHEREAS, the CITY is a municipal corporation organized under the laws of the state of Kansas; and

WHEREAS, JCL is a quasi-municipal corporation organized under the laws of the state of Kansas and is authorized to enter into this MOU by the powers vested in it by K.S.A. 12-1223 *et seq.*; and

WHEREAS, the CITY is the owner of real property located west of Slater Street and east of Ikea Way (the "Property") which is on land that is currently used as Lucyann C. Vavra Memorial Park and is legally described on Exhibit A, which is entitled "Legal Description of the Property to Be Conveyed by the City of Merriam to the Board of Directors of the Johnson County Library," and which is attached hereto and incorporated herein by reference; and

WHEREAS, the CITY has proposed a redevelopment plan for a project area contiguous with the Property, referred to as the Vavra Park Project ("Vavra Development"), which will be a development incorporating a community center, outdoor aquatic center, and shared parking structure serving the Vavra Development and which may include infrastructure improvements on the Property in contemplation of the redevelopment plan for such project area; and

WHEREAS, in a letter dated December 4, 2017, the CITY invited JCL to explore moving the current Antioch branch library and constructing a new library branch on the Property within the Vavra Development; and

WHEREAS, location of a new library -branch within the Vavra Development provides a unique and beneficial opportunity for both parties and for the community; and

WHEREAS, the parties desire to enter into this MOU setting forth their intentions with respect to their responsibilities to each other and this MOU memorializes the same subject to the terms, conditions and subsequent agreements as described herein.

NOW, THEREFORE, for the mutual promises and covenants contained herein, the parties agree as follows:

1. **PROJECT.** JCL intends to construct an approximately 16,000 square foot library branch that provides library services to the general public on the Vavra Development site (the "Project"). The Project will be constructed of high quality materials and will be architecturally compatible with the Vavra Development components. A general site plan depicting the location of the Project is marked as "Future Library Site" on Exhibit B attached hereto and incorporated herein by reference.

A. Development Review Process. JCL agrees to submit to the land use, development and building permit review and approval process related to the Project in accordance with the CITY's Code of Ordinances.

B. Parking. JCL shall utilize shared parking in the 66,800 sq. ft. shared parking structure serving the Vavra Development (the "Parking Structure") to satisfy the daily parking needs of the Project. The Parking Structure shall be constructed by the CITY at no cost to JCL as part of the Vavra Development and will provide free parking to the public. The parties will enter into a subsequent agreement setting forth the terms and conditions under which JCL will participate in an annual payment to assist with the maintenance of the Parking Structure. It is anticipated that the payment will be allocated in proportion to JCL's projected and then actual estimated use of the Parking Structure; the payment will not include any costs relating to the cost of construction. The fee will be adjusted every five years based upon the agreement of the parties as to JCL's estimated use of the Parking Structure for the previous year.

2. **LAND CONVEYANCE.** The CITY will sell the Property to JCL for the sum of \$1.00, to allow JCL to construct the Project defined herein.

A. Public Purpose. The CITY finds that use of the Property by JCL for a public library is a good public use and further finds that such Project and the patrons thereof will be beneficial to the City and the City's Vavra Development.

B. Value. The Property shall be sold for the sum of \$1.00 by the CITY to JCL for this Project consistent with the provisions of this MOU.

C. Conveyance.

(1) JCL, may, but is not obligated to, secure Title Insurance and/or an ALTA Survey on the Property, but shall do so at its expense.

(2) The CITY and JCL intend to enter into a Property Conveyance Agreement within one hundred eighty (180) days after execution of the MOU. The conveyance (or "Closing") will occur within thirty (30) days of the date upon which the Public Building Commission of Johnson County, Kansas is to meet to adopt resolutions to issue bonds in conjunction with the Project. To facilitate the development and building plan approvals, the CITY shall grant JCL the right to

make application for all of its development plan approvals and building permit submission prior to Closing.

(3) Closing is anticipated to occur in calendar year 2021. At Closing, the Parties shall prorate the ad valorem real estate taxes and special assessments on the Property as of the date of Closing. This MOU imposes no responsibility on JCL for payment of any ad valorem real estate and special assessments on the Property JCL would not otherwise be obligated by law to pay.

D. TIF District Has No Legal Effect on the Property. The parties acknowledge that portions of the Property that will be conveyed by the City to the Library lie in a tax increment financing district ("TIF District") created by the City. The City agrees no redevelopment project plan has been approved for the Property and the City will not undertake any approval of redevelopment project plan for the Property. The City further agrees that JCL shall in no way have any obligations arising under the TIF District for the Property and that the City shall indemnify and hold the Library harmless on any claims arising from such portions of the Property lying within the TIF District. Any depiction of a TIF District boundary line shown on the Future Library Site plan or other diagram shall have no effect on the Library or cause the Property to become subject to any TIF District.

3. **SCHEDULE.** JCL agrees to diligently pursue the Project subject to written agreement of the Parties addressing the Project's timeline. Provided JCL is diligently prosecuting the work, JCL shall not be in default so long as it is making reasonable progress in accordance with a timeline agreed upon by the JCL and CITY staff.

4. **OBLIGATIONS TO PROCEED.** The obligation of the parties to proceed beyond this MOU is dependent upon the following:

A. The CITY Governing Body must approve this MOU and comply with the provisions of K.S.A. 12-1301;

B. The Library Board of JCL must approve this MOU and then, pursuant to K.S.A. 12-1223, submit the MOU for ratification and approval by the Board of County Commissioners of Johnson County, Kansas;

C. CITY and JCL entering into a mutually agreeable Property Conveyance Agreement, which will then be submitted to the Board of County Commissioners of Johnson County, Kansas for ratification; and

D. JCL obtaining all applicable CITY development approvals.

5. **NO LIMITATION OF POWER.**

A. Nothing in this MOU shall be construed as a limitation on the ability of the CITY to exercise its governmental functions or to diminish, restrict or limit the police

powers of the CITY granted by the Constitution of the state of Kansas and the United States, statutes, or by general law.

B. Nothing in this MOU shall be construed as a limitation on the powers, rights, authority, duty and responsibility conferred upon and vested in JCL by the laws and Constitution of the state of Kansas and the United States.

6. COOPERATION. The Parties agree to exercise good faith and cooperate with each other to finalize and execute all documents and agreements necessary to complete the Project as contemplated herein and as required by CITY code or state law.

7. NOTICES. Any notice, request, approval, demand, instruction, or other communication to be given to either party hereunder, unless specifically stated otherwise herein, shall be in writing and shall be conclusively deemed to be delivered (i) when personally delivered, (ii) when deposited in the U.S. mail, sent by certified mail return receipt requested, (iii) when sent by overnight courier, or (iv) when sent by facsimile with a confirmed receipt, but in all cases addressed to the parties as follows:

To JCL: Sean Casserley, County Librarian
Johnson County Central Library
9875 W. 87th St.
Overland Park, KS 66212
Phone: 913-826-4600
Fax: 913-826-4730
Email: CasserleyS@jocolibrary.org

With a Copy to: Fred J. Logan, Jr.
Logan, Logan & Watson
8340 Mission Rd., Suite 106
Prairie Village, KS 66206
Phone: 913-381-1121
Fax: 913-381-6546
Email: flogan@loganlaw.com

To CITY: Meredith Hauck, Assistant City Administrator
City of Merriam
9001 W. 62nd Street
Merriam, KS 66202
Phone: 913-322-5515
Fax: 913-322-5505
mhauck@merriam.org

With a Copy to: Nicole Proulx Aiken, City Attorney
City of Merriam
9001 W. 62nd Street

Merriam, KS 66202
Phone: 913-568-5219
Fax: 913-322-5505
naiken@merriam.org

8. TERMINATION. Unless otherwise amended in writing, this MOU shall automatically terminate and be of no further force and effect upon the earlier of:

- A. Failure of JCL to obtain all applicable development approvals;
- B. Execution of a subsequent Development Agreement or similar instrument that expressly terminates this MOU;
- C. Failure of JCL to submit for a building permit within one hundred eighty (180) days after obtaining all applicable development approvals;
- D. Failure of JCL to commence vertical construction of the Project on or before forty-five (45) days following issuance of building permit unless mutually agreed upon in writing by the Parties;
- E. Completion of the Project as contemplated in this MOU; or
- F. Mutual Agreement of the Parties to terminate the MOU as evidenced in writing signed by both parties.

9. GENERAL MATTERS.

- A. This MOU shall be governed by and construed under the laws of the state of Kansas.
- B. Neither party shall assign this MOU without the written consent of both parties.
- C. The recitals set forth above are true and correct and are incorporated herein by reference and made a part of this MOU. This MOU constitutes the entire agreement between the Parties and supersedes all prior agreements, whether written or oral, covering the same subject matter. This MOU may be modified or amended only upon written instrument executed by the parties required to consent to such amendment.
- D. No member of the Governing Body, official or employee of the CITY shall be personally liable to JCL, or any successor in interest to JCL, pursuant to the provisions of this MOU or for any default or breach of the MOU by the CITY.
- E. No member of the Board of Directors, official or employee of JCL shall be personally liable or obligated to perform the obligations of JCL, pursuant to the provisions of this MOU or for any default or breach of the MOU by JCL.

F. The signatories to this MOU covenant and represent that each is fully authorized to enter into and to execute this MOU on behalf of the above named party.

G. It is agreed that nothing in this MOU is intended to, nor does it create or establish a joint venture between the CITY and JCL, or as constituting any agency relationship.

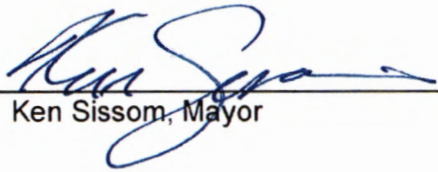
H. Nothing contained in this MOU shall be construed to confer upon any other party the rights of a third party beneficiary.

The parties have executed this MOU on the date first written above.

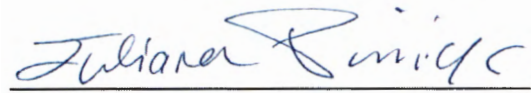
[Signature Pages Follow]

CITY OF MERRIAM, KANSAS

By: _____


Ken Sissom, Mayor

Attest:

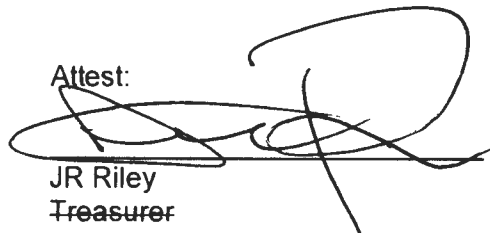

Juliana Pinnick, CITY Clerk

Approved As To Form:


Nicole Proulx Aiken, CITY Attorney

**BOARD OF DIRECTORS OF JOHNSON
COUNTY LIBRARY**

By: 
Bethany Griffith
Vice Chair

Attest: 
JR Riley
Treasurer

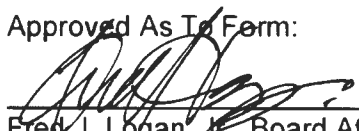
Approved As To Form:

Fred J. Logan, Jr., Board Attorney

EXHIBIT A

**Legal Description of the Property to Be Conveyed by the City of Merriam
to the Board of Directors of the Johnson County Library**

November 9, 2018

EXHIBIT A
DESCRIPTION FOR FUTURE LIBRARY LITE IN MERRIAM, KANSAS
PART OF LOT 1, VAVRA
CITY OF MERRIAM, JOHNSON COUNTY, KANSAS

All that part of Lot 1, VAVRA, a subdivision of land in the City of Merriam, Johnson County, Kansas, more particularly described as follows:

Commencing at the most Easterly Southeast corner of said Lot 1, said point also being on the West right-of-way line of Slater Street, as now established; thence N 2° 01' 52" W, along the East line of said Lot 1 and along the West right-of-way line of said Slater Street, a distance of 175.86 feet, to the point of beginning; thence S 87° 57' 16" W, a distance of 212.79 feet; thence N 2° 05' 17" W, a distance of 147.08 feet; thence N 23° 19' 56" E, a distance of 91.91 feet; thence S 70° 02' 51" E, a distance of 187.18 feet, to a point on the East line of said Lot 1 and the West right-of-way line of said Slater Street; thence S 2° 01' 52" E, along the East line of said Lot 1 and along the West right-of-way line of said Slater Street, a distance of 160.00 feet, to the point of beginning, containing 41,270 square feet, more or less, equal to 0.947 acres, more or less.



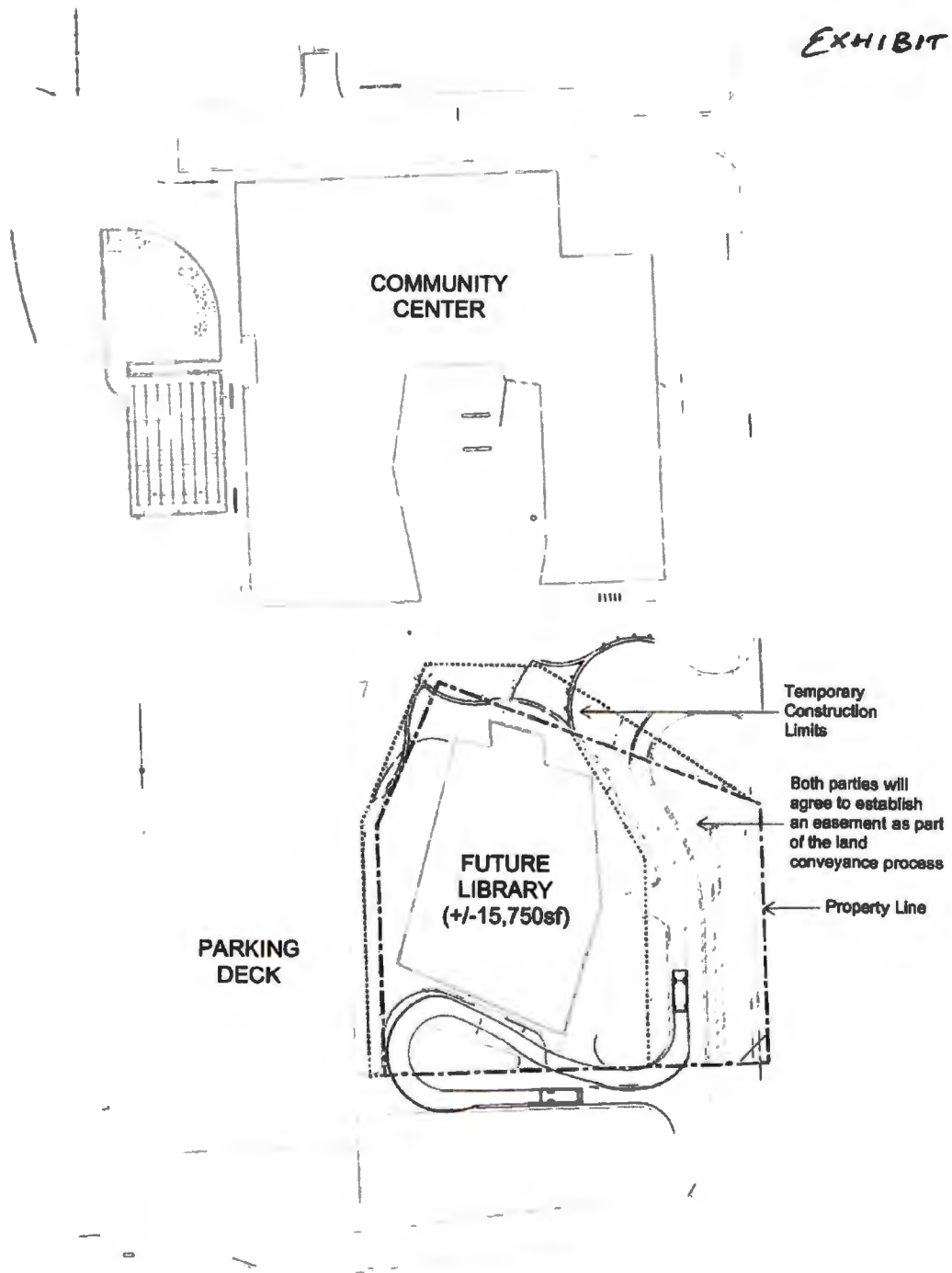


McClure Engineering Company
11250 Corporate Avenue
Lenexa, Kansas 66219
www.mccluresolutions.com




C:\Users\slloyd\AppData\Local\Microsoft\Windows\NetCache\Content.Outlook\CRPLQ37NM\Merriam Library.docx

EXHIBIT B

Future Library Site



PLAN KEY

-  Both parties will agree to establish an easement as part of the land conveyance process
-  Temporary Construction Limits
-  Library Property Line



FUTURE LIBRARY SITE



EXHIBIT B

LEGAL DESCRIPTION AND SURVEY OF THE PROPERTY
TO BE CONVEYED BY THE CITY OF MERRIAM TO
THE BOARD OF DIRECTORS OF THE JOHNSON COUNTY LIBRARY

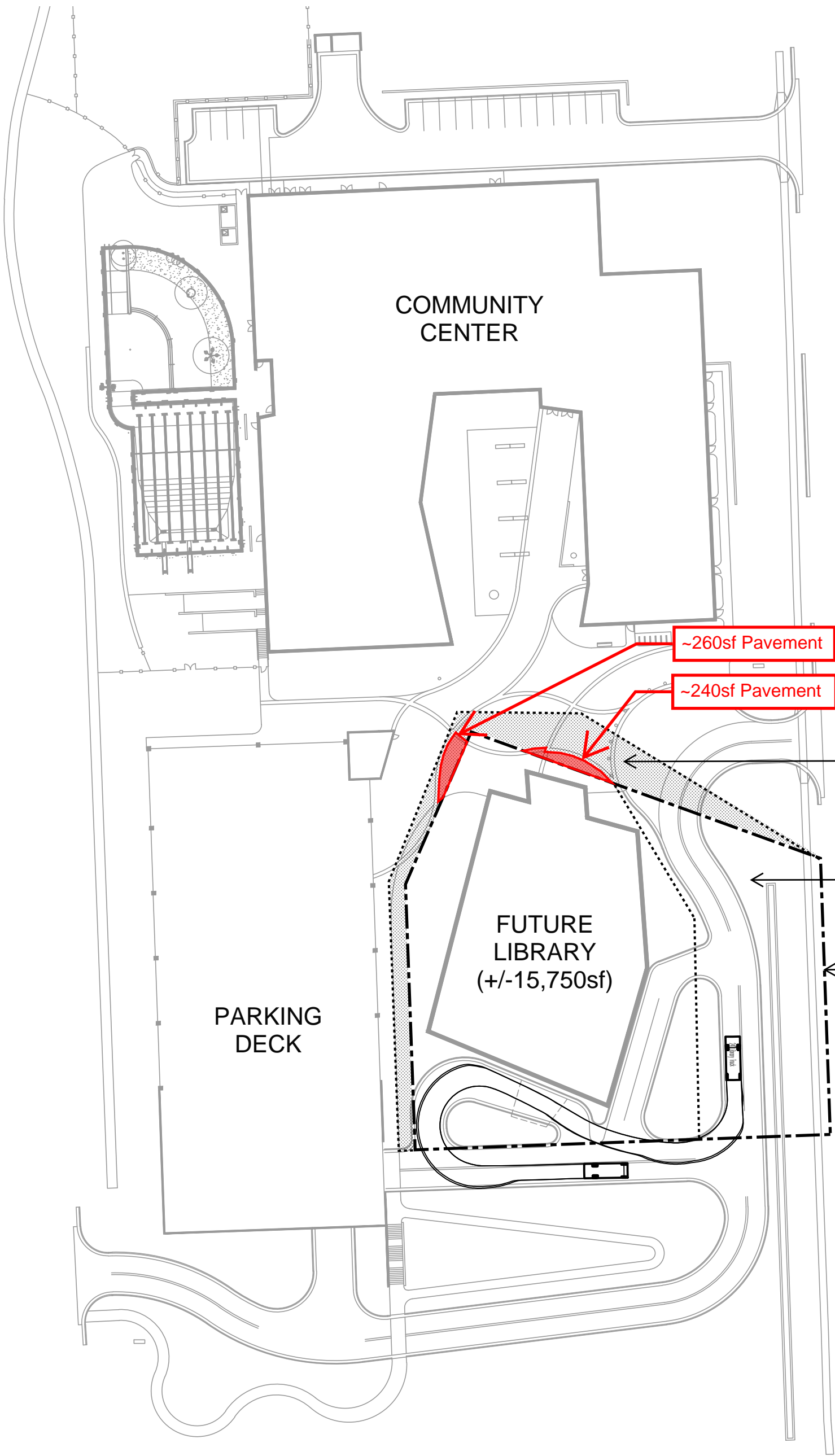
[Remainder of page intentionally left blank; Exhibit B follows.]

EXHIBIT C

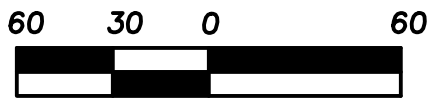
VAVRA DEVELOPMENT AND LIBRARY BRANCH

DEVELOPMENT DIAGRAM

[Remainder of page intentionally left blank; Exhibit C follows.]



DEVELOPMENT DIAGRAM



PLAN KEY

- Both parties will agree to establish an easement as part of the land conveyance process
- Temporary Construction Limits
- Library Property Line

EXHIBIT D

DETAIL PROJECT TIMELINE

[Remainder of page intentionally left blank; Exhibit D follows.]

Antioch Replacement Anticipated Timeline

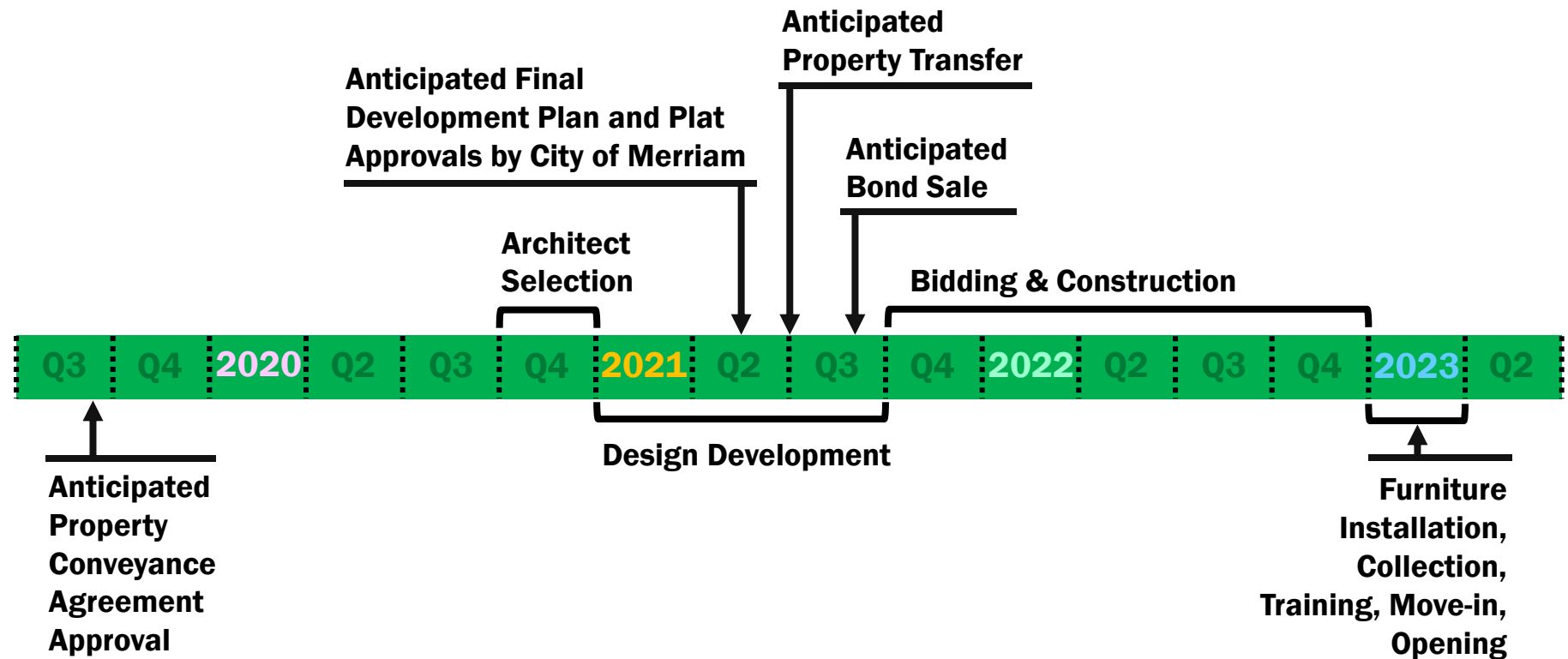
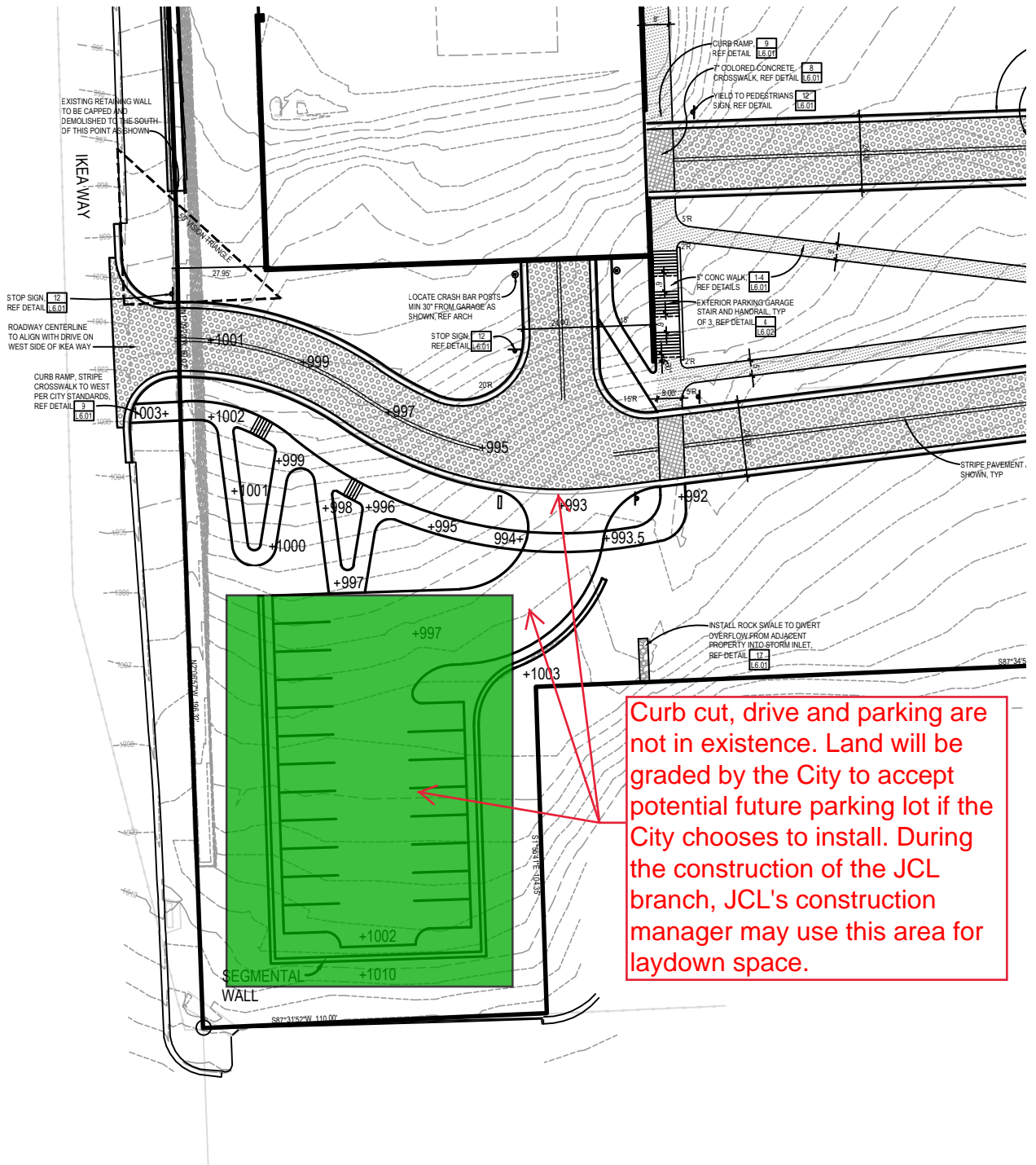


EXHIBIT E

LAYDOWN AREA DIAGRAM

[Remainder of page intentionally left blank; Exhibit E follows.]

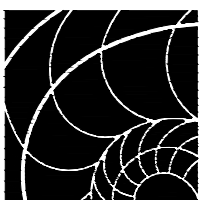


Curb cut, drive and parking are not in existence. Land will be graded by the City to accept potential future parking lot if the City chooses to install. During the construction of the JCL branch, JCL's construction manager may use this area for laydown space.



SCHEMATIC SOUTH PARKING LOT LAYOUT

SCALE: 1"=50'-0"



**The
Clark
Enersen
Partners**

Architecture + Landscape Architecture + Engineering + Interiors
2812 W. 53rd Street Fairway, KS 66205-1706
913.433.2110
Lincoln, NE Kansas City, MO www.clarkenersen.com

Merriam Community Center
Merriam, Kansas
TCEP Project No.: 196-001-18

Parking Lot Update
7 April 2019

Library

To: Johnson County Library Board of Directors
From: Sean Casserley, County Librarian
Date: October 10, 2019
Re: **Cedar Roe Roof Replacement – Building Closure**

Issue: Consider approving the closure of the Cedar Roe library from October 27, 2019 to December 29, 2019, to allow replacement of the flat portion of the roof.

Suggested Motion: I move the Johnson County Board of Directors approve the temporary closure of Cedar Roe library to allow replacement of the flat portion of the roof.

Background: This briefing sheet is a companion to the Cedar Roe Roof Replacement – Roofing Contract. Information from the Background section of that briefing sheet is duplicated below:

The flat portion of roof at Cedar Roe Library has several layers of roofing material installed. All layers of this portion must be removed before replacement can occur.

Analysis: Because of the small parking lot at Cedar Roe Library, the use and positioning of a crane, and the need to stage machinery, equipment, crews, and materials; the Library is requesting temporary closure – anticipated from October 27, 2019 to December 29, 2019.

The closure period will also allow Facilities staff an opportunity to deep clean the interior of the building.

In anticipation of this work, a project team has been established to coordinate patron communication regarding the impacts of the closure.

During the project, it is anticipated that:

- Cedar Roe staff will be temporarily relocated to other locations
- Patron holds will be temporarily relocated to the Antioch library
- The Cedar Roe collection will be temporarily shadowed from view

Alternatives: 1) Not close the building – this will require Library and Facilities staff to postpone the roofing project.

Recommendation: Approve the temporary closure of Cedar Roe library to allow replacement of the flat portion of the roof.

Library

To: Johnson County Library Board of Directors
From: Sean Casserley, County Librarian
Date: October 10, 2019
Re: **Cedar Roe Roof Replacement – Roofing Contract**

Issue: Consider authorizing a contract with Godard & Son Roofing Co., Inc. for a total amount not to exceed \$58,391.00 for partial roof replacement at the Cedar Roe Library, per Invitation for Bid (IFB) No. 2019-100.

Suggested Motion: I move to authorize a contract to Godard & Son Roofing Co., Inc. for roofing replacement at the Cedar Roe Library, for a total amount not to exceed \$58,391.00 per Invitation for Bid (IFB) 2019-100.

Background: The flat portion of roof at Cedar Roe Library has several layers of roofing material installed. All layers of this portion must be removed before the replacement can occur. Because of the small parking lot and location of work, the Library must be closed to provide room for staging of machinery, equipment, crews, and materials. The work will require the use of a crane. Because of these impacts, a companion briefing sheet recommending building closure will accompany this one.

Analysis: On August 23, 2019 the Treasury and Financial Management Department issued an Invitation for Bid (IFB) No. 2019-100 for partial roof replacement at Cedar Roe Library. The IFB was advertised in the local newspaper and posted electronically on the Johnson County KS website, Drexel Technologies plan room, and Johnson County electronic bidding site powered by lonwave Technologies.

A mandatory pre-bid meeting was held on September 3, 2019 at the Cedar Roe Library with fourteen (14) contracting firms in attendance. Bids were opened on September 12, 2019 with six (6) responsive bids received.

Bidder:	Bid:
Godard & Son Roofing Co., Inc.	\$58,391.00
Premier Contracting Inc.	\$64,347.00
Farha Roofing KC LLC (Farha Roofing)	\$67,000.00
American Roofing Inc.	\$68,637.00
Triad, Inc.	\$80,807.00
Safe Harbor Commercial Roofing Inc.	\$104,026.00

The low and responsive bid was submitted by Godard & Son Roofing Co., Inc. This bid is within available designated funds. RTI Consultants, the consultant assisting the Library on this project, is in agreement with the Library, Facilities, and Purchasing on the recommended award to Godard & Son Roofing Co., Inc.

Library staff advises the Library Board that the Invitation for Bid was issued and administered, and this award recommendation is made, in compliance with County purchasing policies and procedures.

Alternatives: 1) Not authorize the Contract.

Legal Review: Library Legal counsel has reviewed and approved the contractor agreement as to form and recommends its approval.

Library

Funding Review: These funds have been allocated in the approved Capital Replacement Plan.

Recommendation: Authorize a contract to Godard & Son Roofing Co., Inc. for roofing replacement at the Cedar Roe Library, for a total amount not to exceed \$58,391.00 per Invitation for Bid (IFB) 2019-100.

Suggested Motion: I move to authorize a contract to Godard & Son Roofing Co., Inc. for roofing replacement at the Cedar Roe Library, for a total amount not to exceed \$58,391.00 per Invitation for Bid (IFB) 2019-100.

Attachments: Overhead map showing affected areas, Recommendation letter from RTI Consultants.

DRAFT AIA® Document A104™ – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

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

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

« Johnson County Library »« »
«
«9875 W 87th St. »
«Overland Park, Kansas 66212 »

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

«Godard & Son Roofing Company, Inc.»« »
«900 SW Powell Dr. »
«Oak Grove »
« MO 64075»

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

«Johnson County Library, Cedar Roe Library
IFB #2019-100»
«5120 Cedar St »
«Roeland Park, Kansas 66205»

The Architect OR the Engineer, hereinafter the Architect:
(Name, legal status, address and other information)

«RTI Consultants»« »
«C/o Mike Gerstner»
«22117 W. 83rd Street
Lenexa, Kansas 66227»
« (913) 649-6565»

. Whenever the terms “Architect” or “Architect’s” appear in the provisions or headings of the Contract Documents, such terms shall be replaced with “Consultant” or “Consultant’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.

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

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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.

☒ [« X »] 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: «December 28, 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 «T\$58,391.00» (\$ «Fifty eight thousand three hundred and ninety one dollars 00/100»), 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.)

«N/A»

§ 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)
2" Tectum Panels	sqft	\$20.00

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

Item	Price
Unforeseen Damage relating to roof substrate	\$10,000.00

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

<< >>

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

§ 3.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

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

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.)

☒ Litigation in a court of competent jurisdiction

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 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.)

« »

§ 6.1.3 INTENTIONALLY OMITTED

§ 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	
Cover Page	Cover Page	July 2019	
A101	Roof Drawing	July 2019	
A102	Details	July 2019	
A103	Details	July 2019	

§ 6.1.6 The Addenda, if any:

Number	Date	Pages
Addendum 1	August 27, 2019	1
Addendum 2	September 4, 2019	4

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

.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. 2019-100
Executed Bid Bond
Executed Performance Bond

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

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

§ 7.2 The Contract

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

§ 7.3 The Work

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

§ 7.3.1 The Project

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

§ 7.3.2 Knowledge

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

§ 7.3.3 Persistently

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

« »

§ 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.

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 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.

§ 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 Architect shall be responsible for promptly notifying the Owner of the failure of the Contractor, Subcontractors, or any other persons performing any of the Work, in failing to use proper construction means and method, techniques sequences, procedures, safety precautions and programs, but only to the extent the Architect becomes aware of, or should, exercising due professional diligence, be aware of the same, and shall also promptly notify the Owner in writing of the failure of any of the foregoing parties to carry out the Work in accordance with the Contract Documents.

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

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

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 9.2, 9.4 and 9.9. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the

Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

§ 10.9 INTENTIONALLY OMITTED

ARTICLE 11 SUBCONTRACTORS

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

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

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

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

ARTICLE 13 CHANGES IN THE WORK

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

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

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

§ 13.4 INTENTIONALLY OMITTED

ARTICLE 14 TIME

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

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

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

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

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

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

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

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

Additionally, with each Application for Payment, the Contractor shall submit the current Construction Schedule including updated cost loading reflecting all changes to date to the Cost of the Work.

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

§ 15.2 Control Estimate

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

§ 15.2.2 The Control Estimate shall include:

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

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

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

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

§ 15.3 Applications for Payment

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

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

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

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

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

§ 15.4 Certificates for Payment

§ 15.4.1 Procedure:

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

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 The Architect will withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or,

because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

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

§ 15.4.4 INTENTIONALLY OMITTED

§ 15.5 Progress Payments

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

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

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

§ 15.5.4 INTENTIONALLY OMITTED

§ 15.6 Substantial Completion

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

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

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

commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 15.7 Final Completion and Final Payment

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

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

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

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

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

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

§ 16.1.2 The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone

for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

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

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

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

§ 16.2 Hazardous Materials and Substances

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

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

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

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

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

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

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

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

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall carry and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall carry and maintain in force for the duration of the Contract the insurance required by this Agreement, underwritten by insurer(s) lawfully authorized to write insurance in the state of Kansas, insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in Article 17.1.2 of the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations under Section 9.16. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. The Contractor shall cause the commercial liability coverage required by the Contract Documents to include: (1) Owner, specifically" the Johnson County Library", Johnson County, Kansas and their respective officers, Commissions, Agencies and employees, ," and the Architect and the Architect's Consultants as Additional Insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations and during the Contractor's completed operations. The Additional Insured requirement, as to the 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:

<< >>

§ 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, 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 two five million (\$2,000,000) per occurrence and two million (\$2,000,000) 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.

The Board of Directors of the Johnson County Library and the Board of County Commissioners, Johnson County, KS, and their officers, Commissions, Agencies and employees shall be named as Additional Insured, on a primary and non-contributory basis, under the Commercial General Liability policy. The Additional Insured requirement 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:

Johnson County Library
Board of Directors of the Johnson County Library
And Board of County Commissioners
Johnson County, Kansas
c/o Risk Manager
111 South Cherry Street, Suite 2400 Olathe, Kansas 66061-3486

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

§ 17.1.11 The Contractor understands and agrees that any insurance or self-insurance maintained by the Johnson County Library, 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 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.

§ 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 17.3 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 Owner's request, provide a copy of the property insurance policy or policies required by this Section 17.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

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

§ 17.3.7 Waiver of Subrogation

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

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

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

§ 17.3.9 Other Insurance Provided by the Owner

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

Coverage	Limits
----------	--------

§ 17.4 Bonds

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

§ 17.4.2 INTENTIONALLY OMITTED

ARTICLE 18 CORRECTION OF WORK

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

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

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

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

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

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

§ 18.6.1 If a portion of the Work has been covered which the Architect has not specifically requested to observe prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If

such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or one of the other Contractors in which event the Owner Shall be responsible for payment of such costs.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

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

§ 19.2 Governing Law

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

§ 19.3 Tests and Inspections

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

§ 19.4 The Owner's representative:

(Name, address, email address and other information)

«Juan Lopez-Tamez, Project Manager»
«Johnson County Facilities Management»
«111 South Cherry Street, Suite 2100»
«Olathe, Kansas 66061»
«913.715.1132»
«juan.lopez-tamez@jocogov.org»

§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

«Aliven Godard»
« J.R. Godard»
« 900 SW Powell Dr. »
« Oak Grove»
« MO 64075 »
« 816.625.1237, 816.228.9286 »

§ 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.

§ 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.

§ 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

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

ARTICLE 21 CLAIMS AND DISPUTES

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

§ 21.2 Notice of Claims

§ 21.2.1 INTENTIONALLY OMITTED

§ 21.2.2 INTENTIONALLY OMITTED

§ 21.3 Time Limits on Claims

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 INTENTIONALLY OMITTED

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

OWNER (Signature)

« Johnson County Library, T Sean Casserley, County Librarian
»« »

(Printed name and title)

CONTRACTOR (Signature)

« »« »

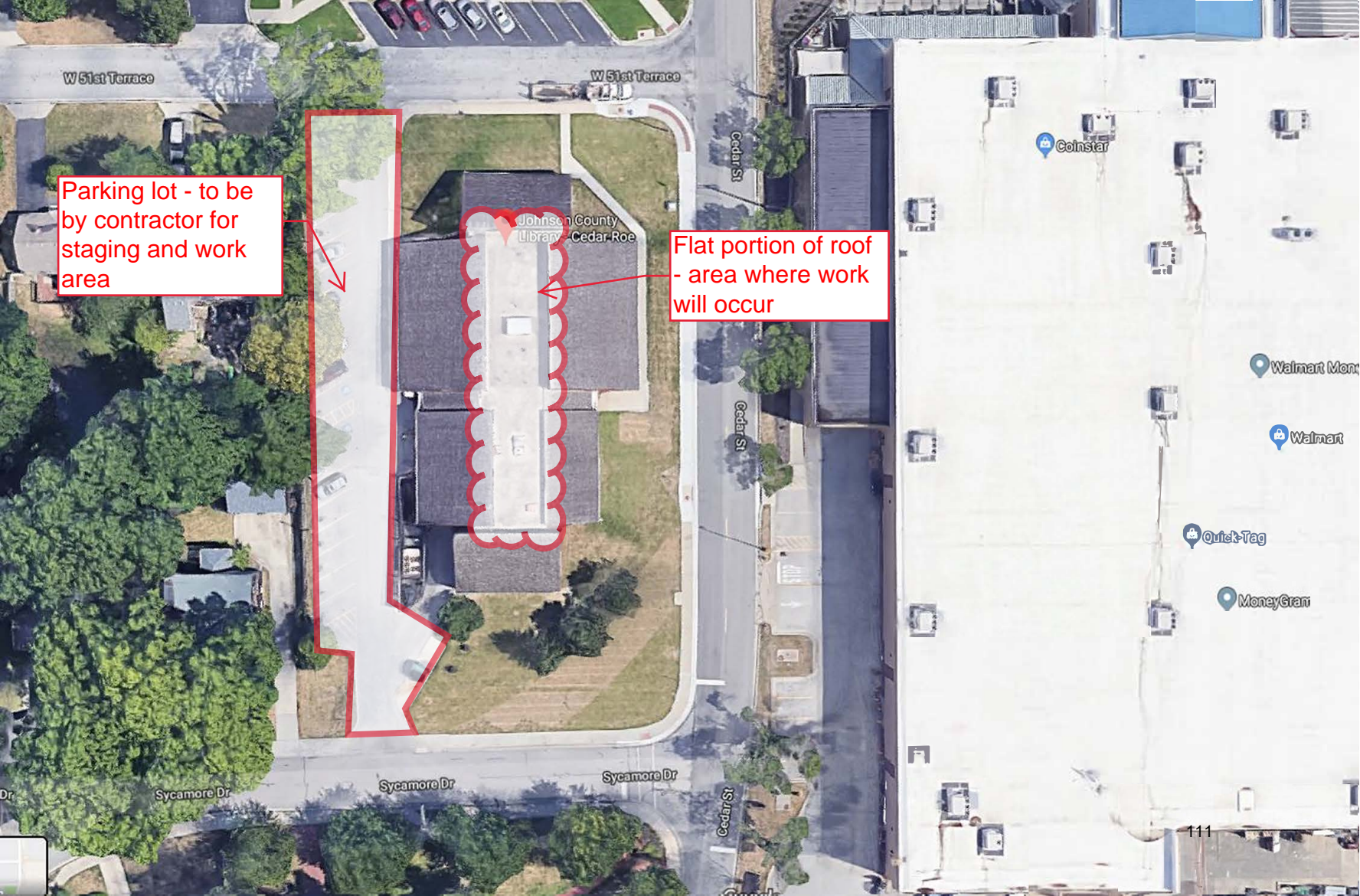
(Printed name and title)

Attest:

APPROVED AS TO FORM:

Fred J Logan Jr.

Counsel to the Board of Directors of the Johnson County Library



Parking lot - to be
by contractor for
staging and work
area

Flat portion of roof
- area where work
will occur

Library

To: Johnson County Library Board of Directors
From: Sean Casserley, County Librarian
Date: October 10, 2019
Re: **Informational Item: Consideration of MOU with County Facilities**

Issue: Consider partnering with County Facilities for custodial management and maintenance of Library Facilities. This is informational at this time, no action requested.

Background:

JCL has worked in partnership with County Facilities since 2007, using them to assist us with and manage our Capital Improvement Projects. This partnership has been extremely successful and beneficial to JCL. County Facilities has the expertise to manage these large projects whereas Library staff does not. It has freed up Library staff time to focus on the things we are good at – serving JCL patrons.

In July, staff brought the temporary outsourcing of custodial services to the Library Board for approval. This partnership has been in place for three months and has proven to be successful. JCL buildings are cleaned to county standards; County Facilities has addressed some long-standing training issues; vacant custodial positions are in the process of being filled by County; custodial staff is better using the tools available to identify work; Facilities staff has been meeting with custodial staff regularly and we are seeing great results.

Analysis:

We would like the Board to consider allowing us to extend our partnership for the entire management of JCL Facilities to County Facilities. This proposed MOU incorporates the current MOU we have with County Facilities and expands it to include the management of custodians and building maintenance. It also would include the management of our fleet. We feel this will be beneficial to us because County Facilities has greater expertise to evaluate our current systems, to maintain our buildings, and to ensure staff is trained appropriately. It allows us to take advantage of economies of scale in purchasing. We are confident in the service that is already provided to us by County Facilities and feel this is a natural next step. The Johnson County Library Board would continue to own or lease all its buildings and properties.

County Facilities successfully manages the maintenance and custodial services of over 40 other county buildings, totaling ~2.25M square feet. JCL currently uses County HR to manage all our HR issues. We also successfully and cooperatively work with the county Department of Technology and Information (DTI). This proposed MOU is another step in continuing to work cooperatively with Johnson County and to be as efficient as possible with JCL resources.

Alternatives: One alternative is to maintain the current structure. We could outsource the cleaning of our buildings to a third party vendor. We could outsource our HVAC systems and temperature controls to a third party vendor.

Legal Review: Both JCL Legal and County Legal have reviewed and approved this Memorandum of Understanding

Budget Approval: Both County and JCL Budget have been working very closely to figure out and understand the budget implications. JCL would transfer the FTEs to County Facilities to manage but would continue to pay for the salaries and benefits. JCL would continue to pay for

Library

all services through budget transfer to the County Facilities general fund. JCL and County Facilities would work together on future budgets to ensure that the service is being funded at the appropriate level. In future years, JCL will need to budget increases to ensure that County Facilities is able to clean and maintain to the standards set forth. This may include some additional staffing requests.

Recommendation: This is for your information only. In November, we will request the Board take action for approval.

This Memorandum of Understanding (MOU) to take effect January 1, 2020, memorializes the agreement between the Board of Directors of the Johnson County Library ("Library") and the Johnson County Facilities Management Department ("Facilities Department") for the Library to outsource management of Library custodians as well as the maintenance of Library buildings to the Facilities Department. This MOU supersedes any and all previous memoranda regarding the subject matter contained herein.

SECTION 1:

1. The Library owns and operates library facilities in the Johnson County Library taxing district pursuant to K.S.A. 12-1223. It also establishes regulations for those facilities pursuant to K.S.A. 12-1225.
2. The Facilities Department has expertise in the planning, design, renovation, construction, and maintenance of public facilities, as well as custodial services.
3. The Library governs all Library owned and leased buildings and properties in the Johnson County Library system. The Library and the Facilities Department agree to cooperate to provide the finest Library facilities and the best possible service for Library staff and patrons.
4. The Library has been and intends to continue to make use of the Facilities Department's expertise, particularly in planning, design, renovation and construction projects, including pending projects associated with the Comprehensive Library Master Plan. The Library and the Facilities Department accordingly agree that on such projects the Department will provide the Library consultation and management services on the overall planning, coordination, and control of project(s) from beginning to completion, aimed at meeting the Library's requirements in order to produce functionally and financially viable project(s) (hereinafter "Services"). Such Services shall include planning; budgeting; consultant and contractor relationships; and implementation and management of consultant and contractor agreements and consultant and contractor payments on such projects.
5. The Facilities Department will complete work utilizing one full-time Project Manager IV, one Project Manager III, and one Project Manager II to work on capital projects. The Library will provide the budget funding to cover the costs of these positions. The Library agrees to provide such funding to support these positions and agreed upon additional FTE's 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.*

6. The Facilities Department will complete cleaning and custodial services of Library facilities utilizing a Custodial Supervisor as well as the 11 FTE of Custodial I and 3 FTE of Custodial II. The Library will provide the budget funding to cover the costs of all positions. The Library agrees to provide such funding to support these positions and agreed upon additional FTE's 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 Facilities Department.*
7. The Facilities Department will complete maintenance of Library facilities utilizing a Building Engineer (supervisor), four Maintenance Techs and one support clerk. The Library will provide the budget funding to cover the costs of all positions. The Library agrees to provide such funding to support these positions and agreed upon additional FTE's 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.*
8. The positions funded by the Library, as described in paragraphs 5, 6 and 7 shall have their primary responsibilities providing to the Library the services described in Appendix A. The Library recognizes that the personnel in such positions may, from time to time, be assigned tasks or projects for the benefit of the Department or the County.

SECTION TWO: FACILITIES DEPARTMENT'S RESPONSIBILITIES.

1. Standard of Service: Ensure that Library buildings are cleaned to the County standard set forth by the Facilities Department and as outlined in Appendix A and provide the expertise and consultation and management services described in section 1.4 above.
 - a. Evaluate needs and make recommendations to the Library regarding staffing needs.
 - b. Evaluate and make recommendations for facilities improvements that have not been made.
 - c. Provide Performance Measurement reports on a quarterly basis.
2. Hiring: Perform hiring tasks as needed.
3. Supervision: Provide supervision and management of all staff transferred to the Facilities Department.
4. Training: Ensure proper training of all facilities positions.
5. Uniforms and Supplies. The Facilities Department will be responsible for purchasing custodial and maintenance uniforms and supplies.
6. Contracts: Include the Library in appropriate contracts for facilities needs and maintenance

7. Budget Planning: The Facilities Department will work with the Library annually to review and plan for budget requests on the Library's budget cycle.
8. Fleet Maintenance. The Facilities Department will assume responsibility for management of the Library's fleet.
 - a. Manage the maintenance of all Library vehicles
 - b. Manage the life cycle replacement of all Library vehicles
9. Communication. Facilities Department representatives will attend meetings with Library staff as needed or as appropriate to maintain a strong level of communication.

SECTION THREE: LIBRARY'S RESPONSIBILITIES.

1. Budget. The Library shall cover all related costs as it relates to the management of Library facilities.
 - a. The Library will transfer the FTEs and the appropriate funds to cover salary and benefits to the Facilities Department for all facilities staff.
 - b. The Library will pay necessary operating costs each year to the Facilities Department to cover the cost of supplies, training, maintenance, contracts that support the Library, uniforms, parts and technology needs.
 - c. The Library will pay all related fees as they relate to fleet management.
 - d. The Library will pay for outsourced cleaning as needed.
 - e. The Library will facilitate an asset transfer for fleet units used by the Facilities Maintenance staff.
2. Building Access. The Library shall provide a security key card to the Facilities Department's supervisors to access all Library facilities during its tenure, and be granted 24-hour access in order to assess the work of Library custodians and the quality of their work.

SECTION FOUR: MISCELLANEOUS.

1. This MOU shall begin January 1, 2020 and run through December 31, 2020 unless the agreement is terminated by either party, in writing, with no less than 30-day's notice. This MOU may be renewed for additional one-year terms upon the approval of the Library and the Facilities Department.
2. This Agreement and any renewal thereof, is subject to the provisions of the Kansas Cash Basis Law, *K.S.A. 10-1101 et seq.*, and amendments thereto (the "Act"). By virtue of this Act, the Library is obligated only to pay periodic payments as contemplated herein as may lawfully be made from funds budgeted and appropriated for that purpose during its current budget year (i.e., January 1 to December 31) or from funds made available from any lawfully operated revenue producing source.

3. This Agreement represents the entire agreement between the parties with respect to services required hereunder and supersedes any and all previous understandings, whether oral or written, between the parties regarding the same.

Date

Director, Johnson County Facilities
Management Department

Date

Johnson County Manager

Date

Johnson County Librarian

Date

Chair, Board of Directors of the
Johnson County Library