



**Board Report  
March 9, 2017**

IF YOU REQUIRE ANY ACCOMMODATION (I.E. QUALIFIED INTERPRETER, HEARING ASSISTANCE, ETC) IN ORDER TO ATTEND THIS MEETING, PLEASE NOTIFY THE CENTRAL RESOURCE LIBRARY AT (913) 826-4600 NO LATER THAN 48 HOURS PRIOR TO THE SCHEDULED COMMENCEMENT OF THE MEETING.

AGENDA

JOHNSON COUNTY LIBRARY BOARD OF DIRECTORS  
REGULAR MEETING, MARCH 9, 2017  
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. Pam Robinson, Board Chair
  - C. Friends of the Library, Dorothy Hughes
  - D. Susan Mong, Executive Director, Johnson County Library Foundation
  - E. Commissioner Ashcraft, Liaison, Board of County Commissioners
- IV. Reports
  - A. Board Counsel – Fred Logan
  - B. County Librarian Report
    - 1. Finances and Statistics – Nicki Neufeld ..... 8
      - a) Proposed 2018 budget
    - 2. Strategic Plan – Sean Casserley
      - a) Staff Day
      - b) Annual Operating Plan update
    - 3. Comprehensive Library Master Plan – Scott Sime
      - a) Monticello update .....16
      - b) Lenexa City Center update .....22
        - i. Hollis+Miller architects Schematic Design presentation
      - c) Blue Valley update .....25
    - 4. Updates – Sean Casserley
      - a) Interview with Candice Millard
      - b) MakerSpace press coverage
      - c) Jack Gantos author visit
- V. Consent Agenda
  - A. Action Items:
    - 1. Minutes of the February 9, 2016 Library Board meeting .....28
  - B. Information Items
    - 1. Summary of New and/or Renewed Contracts .....36
    - 2. Financial and Personnel
      - a) The County Librarian and the Finance Director certify those payment vouchers and personnel authorizations for January 2017 were handled in accordance with library and County policy.

b) The January 2017 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 .....  | 37  |
| VI.   | New Business  |     |
| A.    | Board Action: Consideration of revised ARM 50-30-25, "Contracts" .....  | 38  |
| B.    | Board Action: Consideration of approval of contract with Premier Consulting, Inc. for the Phase 2 Re-Roof project at the Central Library for the amount of \$393,465.00 ..... | 46  |
| C.    | Board Action: Consideration of approval of the proposed revised interlocal agreement with Olathe Public Library .....   | 98  |
| D.    | Board Action: Consideration of approval of proposed 2018 budget .....   | 103 |
| VII.  | Executive Session   |     |
| VIII. | Adjournment   |     |

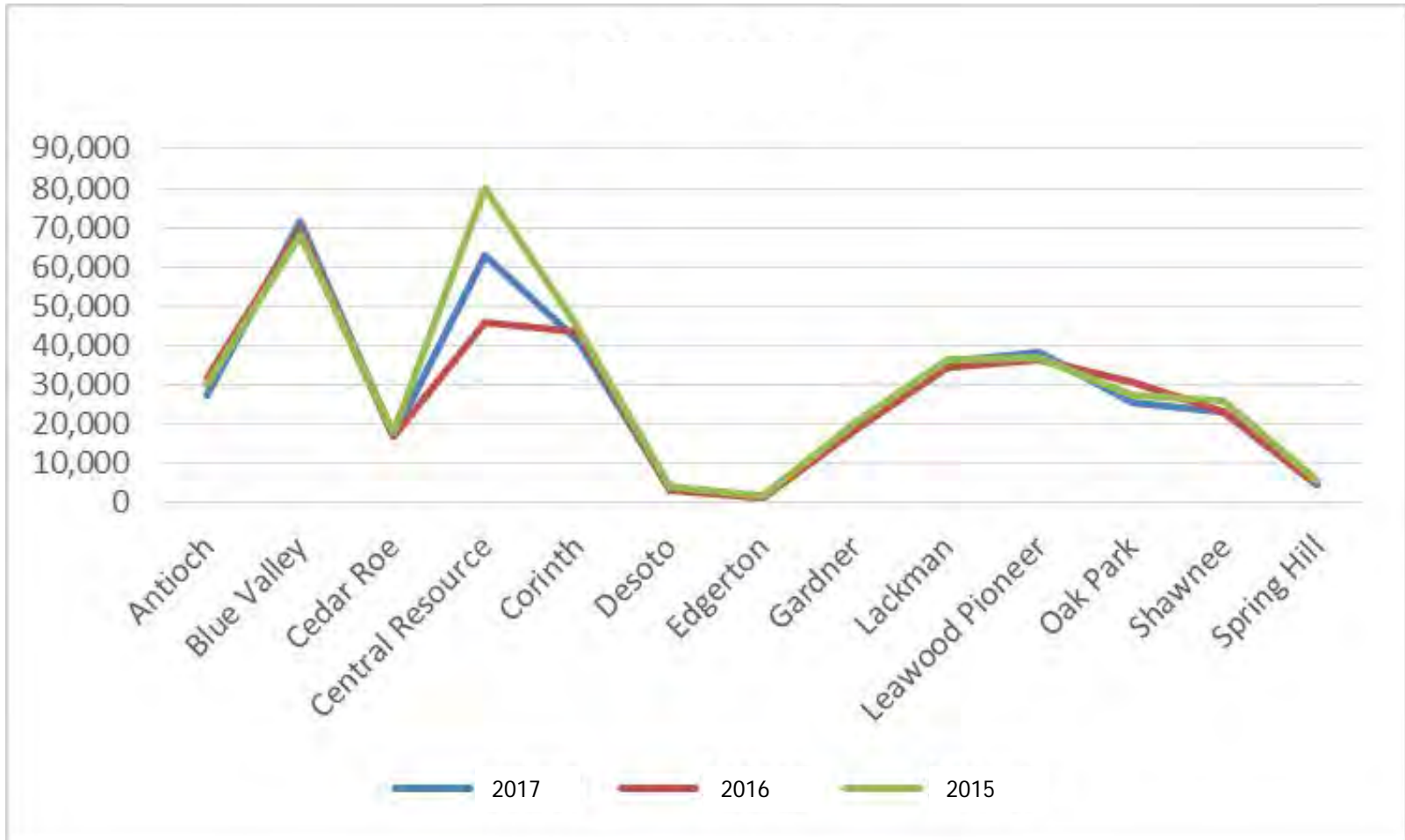
# County Librarian's Report

Presented March 9, 2017

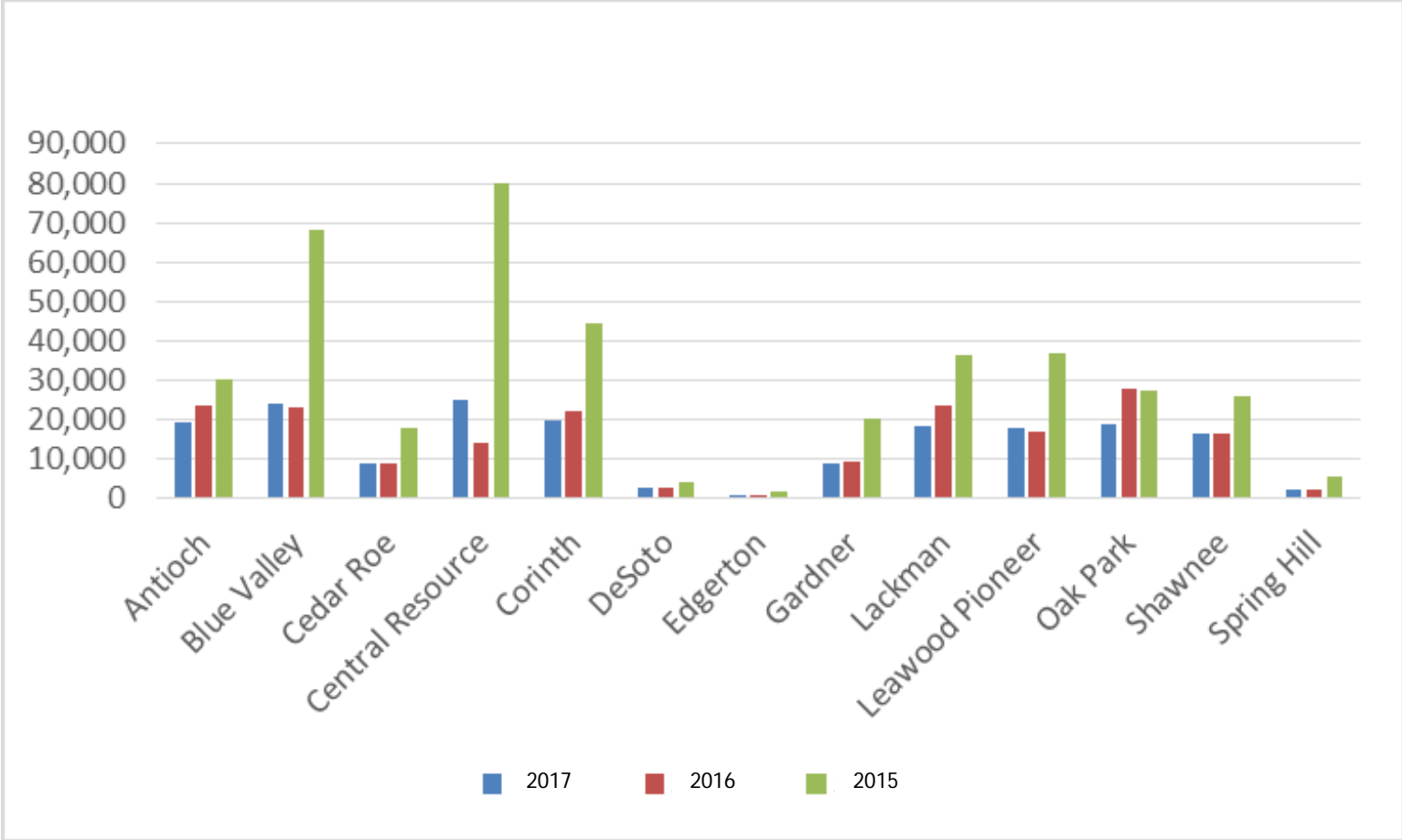
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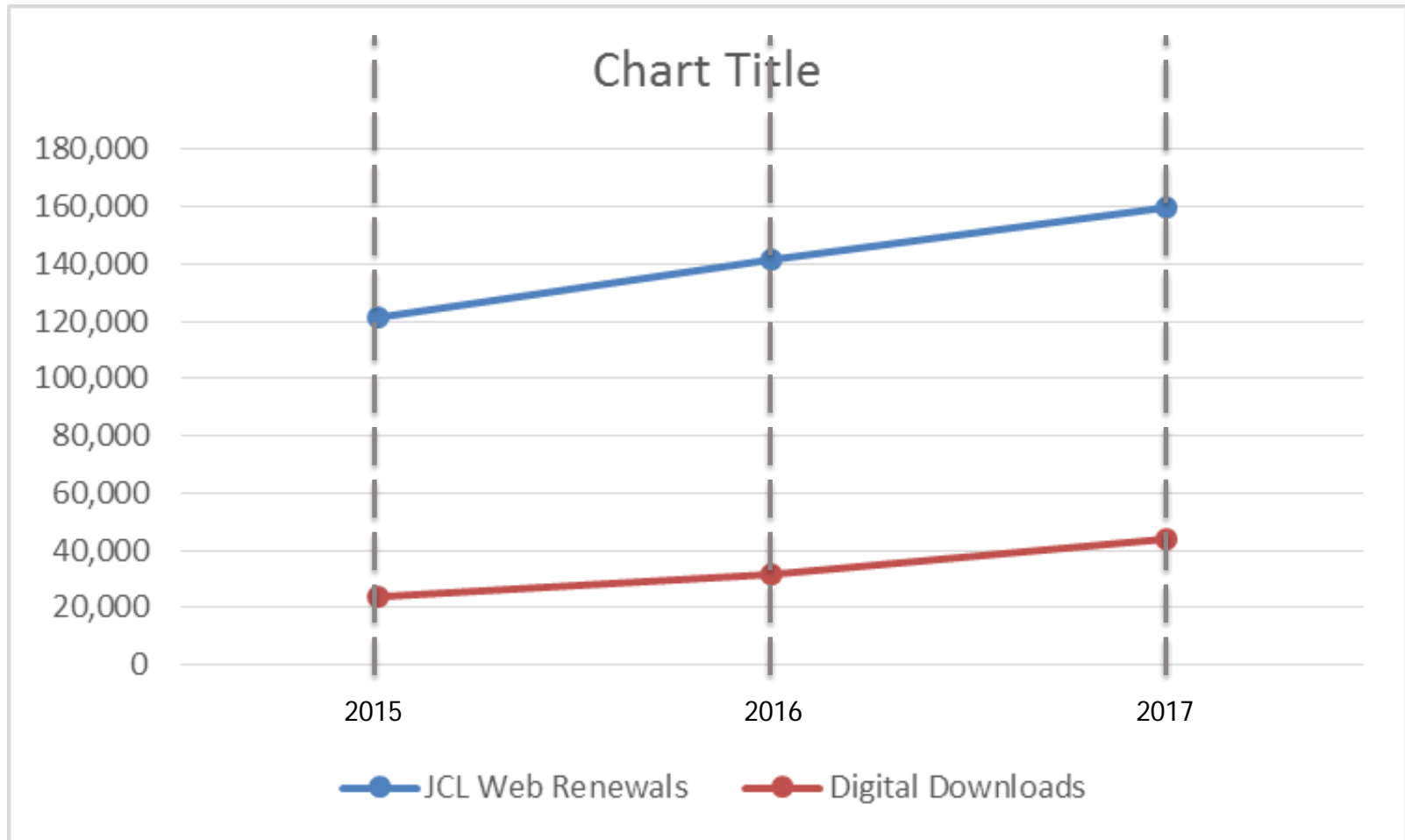
# Branch Circulation: January 2017



# Branch Visits: January 2017



# Electronic Circulation: January 2017



**JOHNSON COUNTY LIBRARY: Summary of Expenditures by Cost Category (.75 Increase Only)**  
**January 2017**  
**8.3% of year lapsed**

**OPERATING FUND**

|          | 2017      |
|----------|-----------|
| Programs | Budget    |
| Revenue  | 2,025,288 |

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

TOTAL OPERATING FUND EXPENDITURES \$0

TOTAL .75 INCREASE FUNDS REMAINING OPERATING \$2,025,288

**SPECIAL USE FUND**

|          | 2017      |
|----------|-----------|
| Revenue: | Budget    |
| Revenue: | 3,583,750 |

- Expenses:
- Contractual Services (General Maintenance)
- Commodities (Capital Equipment)
- Transfer to Debt Payment
- Transfer to Debt Payment - CLMP
- Transfer to Capital Projects

TOTAL SPECIAL USE FUND EXPENDITURES \$0

TOTAL .75 INCREASE FUNDS REMAINING SPECIAL USE \$3,583,750

TOTAL .75 INCREASE FUNDS REMAINING ALL FUNDS \$5,609,038



Scheduled Replacement Account

REVENUE

REVENUE RECEIVED TO DATE

|                    |         |
|--------------------|---------|
| 2015 Fund Transfer | 350,000 |
| 2016 Fund Transfer | 699,000 |

**Total Revenue** **1,049,000**

**2016**

|                                  |                       |
|----------------------------------|-----------------------|
| Contractual Services             | 611,801               |
| Building Repair                  | 43,077                |
| Furnishings and Office Equipment | 57,250                |
| HVAC                             | 110,888               |
| Sorter Parts and Labor           | 4,113                 |
| Security System Maint & Repair   | 33,549                |
|                                  | <b><u>860,678</u></b> |

**Budget Remaining** **188,322**

# JOHNSON COUNTY LIBRARY TOTAL REVENUE REPORT

January 2017

8.3% of Year Lapsed

|                                      | 2017<br>Year to Date | 2017<br>Budget    | % Budget<br>Year to Date | % Budget<br>YTD Prior Year |
|--------------------------------------|----------------------|-------------------|--------------------------|----------------------------|
| Ad Valorem                           | 16,290,362           | 29,255,726        | 56%                      | 56%                        |
| Ad Valorem Delinquent                | 219,580              | 278,294           | 79%                      | 95%                        |
| Motor Vehicle                        | 444,178              | 2,987,490         | 15%                      | 19%                        |
| Library Generated - Copying/Printing | 8,608                | 97,309            | 9%                       | 10%                        |
| Library Generated - Overdues / Fees  | 59,852               | 777,365           | 8%                       | 9%                         |
| Sale of Library Books                | 0                    | 57,832            | 0%                       | 0%                         |
| Misc Other                           | 176                  | 340,753           | 0%                       | 0%                         |
| Library Generated - Other Charges    | 3,271                | 3,570             | 92%                      | 0%                         |
| Investment                           | 23,297               | 76,791            | 30%                      | 7%                         |
| Unencumbered Balance Forward         | 0                    | 10,000            | 0%                       | 0%                         |
| Recreational Vehicle Tax             | 1,347                | 7,956             | 17%                      | 16%                        |
| Commercial Vehicle Tax               | 11,239               | 68,114            | 17%                      | 0%                         |
| Heavy Trucks Tax                     | 1,500                | 2,588             | 58%                      | 135%                       |
| Rental Excise Tax                    | 13,372               | 31,710            | 42%                      | 54%                        |
| State and Federal Grants             | 0                    | 247,260           | 0%                       | 0%                         |
| <b>TOTAL REVENUE</b>                 | <b>17,076,782</b>    | <b>34,242,758</b> | <b>50%</b>               | <b>97%</b>                 |

**JOHNSON COUNTY LIBRARY: Summary of Expenditures by Cost Category**  
**January 2017**  
**8.3% Year Lapsed**

| <b>OPERATING FUND</b>                    | <b>2017</b>      | <b>2017</b>       | <b>% Program</b> |
|--|------------------|-------------------|------------------|
| Programs                                 | Year to Date     | Budget            | Expended         |
| Administrative Services                  | 370,577          | 5,825,213         | 6%               |
| Information Technology                   | 288,486          | 2,188,111         | 13%              |
| Collection Development                   | 110,062          | 3,296,190         | 3%               |
| Branch/Systemwide Services               | 1,089,063        | 13,484,682        | 8%               |
| Risk Management Charges                  |                  | 92,494            | 0%               |
| Grants *                                 |                  | 247,260           | 0%               |
| Transfer to Capital Projects             |                  | 4,092,493         | 0%               |
| Incremental Tax Fund                     |                  | 124,178           | 0%               |
| Interfund Transfer                       |                  | 115,259           | 0%               |
| <b>TOTAL OPERATING FUND EXPENDITURES</b> | <b>1,858,189</b> | <b>29,465,880</b> | <b>6%</b>        |

\* Includes expenditures for 2017 calendar year only. The life of the grant may cover more than one year.

| <b>SPECIAL USE FUND</b>                    | <b>2017</b>  | <b>2017</b>        | <b>% Budget</b> |
|--|--------------|--------------------|-----------------|
|  | Year to Date | Budget             | Expended        |
| Contractual Services (General Maintenance) | 2,574        | 16,305             | 16%             |
| Commodities (Capital Equipment)            |              | 192,564            | 0%              |
| Transfer to Debt Payment                   |              | 975,847            | 0%              |
| Transfer to Capital Projects               |              | 3,583,750          | 0%              |
| <b>TOTAL SPECIAL USE FUND EXPENDITURES</b> | <b>2,574</b> | <b>\$4,768,466</b> | <b>0%</b>       |

|                           |                    |                     |           |
|---------------------------|--------------------|---------------------|-----------|
| <b>TOTAL EXPENDITURES</b> | <b>\$1,860,763</b> | <b>\$34,234,346</b> | <b>5%</b> |
|---------------------------|--------------------|---------------------|-----------|

**JOHNSON COUNTY LIBRARY: Summary of Expenditures by Type**  
**January 2017**  
**8.3% Year Lapsed**

| <b>ALL FUNDS</b>               | <b>2017</b>         | <b>2017</b>       | <b>% Categories</b> |
|--------------------------------|---------------------|-------------------|---------------------|
| <b>Categories</b>              | <b>Year to Date</b> | <b>Budget</b>     | <b>Expended</b>     |
| Salaries and Benefits          | 1,270,719           | 15,918,347        | 8%                  |
| Contractual Services           | 419,784             | 5,034,946         | 8%                  |
| Commodities                    | 170,260             | 4,173,950         | 4%                  |
| Risk Management Charges        |                     | 92,494            | 0%                  |
| Capital / Maintenance / Repair |                     | 4,092,493         | 0%                  |
| Transfer to Debt Payment       |                     | 975,847           | 0%                  |
| Transfer to PBC Capital Leases |                     | 3,583,750         | 0%                  |
| Grants                         |                     | 247,260           | 0%                  |
| Interfund Transfer             |                     | 115,259           | 0%                  |
| <b>TOTAL EXPENDITURES</b>      | <b>\$1,860,763</b>  | <b>34,234,346</b> | <b>5%</b>           |

**JOHNSON COUNTY LIBRARY**

**GRANTS MONTHLY REPORT**

|           | <b>GRANTS*</b>                        |               |                 |                     | <b>Grant</b> | <b>Budget</b>    |
|-----------|---------------------------------------|---------------|-----------------|---------------------|--------------|------------------|
|           | <b>Expenditures through 6/30/2016</b> | <b>Source</b> | <b>Received</b> | <b>Expenditures</b> | <b>Award</b> | <b>Remaining</b> |
| 285000065 | 2014 Check up and Check Out           | State         | 7/1/13          | \$2,351.73          | \$5,250.00   | \$2,898.27       |

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

**JOHNSON COUNTY LIBRARY**

**GRANTS MONTHLY REPORT**

|           | <b>GRANTS*</b>                         |               |                 |                     |                    |                         |
|-----------|--|---------------|-----------------|---------------------|--------------------|-------------------------|
|           | <b>Expenditures through 11/30/2016</b> | <b>Source</b> | <b>Received</b> | <b>Expenditures</b> | <b>Grant Award</b> | <b>Budget Remaining</b> |
| 285000065 | 2014 Check up and Check Out            | State         | 7/1/13          | \$2,351.73          | \$5,250.00         | \$2,898.27              |

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

**Expenditure of Friends of the JCL Donations 2017**

| <i><b>Expenditure Details</b></i>            | <i><b>Payee</b></i> | <i><b>Current Month</b></i> | <i><b>YTD</b></i>  |
|--|---------------------|-----------------------------|--------------------|
| Volunteer Recognition                        |                     | \$0.00                      | \$0.00             |
| Advertising/Promotion                        |                     | 0.00                        | 0.00               |
| Collection Materials                         |                     | 0.00                        | 0.00               |
| Professional Development/Staff Recognition   |                     | 0.00                        | 0.00               |
| Technology/Recruitment Consulting & Expenses |                     | 0.00                        | 0.00               |
| Card Services                                |                     | 0.00                        | 0.00               |
| Homework Help and Tudor.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               |
| Board Travel Expences                        |                     | 0.00                        | 0.00               |
| Miscellaneous                                |                     | 1,065.23                    | 1,065.23           |
| <b>Total Expenditures</b>                    |                     | <b>\$ 1,065.23</b>          | <b>\$ 1,065.23</b> |

# Monticello Library

Update – March 2017





# Updates

- Construction Update
- Next Steps
- Timeline



# Construction Update



# Construction Update

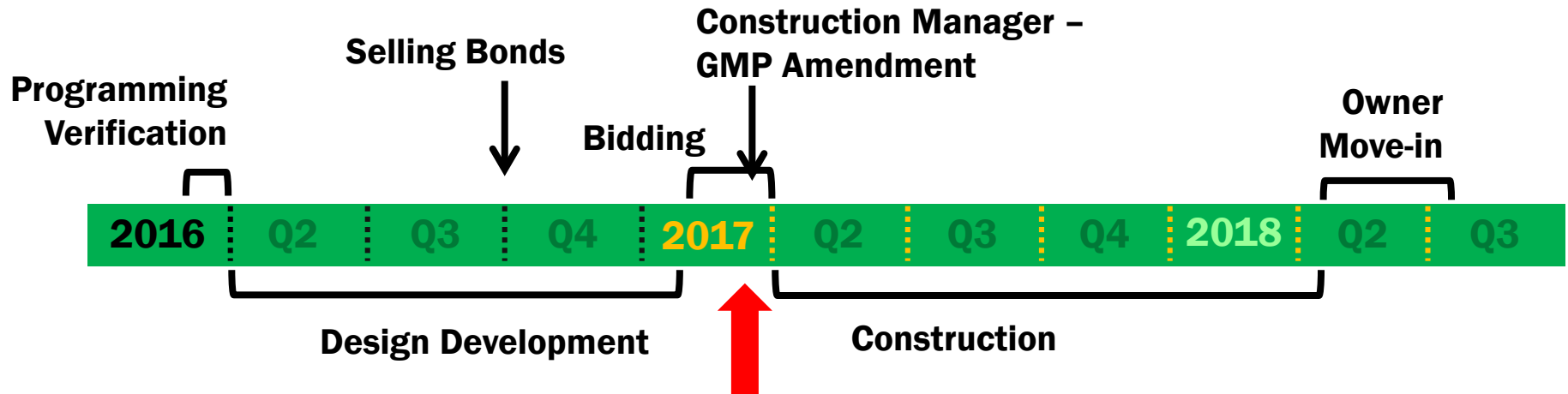


# Next Steps

- Furniture selection
- Public Art
- Groundbreaking – 5/10



# Monticello Library Anticipated Timeline



# Lenexa City Center Library

Update – March 2017

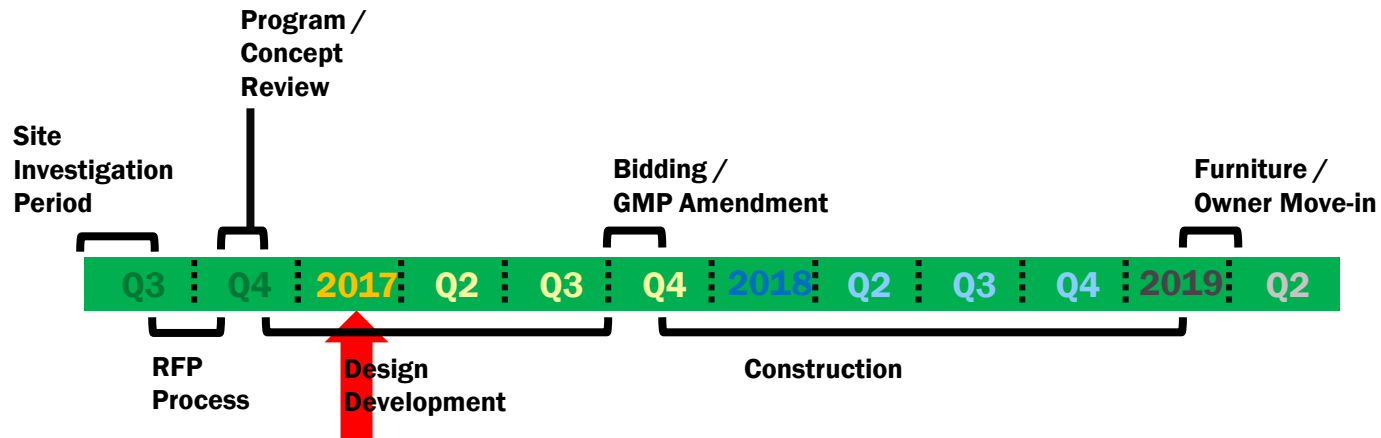


# Updates

- Design Progress – Schematic Design presentation by Hollis + Miller Architects
- Timeline update



# Lenexa City Center Library Anticipated Timeline



(updated 7/15/16)





# Blue Valley Studies

Update – March 2017

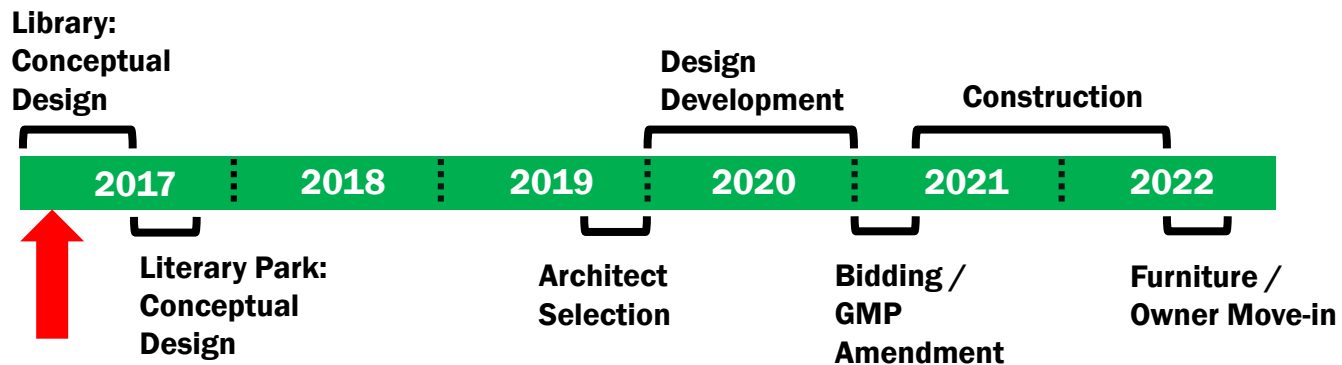


# Updates

- Library Study:
  - Concept Design for Library continues
  - Anticipating Library Board informational presentation in May 2017
- Literary Park Study:
  - Concept Design anticipated to resume after Library Study concludes



# Blue Valley Anticipated Timeline



(updated 03/03/17)



**MINUTES JOHNSON COUNTY LIBRARY BOARD  
REGULAR MEETING  
Thursday, February 9, 2017  
Central Resource Library  
4:00 p.m.**

**BOARD:** Amy Ruo, Nancy Hupp, John Nelson, JR Riley, Bethany Griffith, Donna Mertz

**BOARD ATTORNEY:** Fred Logan

**BOCC:** Commissioner

**FRIENDS OF THE LIBRARY:** Jim Minges

**STAFF:** Dean Allman, Sarah Andrews, Jennifer Barnett Fox, Breanna Beach, Michelle Bellamy, Nancy Birmingham, Chris Carleton, Dale Carleton, Sean Casserley, Beth Eland, Lacie Griffin, Hope Harms, Mike Heffernan, Jennifer Mahnken, Susan Mong, Nicki Neufeld, Michelle Olsen, Ingrid Pelger, Dylan Reiter, Michaela Scruggs, Kari Sime, Scott Sime, Georgia Sizemore, Tricia Suellentrop, Tianna Taylor-Albin, Lorée Terry, Julie Timmins, Adam Wathen, Ron Zluticky

**GUESTS:** Abby Giersch, Andrew Logan, Marshall Sramek, Karen Wulfekuhle

John Nelson called the meeting to order at 4:00 p.m.

**CITIZEN COMMENTS**

Marshall Sramek, 8303 Santa Fe Lane, asked the Board why patrons are limited to 30 holds and 150 check-outs. He would like to see the number of holds increased.

Mr. Casserley explained the Library's holds procedure and that we do have some exceptions in place for teachers and book clubs. The reason for the 30 hold limit is the cost of pulling the items off the shelves and transporting them. Mr. Casserley also shared that some patrons place a large number of holds and then only check-out one or two of the books. When materials are placed on hold they are unavailable for other patrons. The Library tries to find a balance of providing the most access to all patrons by setting a hold limit.

Mr. Sramek expressed concern that he has holds where he is number 500 in line. While he is waiting for those holds to come in, he is not able to place a hold on an item that is available. He stated that he often goes through new arrivals to get on the holds list quickly.

Collection Development Manager, Adam Wathen, spoke to Mr. Sramek about the holds ratio. For every five patrons waiting for an item we try to have one copy of the item in the system. If there are 50 holds on an item, we will have 10 copies. The item should circulate as if there are only five people on hold with one copy. Material with 500 holds is a popular item and we will have many copies in the system to meet demand.

Mr. Wathen explained that another reason for the 30 hold limit is so patrons can be selective in the items they chose to have delivered. Our BiblioCommons catalogue allows patrons to put materials they are interested in on a list, which they can then choose to place on hold when ready. A 30 hold limit allows us to purchase for demand and helps the Library to use resources wisely.

Mr. Casserley thanked Mr. Sramek for his question and comments.

### **BOARD OF DIRECTORS COMMENTS**

Mr. Nelson shared that Pam Robinson is absent today and that she sends her apologies.

Mr. Nelson appointed Ms. Ruo and Mr. Riley to the nominating committee.

Mr. Nelson shared that we have a new Library Board member, who is not here today. She is Commissioner Eilert's appointment to the Board and resides in Edgerton.

Mr. Nelson welcomed Commissioner Ashcraft our new Liaison from the Board of County Commissioners.

Commissioner Ashcraft thanked Mr. Nelson for the welcome.

Mr. Nelson thanked Mr. Sime and Ms. Riggs for joining him in giving a presentation about the Monticello expansion to a class at Oak Hill elementary. It was a wonderful experience.

### **FRIENDS OF THE LIBRARY**

No report from the Friends.

### **JOHNSON COUNTY LIBRARY FOUNDATION**

Susan Mong, Executive Director of the Foundation, presented to the Library Board. Ms. Mong shared that the Foundation Board is focusing their strategic initiative on launching a planned giving program. The name of the program will be *The 1953 society – Writing the Library's Next Chapter*.

The Foundation Board is taking this year to properly build the infrastructure of the planned giving initiative. Ms. Mong asked the Board to think about professionals in the financial and legal community who might be interested in serving on a planned giving professional council. A soft-launch of the 1953 Society is planned for the third quarter and the Foundation hopes to have a list of inaugural members by the end of the year.

The Stay at Home and Read a Book Ball will occur on March 5th. Ms. Mong shared that honorary host, Candice Millard, has provided six autographed books for the event. The books will be given to donors in the lead up to the event.

The Listen Local community has also been engaged by writing songs for the Book Ball.

Planning for the Library Lets Loose is underway and the event will be chaired by Bob and Anne Regnier. The event will be held on October 14<sup>th</sup>.

Ms. Mong reminded the Board to RSVP for the multi-board event on April 20<sup>th</sup>.

### **BOARD OF COUNTY COMMISSIONER REPORT**

No comments this month.

## **BOARD COUNSEL REPORT**

Mr. Logan deferred his comments for the New Business section of the meeting.

## **COUNTY LIBRARIAN REPORT**

### **Budget update**

Finance Director, Ms. Neufeld, stated that the finance reports are of 12/31/2016. They are preliminary at this time as the County has not yet closed the books for 12/31. Ms. Neufeld does not expect any significant changes.

The Library arrived at 101% of expected revenue for the year; last year we arrived at 97%. The expenses were at 101% which is close to the planned budget. Ms. Neufeld noted that the approved space explorations project shifted the expenses to 101% as opposed to 100%. This project skewed the numbers slightly and we are actually under 101%.

Ms. Hupp asked about an extra finance report that had been included in the January Board packet. Ms. Neufeld clarified that a working document had been unintentionally included in the report.

Mr. Nelson asked how funds are divided between the operating fund and the special use fund on the .75 report.

Ms. Neufeld responded that the operating fund takes all of the operations and special use is targeted toward debt repayment, capital items, infrastructure, and information technology department.

When the Library received the mill levy increase we had to decide where to house the funds. The decision between operating and special use is an estimate made by Senior Budget Analyst, David Vratny and Ms. Neufeld. All of the funds in operating and special use go toward capital items.

Mr. Casserley added that we placed 4.2 million in the operating fund to provide flexibility because at the time the decision was made we were not sure where the expenses would come from. The intent has always been to roll it down to the special use fund. We work closely with the County Budget office in making these decisions.

Mr. Nelson asked if we will keep these funds moving forward. Ms. Neufeld responded that we will always have the operating and special use funds, although the break-out will change. We will begin incurring debt and a debt payment will be included also.

Mr. Casserley welcomed the students from the Shawnee Mission West government class to the meeting.

## **STRATEGIC PLAN**

### **Strategic Plan update – Tricia Suellentrop**

Deputy Director, Tricia Suellentrop, presented a strategic plan update highlighting the work the staff has done during the 4<sup>th</sup> quarter.

Ms. Suellentrop featured examples of programs, events and initiatives that support the strategic plan's portfolio themes of education, community and convenience.

## **Supporting the Education portfolio:**

Goal 1: Library staff will exemplify the brand promise in their interactions with people.

- E-Resources – this quarter we have focused on highlighting e-resources, for example, Lynda.com, Tutor.com and the Kansas City Business Journal
- Consistent messaging – One example includes updating signage in our buildings to help people with wayfinding. Signage has been completed at Central and is being rolled out to other branches.

Goal 2: People will achieve higher levels of personal success through digital literacy.

- Tech Tuesday – A drop in program for patrons that offers intensive, on-demand and individual attention that meets their specific tech need. For example, we've introduced patrons to Lynda.com, assisted with word processing basics and assisted a patron with enrolling in online classes at JCCC.
- A docking station has been added to Central that gives patrons the ability to connect their laptop and have access to screens. Ms. Suellentrop commended our IT department and Customer Experience team on their roll-out process and their focus on ease of patron use.

Goal 3: People with specific educational or informational needs will be supported by the Library.

In 2016 we had over 80,000 people attend our programs. We offered over 2,500 programs. Attendance has grown by over 13,000 since 2015.

- Writers Conference – We hosted 215 attendees; a mix of published, local and aspiring writers attended. Many local authors spoke and spoke about their process.
- Women and Money series – We partner with Housing and Credit counseling, Kansas Legal Services, Kansas Securities Commission and the Kansas Bank Commissioners Office to bring experts to this successful program.
- Easy Picture book bins – We installed bins that are low to the floor for easy access to picture books for children. Bins have been added to Leawood and DeSoto.

## **Supporting the Community portfolio:**

Goal 4: People will connect and interact because of Library partnerships and collaboration

- The Library Lets Loose Event
- Metro shared catalog – One step in a large multi-year project. A common discovery layer so patrons with cards at multiple metro libraries can link their accounts and view their checkouts.
- MakerSpace facilitators – We hosted a collaborative workshop for metro librarians to share our experience in creating a MakerSpace.

Goal 5: People will experience a welcoming library environment that meets their needs

- Consistent signage in our buildings that link to the Guide
- Staff rooms refresh – We refreshed staff rooms that have not been updated since the 1970s. This has boosted morale of staff and volunteers.

## **Supporting the Convenience portfolio:**

Goal 6: People will find Library staff, materials and services convenient and easy to access.

- Outreach – We offer outreach to both incarcerated juveniles and adults in the County. We have been working with patrons in the adult residential center on account maintenance.
- Listen Local – Local musicians have been connected to our MakerSpace to record their music in our sound booth.

Goal 7: Library staff will engage in a workforce that is collaborative, connected, efficient and effective

- Customer Experience Team – The team previously officed at several different branches. The team has been relocated to Central and they now are able to share a workspace.
- Our project coordinator has been working on training 13 managers on project management principles. This will embed the skills within the organization.

Goal 8: People will experience library services and resources through the innovative use of technology

- Public wireless – Our wireless usage has increased. We have seen a high of 28,000 sessions and a low of 24,000 sessions in the 4<sup>th</sup> quarter.

## **Annual Operating Plan update**

Mr. Casserley shared an update on the plan to operationalize the strategic plan. He shared a dashboard that tracked the work accomplished on the tactic to bring Zinio to the Library. Zinio is a database that provides access to 200-300 magazine titles. This tactic connects to goal 8: people will experience library services and resources through the innovative use of technology.

Mr. Casserley also shared an example of enhancing online services by updating the Library website with responsive design. This one tactic has 12 associated projects.

Mr. Casserley stated that at the last board meeting he provided an incorrect statistic about the number of people moving into Johnson County annually. Mr. Casserley thanked Karen Wulfekuhle for reaching out to provide the correct information. The population is increasing by 6,000 to 7,000 annually.

Mr. Casserley also thanked Commissioner Allen for serving as our liaison to the Board of County Commissioners over the last year.

## **Monticello**

Project Coordinator, Scott Sime, reported to the Board. Mr. Sime shared that he and IS Manager, Kinsley Riggs, joined Mr. Nelson in a class visit to Oak Hill elementary school. The class has recently read Mr. Lemoncello's Library and are working on a design thinking curriculum. It was a great experience to meet with an enthusiastic group of nine year olds.

Mr. Sime reported that earthwork has started at the Monticello site.

The ceremonial groundbreaking for construction will be held on May 10<sup>th</sup>, from 7:30 a.m. to 9:30 a.m.



## Next Steps:

- Bidding – Bids have been taken and the construction manager is reviewing
- Guaranteed Maximum Price (GMP) Amendment – anticipated in March
- The core team is looking at furniture selection for the building

Mr. Sime shared the timeline.

## **Lenexa City Center update**

50 citizens attended the public input meeting at the existing Lackman branch for a facilitated conversation with the architect. Suggestions from patrons included: ample meeting space, a story time room, ease of access from the parking garage to the Library, a drive-through for holds, access to technology, plenty of natural light in the building/good lighting.

Another place for patrons to provide feedback on Lenexa City Center is on the Lenexa City Center location page on the Library website. We have received approximately 150 comments from this source.

Mr. Casserley thanked Commissioner Ashcraft, Ms. Griffith and Ms. Hupp for attending the public meeting and being part of the process.

The core team and the architects have started to more clearly define the layout of the building. Design work will continue and the public art process will soon begin.

In response to a question from Ms. Hupp, Mr. Sime stated that the comments obtained from the Lenexa City Center location page will be shared with the Board.

## **Blue Valley**

Mr. Sime shared that the team is currently performing due-diligence on the site and the existing facility. Concept design for the Library has resumed with the goal of submitting a development plan to the City of Overland Park.

The team anticipates a public input meeting for Blue Valley will be held in April and findings from that meeting will be brought to the Board in May. As we close the Library study we will begin the Literary Park study with the city.

Mr. Casserley announced that we are signing a contract with the Rabbit Hole to create 5 interactive panels for Monticello.

## **Updates**

### **JOCO Magazine**

Mr. Casserley thanked the Communication department and County Public Information Office for featuring the MakerSpace in JOCO Magazine. 350,000 copies are sent to residents throughout the county. Mr. Casserley shared that the Black & Veatch MakerSpace is a great example of a Public/Private partnership.

## **Board Retreat**

Mr. Casserley opened a discussion with the Board to identify a date for the next Library Board retreat. The Board discussed that evenings are preferable. Mr. Nelson commented that a September date is preferable to August. Board members agreed that September is agreeable. Ms. Griffith asked that it not be 9/9.

Mr. Casserley noted that traditionally Commissioners have not attended the Library Board retreat and expressed that Commissioner Ashcraft is welcome to participate.

## **New member of the Library Board and Board of County Commissioners**

### **Strategic Plan**

### **UPDATE**

### **Consent Agenda**

1. Minutes of the January 12, 2016 Library Board meeting

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

**Second:** Nancy Hupp

**Motion carried 6 to 0**

### **NEW BUSINESS**

#### **Board Action: Consideration of the second addendum to the Property Conveyance agreement with the City of Lenexa.**

Mr. Logan introduced the second addendum to the property conveyance agreement with Lenexa. The second addendum achieves the following:

1. A new survey was completed and the addendum corrects the legal description of the property to be conveyed by the City to the Library. We now have a final legal description for purposes of conveyance.
2. It extends to May 31, 2017, the City's deadline for grading the Library property in accordance with the grading plans on file with the City.
3. It incorporates in the new legal description the Additional Property at the northwest corner of the Property that the parties agreed to in the First Addendum. The Additional Property will facilitate the construction of an entry vestibule and additional area.
4. The parties agree to negotiate a separate addendum on the stair and strata project.

On the fourth point Mr. Logan stated that instead of the City building something that the Library will immediately damage or need to change, the City will defer construction of the library portion of the project.

The Lenexa City Council approved the addendum on Tuesday evening. When approved by the Library Board it will become effective.

**Motion:** Nancy Hupp moved to approve the second addendum to the Property Conveyance Agreement between the City of Lenexa and the Board of Directors of the Johnson County Library.

**Second:** JR Riley

**Motion carried 6 to 0**

Mr. Casserley noted that the Leadership Summit will be held on April 20<sup>th</sup>, 5:30 to 7:30 p.m. Author Tanner Colby will attend the event.

The Stay Home and Read a Book Ball will be Sunday, March 5<sup>th</sup>. Author Candice Millard is the honorary host and Mr. Casserley will be interviewing her in the lead up to the event. He encouraged everyone to participate.

Commissioner Ashcraft asked about the format of the Leadership Summit.

Ms. Mong responded that there will be a brief reception for guests to network and socialize. Tanner Colby will then speak to the group and facilitate a discussion. We anticipate hosting 40 guests that will include the Library Board, Foundation Board, Friends Board and key leaders.

Commissioner Ashcraft asked if leadership from the NAACP and el Centro have been invited.

Ms. Mong responded that invitations have been sent to the NAACP. She thanked the Commissioner for the recommendation of el Centro and will reach out to invite a representative to attend.

Mr. Casserley added that we have also connected to the African American community through our connections with GKCLinks.

**ADJOURNMENT**

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

**Second:** JR Riley

**Motion carried 6 to 0**

The meeting adjourned at

DATE \_\_\_\_\_

SECRETARY \_\_\_\_\_  
John Nelson

CHAIR \_\_\_\_\_  
Pam Robinson

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

JOHNSON COUNTY LIBRARY

SUMMARY OF NEW AND/OR  
RENEWED CONTRACTS  
Jan-17

| VENDOR   | DESCRIPTION   | AMOUNT                           |
|----------|---|----------------------------------|
| Mergent  | Online database renewal; software subscription access | \$59,900.00                      |
| Proquest | Online database renewal                               | \$23,720.00                      |
|          | <b>Total</b>  | <b><u><u>\$83,620.00</u></u></b> |

SIGNED:

\_\_\_\_\_  
Finance Director

**JOHNSON COUNTY LIBRARY  
GIFT FUND  
TREASURER'S REPORT**  
Period: JAN-2017

|  |                                 | Receipts | Payments    | Balance             |
|--|---------------------------------|----------|-------------|---------------------|
|  | <b>Opening cash balance</b>     |          |             | <b>\$191,669.61</b> |
|  | Add Receipts                    | \$119.50 |             |                     |
|  | Less Payments                   |          | \$92,499.00 |                     |
|  | <b>Ending Cash balance</b>      |          |             | <b>\$99,290.11</b>  |
|  | Less Liabilities                |          | \$37,257.12 |                     |
|  | <b>Unobligated cash balance</b> |          |             | <b>\$62,032.99</b>  |

**APPROVED:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**To:** Johnson County Library Board of Directors  
**From:** Sean Casserley, County Librarian  
**Date:** March 9, 2017

---

**Issue:** Consider approving the revisions to ARM 30-50-25, "Contracts".

**Analysis:**

See memo from Library Legal Counsel.

**Alternatives:** 1) Approve the recommendation. 2) Not approve the recommendation.

**Legal Review:** Reviewed and approved by Library Legal counsel. Memo follows this briefing.

**Recommendation:** The Library Board approve the revised ARM 30-50-25.

**Suggested Motion:** I move that the Library Board of Directors approved the revised ARM 30-50-25, "Contracts".

# LOGAN LOGAN & WATSON, L.C.

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ANDREW V. LOGAN

ALL ATTORNEYS  
ADMITTED IN KANSAS  
AND MISSOURI

## MEMORANDUM

To: Members of the Library Board, Sean Casserley

From: Fred Logan

Re: Explanation of revisions to ARM 30-50-25, "Contracts"

Date: February 22, 2017

---

The Library Board's regulation on "Contracts," ARM 30-50-25, has not been revised since 2011. We felt that some revisions were in order. Our revisions are shown in the redline version of the regulation that appears after this memo. The revisions are incorporated in the "clean" version of the regulation that appears after the redline version. We recommend that the Board approve the revised version of ARM 30-50-25.

Here is a summary of our revisions:

- The primary purpose of the revisions is to reinforce the Library's adherence to the Kansas Cash Basis Law ("KCBL") and the Kansas Tort Claims Act ("KTCA") in contracts between the Library and contractors.
- KCBL has the effect of restricting most agreements to terms of one year. KTCA limits the Library's liability in tort claims. It is particularly important to be careful that indemnification provisions in contracts do not expand Library liability under the KTCA.
- Section o. is a new section pertaining to KTCA. It explains the Library's protections under KTCA. Additionally, Section o. makes explicit that Library contracts do not waive KTCA immunities, regardless of contract indemnification provisions.
- Section p. clarifies when the Library must use the Standard Library Contract Addendum.
- Section q. is added to reinforce adherence to KCBL and KTCA. It also specifies that potential contractors have notice of the Library's requirements under KCBL and KTCA through ARM 50-30-25, which is published on the library's website.



**ADMINISTRATIVE REGULATIONS Document ARM 50-30-25  
Number**

Tab: Administration  
Section: Finance  
Subject: CONTRACTS

**SUMMARY**

This regulation describes the source of the Library Board's authority for entering into contracts independently, its intent to follow County procedures, where it does and does not delegate its authority to enter into contracts, adherence to the Kansas Cash Basis Law, and the reporting on contracts to be made to the Board. This regulation covers all contracts adopted by the Library Board pursuant to its governing authority under K.S.A. 12-1223. Agreements between the Johnson County Library and public agencies, not-for-profit organizations and for-profit businesses on co-sponsorship of programs and events (Program Agreements) are covered by ARM 10-50-85, "Program Agreements with Public Agencies, Not-for-Profit Organizations, and For-Profit Businesses." [All Johnson County Library contracts are subject to the Kansas Cash Basis Law and the Kansas Tort Claims Act.](#)

**Effective Date:**

Reaffirmed  
Reviewed

~~August 17, 2011~~ [March 9, 2017](#)  
~~August 17, 2011~~ [March 9, 2017](#)

**POLICY;  
CONTRACTS  
COVERED BY  
THIS  
REGULATION**

a. The power to contractually bind the Johnson County Library resides solely in the Board of Directors of the Johnson County Library, pursuant to K.S.A. 12-1223, or in the County Librarian in those instances where the Library Board has specifically delegated the power to the County Librarian. The Board of County Commissioners does not have statutory authority to contractually bind the Johnson County Library. K.S.A. 12-1223 provides, "In Johnson county, the library board shall constitute a body corporate and politic possessing the usual powers of a corporation for public purposes, . . . and under such name may contract . . ." This regulation covers all of the contracts into which the library enters pursuant to its authority as a governing body under K.S.A. 12-1223 (Governance Contracts), with the exception of the Program Agreements covered by ARM 10-50-85. Governance Contracts include but are not necessarily limited to contracts for construction



and renovation of library facilities; all contracts for consulting and professional services; all contracts with vendors and for the acquisition of goods; all leases and contracts pertaining in any way to library real estate, including easement and cross-parking agreements; all contracts relating to the acquisition of books and other library materials; and all contracts relating to the acquisition and maintenance of library technology and equipment. All of the contracts described in this regulation are Governance Contracts.

CONTRACTS FOR ACQUISITION OF MATERIALS

b. The Library Board of Directors has the complete authority, pursuant to K.S.A.12-1225(c), to enter into contracts for the acquisition of "books, magazines, papers, printed materials, slides, pictures, films, projection equipment, phonograph records and other material and equipment deemed necessary by the Board for the maintenance and extension of modern library service."

CONTRACTS FOR CONSULTING, ETC.

c. The Library Board of Directors also has the complete authority to enter into contracts for consulting, professional, and other services pursuant to K.S.A. 12-1223.

CONTRACTS FOR CONSTRUCTION

d. The Library Board of Directors has complete authority to award bids and enter into contracts for construction and renovation for specific projects when such specific projects have been authorized and funded by the Board of County Commissioners.

CONTRACTS FOR THE ACQUISITION OR DISPOSITION OF REAL ESTATE; ALL OTHER CONTRACTS

e. The Library Board of Directors has the authority to enter into contracts for the acquisition or disposition of real estate, subject to the approval of the Board of County Commissioners of Johnson County. The Library Board, as a quasi-municipal corporation under K.S.A. 12-1223, has the complete authority to enter into other contracts in accordance with this regulation.

DELEGATION TO COUNTY LIBRARIAN

Library Materials

f. Subject to the review and approval of the form of the contract by Library Board Counsel, the County Librarian is authorized to enter into contracts for library materials in cases where the Library Board's intent is provided in the Collection Development Policy and annual operating budget. The Library Board shall approve contracts for the acquisition of library materials of \$100,000 or more.

Other Areas

g. Subject to the review and approval of the form of the contract by Library Board Counsel, the County

Librarian is authorized to enter into all other contracts up to \$99,999, where funds and the Library Board's intent are provided in the Johnson County Library's annual budget, except as noted below.

PURCHASING  
DEPT.  
PROCEDURES

h. Johnson County Purchasing Department regulations are strictly followed for all purchasing procedures, except as noted in (b) above. Purchases under \$10,000 require no competitive quotations. Purchases of \$10,000-\$49,999 for which there is more than one source, require informal competitive quotations. Expenditures above \$50,000 require formal, advertised competition (RFP's or RFB's); award can be made to any or all of the respondents to an RFP. Expenditures resulting from an RFP or RFB for amounts of \$50,000 to \$99,999 may be approved by the County Librarian in consultation with the Purchasing Director. The Library Board must approve all contracts arising from an RFP or RFB and other purchases amounting to \$100,000 or more.

Change Orders

i) Change orders for construction projects and construction-related professional service contracts not specifically described in section ii may be approved by the County Librarian.

ii) The following types of change orders must be approved by the Library Board: change orders which equal or exceed \$100,000; for projects with a base contract amount of \$500,000 or less, change orders which equal or exceed \$50,000; for projects with a base contract amount of \$100,000 or less, change orders which equal or exceed \$10,000 and cause the total contract to exceed \$100,000; for projects with a base contract amount between \$100,000 and \$500,000, change orders which individually or in combination with others exceed \$50,000; for projects with a base contract amount between \$500,000 and \$1,000,000, change orders which individually or in combination with others exceed \$100,000; for projects with a base contract amount of \$1,000,000 or more, any change order which individually or in combination with others exceeds 10% of the base contract amount; and any change order which causes a project to exceed its project authorization or scope.

BOARD  
APPROVAL

i. All contracts for consulting and professional services that amount to \$100,000 or more must receive the approval of the Library Board. Contracts for consulting and professional services that amount to less than \$50,000 may be negotiated and approved by the

County Librarian without competitive quotations. Contracts for consulting and professional services for \$50,000 or more require at least three competitive quotations and may, at the direction of the County Librarian or Library Board, be made subject to a formal competitive quotation or RFP process. However, nothing in these regulations shall require the approval of such contracts strictly on the basis of the low dollar bid. Library board counsel shall review and approve the form of all contracts for professional and consulting services.

BOARD  
APPROVAL

j. The Library Board must approve all contracts not delegated to the County Librarian in this regulation.

REPORTS

k. The Library Board will receive monthly a summary of all contracts entered into by the Library and all change orders approved by the County Librarian during the previous month.

CASH BASIS LAW

l. The Johnson County Library is subject to the terms of the act setting out the Kansas Cash Basis Law, K.S.A. 10-1101, et seq. The law's statutory scheme requires the Johnson County Library to contract all indebtedness in conformity with the act. Except where the act provides a specific exception, it is illegal for the Johnson County Library to create any indebtedness "in excess of the amount of funds actually on hand in the treasury of the library at the time for such purpose." (K.S.A. 10-1112). All library contracts that are lease-purchase agreements or installment sale agreements that extend over a period in excess of 12 months shall contain the following language:

The Johnson County Library is obligated under this agreement only to pay periodic payments or monthly installments under the agreement as may lawfully be made from (a) funds budgeted and appropriated for that purpose during the library's current budget year or (b) funds made available from any lawfully operated revenue producing source. (K.S.A. 10-1116b). The Johnson County Library has the right to not renew said agreement by an act of non-appropriation at the end of each fiscal year.

In the event that the proposed agreement is for a term exceeding the current fiscal year of the library, the agreement shall ~~also specify~~ be subject to the following: (1) The amount of capital cost required to purchase the item if paid for in cash as of the end of the fiscal year, (2) the annual average effective interest cost (simple

interest payable in arrears), and (3) the amount included in the payments for service, maintenance, insurance or other charges exclusive of the capital cost and interest cost. (K.S.A. 10-1116c). The principle and interest portions of each periodic lease payment shall be denoted.

AUTOMATIC  
RENEWAL  
CLAUSES IN  
CONTRACTS

m. The Library Board or the County Librarian must approve all library contracts in accordance with this regulation. No library contracts shall contain provisions that “automatically renew” the term of the contract without specific new approval by the Library Board or the County Librarian pursuant to the terms of this regulation. Any automatic contract term renewal provisions in library contracts not stricken or deleted by mistake shall be null and void under the terms of this regulation.

PROHIBITED

MANDATORY  
VENUE CLAUSES  
PROHIBITED

n. The library shall retain the right, under all of the contracts to which it is a party, to bring actions on claims or disputes under those contracts in the state courts of Johnson County, Kansas or the federal courts of the state of Kansas. No library contracts shall contain provisions that mandate placement of venue of disputes or claims under the contracts in some state other than Kansas. In the event that any such “mandatory venue” provision is not stricken or deleted by mistake, such provision shall be deemed null and void under the terms of this regulation.

CONTRACTS  
SUBJECT TO  
KANSAS TORT  
CLAIMS ACT;  
INDEMNIFICATION  
CLAUSES  
SUBJECT TO  
LIMITATIONS

o. Contracts to which the Library is a party are subject to the Kansas Tort Claims Act, K.S.A. 75-6101, et seq. The Kansas Tort Claims Act limits liability for the Library and other Kansas governmental entities. The law caps the amount of damages and grants immunity to the Library and its employees and agents for a variety of tort actions.

Nothing in any contract shall be construed as a waiver by the Library of the immunities and liability limitations afforded to it by the Kansas Tort Claims Act. Indemnification agreements in Library contracts are limited by and made subject to the terms of the Kansas Tort Claims Act. Nothing in any indemnification agreement in a Library contract shall be construed to set aside the immunities and liability limitations of the Kansas Tort Claims Act or to expand the Library’s liability under that Act.

CERTIFICATION  
BY

pe. Prior to execution by the Library of a contract, Library Board Counsel shall certify in writing that he

LIBRARY BOARD  
COUNSEL;  
INCORPORATION  
OF STANDARD  
LIBRARY  
CONTRACT  
ADDENDUM IN  
LIBRARY  
AGREEMENTS

has reviewed the contract, approves the same as to form, and that it may be approved and executed in accordance with this regulation. The Standard Library Contract Addendum set forth in the Appendix to this regulation shall be made a part of Library contracts ~~unless Library Board Counsel states in his certification that one or more provisions of the entire Addendum are not to be made part of the Contract for reasons specified in the certification~~ if Library Board Counsel so directs in his certification. The Standard Library Contract Addendum should be used with construction contracts unless Library Board Counsel directs in his certification that it need not be used.

CONTRACTS ARE  
SUBJECT TO AND  
LIMITED BY THE  
KANSAS CASH  
BASIS LAW AND  
THE KANSAS  
TORT CLAIMS  
ACT; NOTICE

g. All contracts to which the Library is a party shall be subject to and limited by the Kansas Cash Basis Law and the Kansas Tort Claims Act, and amendments thereto. The Library makes the provisions of ARM 50-30-25 and other administrative regulations available to the public and to contractors and vendors on its website.

August 17,  
2014 March 9, 2017

**ARM 50-30-25 End**

**To:** Johnson County Library Board of Directors  
**From:** Sean Casserley, County Librarian  
**Date:** March 9, 2017

---

**Issue:** Whether or not to approve \$393,465.00 for the partial roof replacement for Central Resource Library.

**Analysis:** The roof was replaced during the acquisition and remodeling of the building in 1995. Unfortunately, the existing roof was not removed before the new roof was installed. Some areas of the roof have 3 different roofs applied. The roof will have to be removed down to the deck and new insulation and roofing applied. This is a phased project and this is phase 2 of 3. The roofs in this phase are the two large sections over the middle of the building. The final phase will be completed as funds become available.

**Alternatives:** 1) Approve the recommendation. 2) Not approve the recommendation.

**Legal Review:** Reviewed and approved by the library attorney.

**Recommendation:** The Johnson County Library Board of Directors approve the partial roof replacement for the Central Library for \$393,465.00.

**Suggested Motion:** I move that the Library Board of Directors approve the partial roof replacement for the Central Library for \$393,465.00



**AIA**<sup>®</sup>

# Document A107™ – 2007

## **Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope**

**AGREEMENT** made as of the 9th day of March in the year 2017  
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:  
*(Name, legal status, address and other information)*  
Board of Directors of the Johnson County Library  
9875 W 87<sup>th</sup> Street  
Overland Park, KS 66212

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

Premier Contracting, Inc.  
3940 S Ferree  
Kansas City, KS 66103  
913-677-4700

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

Johnson County Libraries - Central Resource Library Roof Replacement - Phase 2  
Bid No. 2017-014  
9875 W 87th Street  
Overland Park, KS 66212

The Consultant, hereinafter the Architect:  
*(Name, legal status, address and other information)*

RTI Consultants  
22117 W 83<sup>rd</sup> Street  
Lenexa, KS 66227-3136

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

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

Init.

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 & BONDS
- 18 CORRECTION OF WORK
- 19 MISCELLANEOUS PROVISIONS
- 20 TERMINATION OF THE CONTRACT
- 21 CLAIMS AND DISPUTES

**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 the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner to the Contractor in writing.

*(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

Init.



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

§ 2.3 The Contractor shall achieve Substantial Completion of the entire Work not later than ( ) days from the date of commencement, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

Substantial Completion Date: June 30, 2017 (Phase 2 Re-Roof Areas)

**Portion of Work**

**Substantial Completion Date**

*, subject to adjustments of this Contract Time as provided in the Contract Documents.*

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

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 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.)*

- [ X ] 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 Three hundred ninety-three thousand four hundred sixty-five dollars and no cents (\$ 393,465.00 ), subject to additions and deductions as provided in the Contract Documents.

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

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

§ 3.2.2 Unit prices, if any:

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

| Item | Units and Limitations | Price Per Unit (\$0.00) |
|------|-----------------------|-------------------------|
| N/A  |                       |                         |

§ 3.2.3 Allowances included in the stipulated sum, if any:  
*(Identify allowance and state exclusions, if any, from the allowance price.)*

| Item                  | Allowance |
|-----------------------|-----------|
| Unforeseen Conditions | \$15,000  |

**§ 3.3 COST OF THE WORK PLUS CONTRACTOR'S FEE**

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

§ 3.3.2 The Contractor's Fee:

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

**§ 3.4 COST OF THE WORK PLUS CONTRACTOR'S FEE WITH A GUARANTEED MAXIMUM PRICE**

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

§ 3.4.2 The Contractor's Fee:

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

**§ 3.4.3 GUARANTEED MAXIMUM PRICE**

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

*(Insert specific provisions if the Contractor is to participate in any savings.)*

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

§ 3.4.3.3 Unit Prices, if any:

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

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

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

*(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)*

| Item | Allowance |
|------|-----------|
|------|-----------|

§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

Init.

## ARTICLE 4 PAYMENTS

### § 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.

*(Insert rate of interest agreed upon, if any.)*

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;
- .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

*(Paragraphs deleted)*

approved Certificate for Payment.

## ARTICLE 5 DISPUTE RESOLUTION

### § 5.1 BINDING DISPUTE RESOLUTION

The method of binding dispute resolution shall be:

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 A107-2007, as modified, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

### § 6.1.2

*(Paragraphs deleted)*

INTENTIONALLY OMITTED.

§ 6.1.3 The Specifications:

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

| Section        | Title             | Date             | Pages               |
|----------------|-------------------|------------------|---------------------|
| Project Manual | Table of Contents | February 1, 2107 | 000100-1 & 000100-2 |

§ 6.1.4 The Drawings:

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

| Number | Title             | Date             |
|--------|-------------------|------------------|
|        | Cover             | Bid No. 2017-014 |
| R200   | Phase 2 Roof Plan | February 2017    |
| R201   | Phase 2 Details   | February 2017    |
| R202   | Phase 2 Details   | February 2017    |

§ 6.1.5 The Addenda, if any:

| Number | Date              | Pages |
|--------|-------------------|-------|
| One    | February 15, 2017 | 6     |
| Two    | February 16, 2017 | 1     |

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

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

- .1 Exhibit A, Determination of the Cost of the Work, if applicable.
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

- .3 Other documents:  
(List here any additional documents that are intended to form part of the Contract Documents.)

Invitation For Bid, Bid Request No. 2017-014  
Executed Bid Form  
Executed Bid Bond  
Executed Performance Bond  
Executed Statutory Bond to the State of Kansas  
AIA Document A701-1997, as modified, Instructions To Bidders

## ARTICLE 7 GENERAL PROVISIONS

### § 7.1 THE CONTRACT DOCUMENTS

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

### § 7.2 THE CONTRACT

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

### § 7.3 THE WORK

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

#### § 7.3.1 THE PROJECT

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

### § 7.4 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, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 this 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 material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All

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copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 TRANSMISSION OF DATA IN DIGITAL FORM**

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 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.

**§ 7.8 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.

**§ 7.9 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.

### **ARTICLE 8 OWNER**

#### **§ 8.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 8.1.1** 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.

**§ 8.1.2** 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.

**§ 8.1.3** 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 written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner, without prejudice to any other remedy the Owner may have, may correct such deficiencies 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 furnished by the Owner pursuant to Section 8.1.1, 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

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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.

#### **§ 9.5 TAXES**

The Contractor shall pay any and all sales, consumer, use and 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 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. Allowance amounts shall not include the Contractor's costs for unloading and handling at the site, labor, installation, overhead, and profit.

#### **§ 9.8 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 9.8.1** The Contractor, after being awarded the Contract, shall promptly 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.

## § 9.10 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 or 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 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 such 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 the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished in writing to the Architect and the Owner.

#### § 9.14 ACCESS TO WORK

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

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

*(Paragraphs deleted)*

#### § 9.16 INDEMNIFICATION

**§ 9.16.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants and their respective officers, consultants, agents, and employees from and against claims, damages, losses and expenses, including but not limited to lost revenues or profits and attorney's 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, cause in whole or in part by 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 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 by written instrument in accordance with the other provisions of the Contract.

**§ 10.2** 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.

**§ 10.3** 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent Construction Schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the

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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 and 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.

§ 10.4 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.

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

§ 10.6 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.

§ 10.7 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.

§ 10.8 INTENTIONALLY OMITTED.

§ 10.9 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.

## 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 through the Architect the names of the Subcontractors or suppliers 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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts 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 these, including those portions 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.

§ 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 the 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 15.4.3.

§ 14.5 If the Contractor is materially delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by fire, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes the Architect determines may justify delay, then the Contract Time shall be extended by Change Order 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 APPLICATIONS FOR PAYMENT

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit to the Architect and Owner, before the first Application for Payment, and, if necessitated by Change Orders, updated from time to time thereafter, a schedule of values, allocating the entire Contract Sum to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect and Owner may require. This cost loaded schedule, when and only when approved in writing by the Architect and the Owner, shall be used as the 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 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 (1) progress payments already received by the Contractor, less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 15.1.3 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.

§ 15.1.4 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.

§ 15.1.5 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.

### § 15.2 CERTIFICATES FOR PAYMENT

#### § 15.2.1 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. Such application 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 15.1.4 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 15.2.3.

§ 15.2.2 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 comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject 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. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. 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 material 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.

§ 15.2.3 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 15.2.2 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 15.2.1. 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 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.

§ 15.2.4 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

### § 15.3 PROGRESS PAYMENTS

§ 15.3.1 The Contractor shall pay each Subcontractor, no later than seven (7) business days after receipt of payment, 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 similar manner. Notwithstanding anything in the Section 15.3.1 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.

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

§ 15.3.3 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.

### § 15.4 SUBSTANTIAL COMPLETION

§ 15.4.1 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.

§ 15.4.2 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.

§ 15.4.3 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.

§ 15.4.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such 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.

### § 15.5 FINAL COMPLETION AND FINAL PAYMENT

§ 15.5.1 Upon receipt of the Contractor's written 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 terms and conditions of the Contract Documents and that the entire balance found to be due the

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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 15.5.2 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.

§ 15.5.2 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.

§ 15.5.3 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; or
- .3 terms of special warranties required by the Contract Documents.

§ 15.5.4 Acceptance of final payment by the Contractor, a Subcontractor, and equipment or material 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 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 Subcontractors or 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, except for damage or loss 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 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials. 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 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 report the condition to the Owner and Architect within twenty-four (24) hours by phone or email and in writing. 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 The Contractor shall carry and maintain in force for the duration of the Contract, underwritten by insurer(s) lawfully authorized to write insurance in the jurisdiction in which the Project is located, 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.

§ 17.1.1 MINIMUM INSURANCE TYPES AND LIMITS:

.1 Commercial General Liability:

- a. \$1,000,000 Combined Single Limit, for bodily injury and property damage, per Occurrence.
- b. \$2,000,000 Annual Aggregate

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.

.2 Workers' Compensation and Employer's Liability:

- c. Statutory Workers' Compensation including an all states endorsement.
- d. Employer's Liability:

Bodily Injury by Accident                      \$500,000 Each Accident

Bodily Injury by Disease    \$500,000 Policy Limit

Bodily Injury by Disease    \$500,000 Each Employee

.3 Commercial Automobile Liability:

- e. \$1,000,000 Combined Single Limit for bodily injury and property damage liability, covering all owned, hired and non-owned vehicles, and including loading, unloading thereof.

.4 Umbrella (Excess) Liability: To be provided over the primary general liability; automobile liability and employers' liability insurance policies.

\$5,000,000 per occurrence  
\$5,000,000 Aggregate (Per Project)

.5 The Board of Directors of the Johnson County Library of Johnson County, Kansas, and the Board of County Commissioners of Johnson County, Kansas respectively and their officers, Commissions, Agencies and employees shall be named as Additional Insured under the Commercial General Liability policy. The Additional Insured requirement shall be subject to the limitation of liability for claims within the scope of the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., and amendments thereto, and does not create a partnership or joint venture between the BOCC, Board of Directors and Contractor under this Contract. The additional insured status shall be provided by means of ISO Endorsement CG 20 10, CG 20 37 or their manuscript equivalent. Such additional insured status shall extend to the liability arising out of the Contractor's work or completed operations. A copy of the additional insured endorsement shall be attached to the Certificate of Insurance required per Section 17.1.1.7.

.6 It is the Contractor's sole responsibility to provide the Owner notice should any required insurance be reduced, cancelled or non-renewed. Failure of the Contractor to provide all insurance required or to provide notice of cancellation or non-renewal shall not relieve Contractor of its obligation under this Contract.

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- .7 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work, verifying the required coverage. The Certificate Holder on the Certificate of Insurance shall be as follows:

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

Board of County Commissioners of Johnson County, Kansas  
c/o Risk Manager  
111 S. Cherry Street, Suite 2400  
Olathe, KS 66061-3468

- f. The Bid Request Number shall be referenced on the Certificate of Insurance. The Certificate of Insurance shall be written on a standard ACCORD 25 form (required certificate format is included in the Contract Documents).
- g. Prior to any reduction in coverage or limits, or cancellation, Contractor or its Agent shall provide the Certificate Holder not less than thirty (30) days advanced written notice by registered mail to the stated address of the certificate holder.
- .8 The Contractor understands and agrees that any insurance or self-insurance maintained by the Board of Directors of the Johnson County Library of Johnson County, Kansas and the Board of County Commissioners of Johnson County, Kansas and their officers, Commissions, and Agencies and employees, shall apply in excess of and not be contributory with any insurance or self-insurance maintained by Contractor.
- .9 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.
- .10 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.

## § 17.2 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 Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance on a "special form" Builder's Risk or equivalent policy form in the amount of the initial Contract Sum plus the value for the entire Project at the site on a replacement cost basis subject to the Owner's policy deductible. Such 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 15.5 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 interests of the Owner, the Contractor, Subcontractors and sub-subcontractors in the Project.

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§ 17.3.2 The Contractor shall be responsible for the first Five Thousand Dollars and Zero Cents (\$5,000.00) of each covered Builder's Risk Property Insurance claim, which shall not be reimbursable as a Cost of Work.

§ 17.3.3 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 12, 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 covered by property insurance obtained pursuant to Section 17.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as a fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 12, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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

*(Paragraphs deleted)*

#### § 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 The Contractor shall furnish a Maintenance Bond on a form supplied by the Owner and contained in the Bidding Documents in an amount equal to five percent (5%) of the initial Contract Sum as well as subsequent modifications holding good for a period of one (1) year(s) after final acceptance of the Work. The Maintenance Bond shall protect the Owner against all damages, losses, and expenses which may occur to the Owner, by reason of defective materials used, or by reason of defective workmanship done, for, and the construction of, said Work. If any items covered by the Maintenance Bond are not repaired or replaced by the Contractor within a reasonable time, as determined by the Owner, or if a hazard occurs as the result of disrepair, the Owner shall have the right to correct, or have corrected such disrepair, at the expense of the Contractor or Bonding Company.

#### 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.

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§ 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 15.4.3, 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 written 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.

§ 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 (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating the costs to the Contractor.

### **§ 19.4 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

INTENTIONALLY OMITTED

§ 19.5 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.

**§ 19.6** 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.

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

**§ 19.7.1** 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.

**§ 19.7.2** 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.

**§ 19.7.3** The Contractor agrees that is at any time following thirty-six (36) months of termination of the Contract (the "audited period"), an audit performed by or for the Owner hereunder of the Records and/or Change Order(s) pertaining to, or in connection with, the Work and/or the Contract reveals that any overcharges were paid by the Owner and were attributable to any error, omission, negligence, misrepresentation, or willful act on the part of the

Contractor, or an of its officers, employees, subcontractors, agents or payees, then the 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.

#### **§ 19.8 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 15.2.1 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’ written 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 above reasons 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’ written 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.

Init.

## § 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 21.8 and Sections 15.5.3 and 15.5.4, 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 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.

§ 21.3 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.

§ 21.4 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.

Init.



§ 21.5 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.

*(Paragraph deleted)*

§ 21.7 INTENTIONALLY OMITTED

§ 21.7 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.

§ 21.8

*(Paragraphs deleted)*

INTENTIONALLY OMITTED

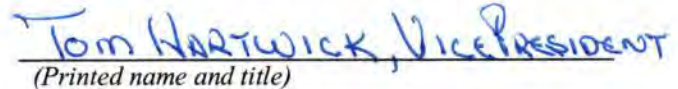
This Agreement entered into as of the day and year first written above.

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

\_\_\_\_\_  
(Printed name and title)



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

  
(Printed name and title)

APPROVED AS TO FORM:

\_\_\_\_\_  
Fred J. Logan, Jr.  
Counsel for Johnson County Library

Init.

# **Additions and Deletions Report for** **AIA® Document A107™ – 2007**

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:54:35 on 02/27/2017.

## **PAGE 1**

**AGREEMENT** made as of the 9th day of March in the year 2017

...

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

...

Premier Contracting, Inc.  
3940 S Ferree  
Kansas City, KS 66103  
913-677-4700

...

*(Name, location and detailed description)*

Johnson County Libraries - Central Resource Library Roof Replacement - Phase 2  
Bid No. 2017-014  
9875 W 87<sup>th</sup> Street  
Overland Park, KS 66212

...

The Consultant, hereinafter the Architect:

...

RTI Consultants  
22117 W 83<sup>rd</sup> Street  
Lenexa, KS 66227-3136

...

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.

## **PAGE 2**



§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the \_\_\_ day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the \_\_\_ day of the \_\_\_ month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than \_\_\_ (\_\_\_) days after the Architect receives the Application for Payment. 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. (~~Federal, state or local laws may require payment within a certain period of time.~~)

...

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.

...

18 % per annum

...

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

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

**approved Certificate for Payment**

**PAGE 6**

For any claim subject to, but not resolved by, mediation pursuant to Section 21.3, ~~the~~ The method of binding dispute resolution shall be as follows: be:

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

Arbitration pursuant to Section 21.4 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

...

§ 6.1.1 The Agreement is this executed AIA Document A107-2007, as modified, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

§ 6.1.2 ~~The Supplementary and other Conditions of the Contract:~~

| <u>Document</u>               | <u>Title</u>             | <u>Date</u>              | <u>Pages</u>                   |
|-------------------------------|--------------------------|--------------------------|--------------------------------|
| <u>INTENTIONALLY OMITTED.</u> |                          |                          |                                |
| ...                           |                          |                          |                                |
| <u>Project Manual</u>         | <u>Table of Contents</u> | <u>February 1, 2107</u>  | <u>000100-1 &amp; 000100-2</u> |
| ...                           |                          |                          |                                |
| <u>R200</u>                   | <u>Cover</u>             | <u>February 15, 2017</u> | <u>Bid No. 2017-014</u>        |
| <u>R201</u>                   | <u>Phase 2 Roof Plan</u> | <u>February 16, 2017</u> | <u>February 2017</u>           |
| <u>R202</u>                   | <u>Phase 2 Details</u>   | <u>February 16, 2017</u> | <u>February 2017</u>           |
| ...                           |                          |                          |                                |
| <u>One</u>                    | <u>Phase 2 Details</u>   | <u>February 15, 2017</u> | <u>6</u>                       |
| <u>Two</u>                    |                          | <u>February 16, 2017</u> | <u>1</u>                       |

PAGE 7

- Invitation For Bid, Bid Request No. 2017-014
- Executed Bid Form
- Executed Bid Bond
- Executed Performance Bond
- Executed Statutory Bond to the State of Kansas
- AIA Document A701-1997, as modified, Instructions To Bidders

...

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

...

The Contract Documents form the Contract for Construction. The ~~Contract represents~~ Contract, together with the performance bond, statutory bond and maintenance bond, if any, represent the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed

to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

...

### **§ 7.3.1 THE PROJECT**

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

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

...

**§ 7.5.1** The Architect and the Architect's ~~consultants~~ consultants, if any, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 this Project is not to be construed as publication in derogation of the Architect's or Architect's ~~consultants'~~ consultants', if any, reserved rights.

**§ 7.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them 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 material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's ~~consultants~~ consultants, if any.

## **PAGE 8**

**§ 7.7 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.

**§ 7.8 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.

**§ 7.9 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.

...

**§ 8.1.1** The Owner shall furnish all necessary surveys and a legal description of the site.

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

...

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 written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner, without prejudice to any other remedy the Owner may have, may correct such deficiencies and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Architect's additional services and expenses made necessary thereby, from the payment then or thereafter due the Contractor. If payments then or thereafter due are insufficient, the Contractor shall pay the difference to the Owner.

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

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

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. ~~These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the~~ The Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

...

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

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

...

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

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

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

...

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

#### PAGE 10

The Contractor shall pay ~~sales, consumer, use and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~ any and all sales, consumer, use and 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.

...

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

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

...



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

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

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

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

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

§ 9.9.3 The Contractor shall 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.

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The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such 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 the Contractor has reason to believe that the required design, process or product is an infringement of a

copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect in writing to the Architect and the Owner.

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

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

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

#### **§ 9.16 INDEMNIFICATION**

**§ 9.16.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants and their respective officers, consultants, agents, and employees from and against claims, damages, losses and expenses, including but not limited to lost revenues or profits and attorney's 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, cause in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.16.1. The Contractor's obligation to indemnify and hold harmless the Architect shall apply only to the extent that the Owner's agreement with the Architect contains a reciprocal indemnification and hold harmless provision protecting the Contractor.

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

**§ 10.1** The Architect will provide administration of the Contract and will be an the Owner's representative during construction, until the date the Architect issues the final Certificate for Payment, conclusion of the one year warranty period. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract

Documents, unless otherwise modified ~~in writing in accordance with~~ by written instrument in accordance with the other provisions of the Contract.

§ 10.2 The Architect ~~will~~ shall visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

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

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§ 10.6 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.

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§ 10.8 ~~The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~ INTENTIONALLY OMITTED.

#### PAGE 14

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

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

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

Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, and damage to the Work or defective construction of a separate contractor.

...

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

#### PAGE 15

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

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

...

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit to the ~~Architect, Architect and Owner,~~ before the first Application for Payment, and, if necessitated by Change Orders, updated from time to time thereafter, a schedule of values, allocating the entire Contract Sum to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect ~~may require. This schedule, unless objected to by the Architect, shall be used in and~~ Owner may require. This cost loaded schedule, when and only when approved in writing by the Architect and the Owner, shall be used as the 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.

...

§ 15.1.5 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.

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

- .1 At least seven days (7) before the date established for each progress payment submittal, the Contractor shall submit to the Architect and Owner, a draft of the Application for Payment for operations completed in accordance with the most recently approved schedule of values. Such application 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 15.1.4 and all other provisions of this Contract, the Architect will, within two (2) business days, issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or 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 15.2.3.

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§ 15.2.3 The Architect ~~may will~~ withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.2.2 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 15.2.1. 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

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§ 15.3.1 The Contractor shall pay each Subcontractor, no later than seven (7) business days after receipt of payment, 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 similar manner. Notwithstanding anything in the Section 15.3.1 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.

...

§ 15.4.1 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.

...

§ 15.5.1 Upon receipt of the Contractor's written 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 terms and conditions of 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 15.5.2 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.

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

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§ 15.5.4 Acceptance of final payment by the Contractor, a ~~Subcontractor~~ Subcontractor, and equipment or material 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 final Application for Payment.

...

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

...

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

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, except for damage or loss 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. 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.

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**§ 16.2.1** The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials. 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), substance 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 report the condition to the Owner and Architect within twenty-four (24) hours by phone or email and in writing. When the material or substance has been rendered harmless, harmless by an authority of the Owner's choosing. Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately if and as appropriate and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional and incurred costs of shutdown, delay and start-up, start-up, if any.

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

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

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

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

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

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

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

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**§ 17.1** The Contractor shall ~~purchase from, and maintain in a company or companies lawfully authorized to do business~~ carry and maintain in force for the duration of the Contract, underwritten by insurer(s) lawfully authorized to write insurance in the jurisdiction in which the Project is located, 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 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 9.15.~~

**§ 17.1.1 MINIMUM INSURANCE TYPES AND LIMITS:**

.1 Commercial General Liability:

a. \$1,000,000 Combined Single Limit, for bodily injury and property damage, per Occurrence.

b. \$2,000,000 Annual Aggregate

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.

.2 Workers' Compensation and Employer's Liability:

c. Statutory Workers' Compensation including an all states endorsement.

d. Employer's Liability:

Bodily Injury by Accident \$500,000 Each Accident

Bodily Injury by Disease \$500,000 Policy Limit

Bodily Injury by Disease \$500,000 Each Employee

.3 Commercial Automobile Liability:

e. \$1,000,000 Combined Single Limit for bodily injury and property damage liability, covering all owned, hired and non-owned vehicles, and including loading, unloading thereof.

.4 Umbrella (Excess) Liability: To be provided over the primary general liability, automobile liability and employers' liability insurance policies.



\$5,000,000 per occurrence  
\$5,000,000 Aggregate (Per Project)

.5 The Board of Directors of the Johnson County Library of Johnson County, Kansas, and the Board of County Commissioners of Johnson County, Kansas respectively and their officers, Commissions, Agencies and employees shall be named as Additional Insured under the Commercial General Liability policy. The Additional Insured requirement shall be subject to the limitation of liability for claims within the scope of the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., and amendments thereto, and does not create a partnership or joint venture between the BOCC, Board of Directors and Contractor under this Contract. The additional insured status shall be provided by means of ISO Endorsement CG 20 10, CG 20 37 or their manuscript equivalent. Such additional insured status shall extend to the liability arising out of the Contractor's work or completed operations. A copy of the additional insured endorsement shall be attached to the Certificate of Insurance required per Section 17.1.1.7.

.6 It is the Contractor's sole responsibility to provide the Owner notice should any required insurance be reduced, cancelled or non-renewed. Failure of the Contractor to provide all insurance required or to provide notice of cancellation or non-renewal shall not relieve Contractor of its obligation under this Contract.

.7 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. The Contractor shall cause the commercial liability coverage required by the Contract Documents 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 during the Contractor's completed operations. Work, verifying the required coverage. The Certificate Holder on the Certificate of Insurance shall be as follows:

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

Board of County Commissioners of Johnson County, Kansas  
c/o Risk Manager  
111 S. Cherry Street, Suite 2400  
Olathe, KS 66061-3468

f. The Bid Request Number shall be referenced on the Certificate of Insurance. The Certificate of Insurance shall be written on a standard ACCORD 25 form (required certificate format is included in the Contract Documents).

g. Prior to any reduction in coverage or limits, or cancellation, Contractor or its Agent shall provide the Certificate Holder not less than thirty (30) days advanced written notice by registered mail to the stated address of the certificate holder.

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

.9 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.

- .10 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.

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~~§ 17.3.1~~ Unless otherwise ~~provided~~, provided for in this Agreement, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance on ~~an "all-risk" a "special form" Builder's Risk or equivalent policy form, including builder's risk, form~~ in the amount of the initial Contract Sum, ~~plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising total Sum plus the value for the entire Project~~ at the site on a replacement cost basis ~~without optional deductibles, subject to the Owner's policy deductible~~. Such 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 15.5 or until no person or entity other than the Owner has an insurable interest in the property required by this Section ~~17.3.1~~ 17.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-subcontractors in the Project.

~~§ 17.3.2~~ The Owner shall file a copy of each policy with the Contractor before an exposure to loss may occur. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor. Contractor shall be responsible for the first Five Thousand Dollars and Zero Cents (\$5,000.00) of each covered Builder's Risk Property Insurance claim, which shall not be reimbursable as a Cost of Work.

~~§ 17.3.3~~ The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 12, 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 covered by property insurance obtained pursuant to Section 17.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as a fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 12, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

~~§ 17.3.4~~ A loss insured under the Owner's property insurance shall be adjusted by the Owner as a fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in a similar manner.

~~§ 17.4 PERFORMANCE BOND AND PAYMENT BOND~~

~~§ 17.4.1~~ The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

~~§ 17.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~

## **§ 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 The Contractor shall furnish a Maintenance Bond on a form supplied by the Owner and contained in the Bidding Documents in an amount equal to five percent (5%) of the initial Contract Sum as well as subsequent modifications holding good for a period of one (1) year(s) after final acceptance of the Work. The Maintenance Bond shall protect the Owner against all damages, losses, and expenses which may occur to the Owner, by reason of defective materials used, or by reason of defective workmanship done, for, and the construction of, said Work. If any items covered by the Maintenance Bond are not repaired or replaced by the Contractor within a reasonable time, as determined by the Owner, or if a hazard occurs as the result of disrepair, the Owner shall have the right to correct, or have corrected such disrepair, at the expense of the Contractor or Bonding Company.

~~§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.2.7.3 in Exhibit A, Determination of the Cost of the Work, otherwise provided in the Contract Documents.~~

~~§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.4.3, 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 written 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. Contractor.~~

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

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

...

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

...

The Contract shall be governed by the law of the place where the Project is located, except, that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.4. laws of the state of Kansas.

...

~~The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 19.4.~~ INTENTIONALLY OMITTED

**§ 19.5** 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.

**§ 19.6** 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.

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

**§ 19.7.1** 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.

**§ 19.7.2** 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.

**§ 19.7.3** The Contractor agrees that is at any time following thirty-six (36) months of termination of the Contract (the "audited period"), an audit performed by or for the Owner hereunder of the Records and/or Change Order(s) pertaining to, or in connection with, the Work and/or the Contract reveals that any overcharges were paid by the Owner and were attributable to any error, omission, negligence, misrepresentation, or willful act on the part of the Contractor, or an of its officers, employees, subcontractors, agents or payees, then the 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.

**§ 19.8 Definitions:**

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

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

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If the Architect fails to certify payment as provided in Section 15.2.1 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' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages executed.

...

§ 20.2.2 When any of the above reasons 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' written notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor ~~a detailed an~~ accounting of the costs incurred by the Owner in finishing the Work.

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

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~~The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.~~

§ 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.

...

§ 21.1 Claims, disputes and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred

~~initially to the Architect for initial decision. Such matters, except those waived as provided for in Section 21.8 and Sections 15.5.3 and 15.5.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation shall require an initial decision by the Architect as a condition precedent to binding dispute resolution. Unless the Architect and all affected parties agree, the Architect will not decide disputes between the Contractor and persons or entities other than the Owner.~~

~~§ 21.2 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines. The Architect will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, or (4) suggest a compromise.~~

~~§ 21.3 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.~~

~~§ 21.4 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished or (3) advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will render an initial decision.~~

~~§ 21.5 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). The Architect will render an initial decision that either rejects or approves the Claim in whole or in part. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to binding dispute resolution.~~

~~§ 21.6 Any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.~~

~~§ 21.7 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof. INTENTIONALLY OMITTED~~

~~§ 21.7 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.

**§ 21.8 CLAIMS FOR CONSEQUENTIAL DAMAGES**

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

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

**INTENTIONALLY OMITTED**

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.8 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

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\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

APPROVED AS TO FORM:

\_\_\_\_\_  
Fred J. Logan, Jr.  
Counsel for Johnson County Library



## Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Donavon Coup, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:54:35 on 02/27/2017 under Order No. 8699986006\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A107™ – 2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
\_\_\_\_\_  
(Signed)

PROJECT MANAGER, FACILITIES  
\_\_\_\_\_  
(Title)

2/27/17  
\_\_\_\_\_  
(Dated)

**To:** Johnson County Library Board of Directors  
**From:** Sean Casserley, County Librarian  
**Date:** March 9, 2017

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**Issue:** Whether to renew the proposed revised interlocal cooperation agreement with Olathe Public Library for automation, remote databases and e-content, and the provision of public computer control and reservation services for 2017.

**Analysis:** The Johnson County Library currently has an interlocal cooperation agreement with the Olathe Public Library (OPL) for automation and remote database access services. The agreement requires that a memorandum of renewal be approved for each calendar year in order to keep the agreements in force and effect.

**Alternatives:** 1) Approve the recommendation. 2) Not approve the recommendation.

**Recommendation:** The Johnson County Library Board of Directors approve the proposed renewal memorandum of interlocal cooperation agreement with the Olathe Public Library through December 31, 2017.

**Suggested Motion:** I move that the Library Board of Directors approve the proposed memorandum of interlocal cooperation agreement with the Olathe Public Library through December 31, 2017.

**ADDENDUM TO THE INTERLOCAL COOPERATION AGREEMENT  
BETWEEN THE BOARD OF DIRECTORS OF THE JOHNSON COUNTY  
LIBRARY AND THE BOARD OF DIRECTORS OF THE OLATHE PUBLIC  
LIBRARY FOR AUTOMATED CIRCULATION, PATRON, AND  
BIBLIOGRAPHIC SERVICES**

This Renewal Memorandum (the "Renewal" hereinafter) is made this 9<sup>th</sup> day of March 2017, by and between the Board of Directors of the Johnson County Library ("JCL" hereinafter) and the Board of Directors of the Olathe Public Library ("OPL" hereinafter) to amend the Interlocal Cooperation Agreement between the parties on the sharing of automated services (the "Agreement" hereinafter).

The parties agree as follows:

1. Memorandum of Renewal. On May 17, 1989, the parties entered into the Agreement and have renewed it on an annual basis since that date. The Agreement has been amended and supplemented several times. The Agreement, as amended and supplemented, has worked well for the parties, is of substantial benefit to the patrons of both institutions, and the parties accordingly renew said Agreement, as amended and supplemented, under the existing terms, pursuant to paragraph II.2, for the period of January 1, 2017 through December 31, 2017 with Sections 10 and 10A as set forth below.
2. Amended Section 10 of the Agreement. Section 10 of the Agreement, as amended, reads as follows:
  10. ACCESS TO INFORMATION IN BIBLIOGRAPHIC AND CIRCULATION DATA BASE: SERVICE FEES.
    - A. Access to Information. JCL and OPL agree that, subject to paragraph 11, full access shall be allowed to information stored in the JCL automated system relating to books and library materials at both libraries and relating to the holdings, availability and circulation status of such books and library materials. The parties agree to use the JCL automated system to permit patrons of one library system to "reserve" an item in the other library's collections. Staff from OPL and JCL has developed procedures for the delivery of such material.
    - B. Internet Access Service. JCL and OPL agree that JCL no longer provides OPL with Internet Access Service and that no fee is accordingly charged for that service.
    - C. Service Fees. The parties agree that OPL will pay to JCL a service fee in the amount of 23% of Integrated Library System Coordinator services costs, 23% of .5FTE for E-content Selector negotiation

services, plus 23% additional costs for database subscriptions for the period of January 1, 2017 through December 31, 2017. If additional services are added throughout the year, additional service fees will be assessed at the 23% rate.

3. Amended Section 10A of the Agreement. Section 10A of the Agreement, as added by way of addendum approved December 17, 2003, shall read as follows:

10A. LEASE OR PURCHASE OF DATA BASES AND E-CONTENT FOR REMOTE USE. JCL and OPL agree to act in concert to lease or purchase databases and e-content for remote use by their patrons on the terms set forth in this paragraph 10A.

- A. Each library shall be financially responsible for its share of the cost of leasing or purchasing such data bases and e-content as follows:
1. OPL will be responsible for 23% of the total cost in 2017 plus additional costs associated with OPL being made a party to any applicable leases.
  2. JCL will be responsible for 77% of the total cost of leasing or purchasing such databases in 2017.
  3. In 2017, databases will be billed from 10/1/16 – 9/30/17 and will continue billing on an October – September cycle thereafter.
  4. In 2016, e-books will be billed from 10/1/16 – 9/30/17 and will continue billing on an October – September cycle thereafter.
- B. JCL shall provide OPL with the following services at no additional cost JCL staff shall provide the necessary equipment and software to perform use authentication; and JCL staff shall provide support desk services relating to remote data base and e-content access.  
OPL will pay 23% of .5FTE for E-content Selector to negotiate data base and e-content contracts on behalf of JCL and OPL.
- C. OPL shall appoint a representative to assist in the selection and licensing of databases leased or purchased for remote use pursuant to the terms of this Agreement.

D. In the event of severance of the Inter local Agreement between JCL and OPL, 23% of the mutual e-book and e-audio book content will remain the property of OPL. The specific titles retained will be determined by OPL.

4. Added Section 10B of the Agreement. Section 10B of the Agreement, as added by way of addendum approved July 21, 2004, shall read as follows:

10B. USE OF COMPUTER RESERVATION SERVICE. JCL agrees to allow OPL to access and use its online computer reservation system. This service will be provided to OPL by JCL, and JCL will be the sole owner of all hardware, software, and other components related to the proper operation of the system. JCL will provide regular maintenance to all components of the service. The agreed support fee for this service is included in the fee set forth in paragraph 10.A above.

5. Addendum to Section 10C of the Agreement Section 10C of the agreement, as added by way of addendum approved December 15, 2010, shall read as follows:

10 C. LEASES OR PURCHASE OF WEB CATALOG INTERFACE. JCL and OPL agree to act in concert to lease or purchase a presentation layer interface to provide public access to the Bibliographic and Patron account database via the Web on the terms set forth in this paragraph 10C.

A. Each library shall be financially responsible for its share of the costs of leasing or purchasing a presentation layer interface as follows:

1. OPL will be responsible for 23% of the total cost in 2017, plus additional costs associated with OPL being made a party to any applicable leases.
2. JCL will be responsible for 77% of the total cost of leasing or purchasing such an interface.

B. JCL shall provide OPL with the following services at no additional cost: JCL staff will be responsible for negotiation of contracts or leases with interface vendors; JCL staff shall provide the necessary equipment and software to perform authentication and interface with the ILS; and JCL staff shall provide support desk services relating to online interface access.

C. JCL and OPL shall appoint members to a committee that will select and mutually agree upon an interface to be leased or purchased pursuant to the terms of this Agreement.

COURIERS JCL shall pay 77% of Monday through Saturday courier service between OPL and JCL.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands.

BOARD OF DIRECTORS OF THE  
OLATHE PUBLIC LIBRARY

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BOARD OF DIRECTORS OF THE  
JOHNSON COUNTY LIBRARY

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**To:** Johnson County Library Board of Directors

**From:** Sean Casserley, County Librarian

**Date:** March 9, 2017

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**Issue:** Initial approval of the Fiscal Year 2018 budget for the Johnson County Library Taxing District

**Background:** Each year the Board of the Johnson County Library submits a proposed budget to the County Manager's Office to be approved and presented to the Johnson County Board of County Commissioners.

**Analysis:** The budgeted revenues for fiscal year 2018 are based upon projected assessed valuation and may change as the assessed valuation is finalized.

**Alternatives:** 1) Approve the recommendation. 2) Not approve the recommendation.

**Legal Review:** See Legal Memo.

**Recommendation:** Approve the proposed budget.

**Suggested Motion:** I move the Johnson County Library Board of Directors approve the submittal, as stated in Resolution No. 2017-1 Initial approval of the Fiscal Year 2018 budget for the Johnson County Library Taxing District, to the County Manager's Office.

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AND MISSOURI

## MEMORANDUM

To: Members of the Library Board; Sean Casserley

From: Fred Logan, Library counsel

Re: Resolution No. 2017-1; Initial approval of the Fiscal Year 2018 budget for the Johnson County Library Taxing District

Date: March 3, 2017

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At your March 9, 2017, meeting, I will be presenting to you for approval Resolution No. 2017-1, Approval of the Fiscal Year 2018 Budget for the Johnson County Library.

You will recall that last August the Library Board adopted a formal resolution approving the final fiscal year 2017 budget for the Johnson County Library Taxing District. We recommended that the Library Board adopt such a resolution after consulting with Don Jarrett, chief counsel for the Board of County Commissioners and Cynthia Dunham, Deputy Director for Legal Services for the county. The Johnson County Commission adopted and published a similar resolution with respect to the Johnson County budget, as did the Johnson County Park Board with respect to the Johnson County Park and Recreation District.

As I noted in my memo to you last August, the adoption of formal budget resolutions represents “best practice going forward . . . for both the BOCC and the Library Board.”

I anticipate that in August you will again adopt formal resolutions approving (1) the final budget, after it is reviewed and finalized by the office of the County Manager and the BOCC, and (2) the mill levy associated with the final, approved budget.

We recommend that you approve Resolution 2017-1. I look forward to explaining this and answering your questions at the Board meeting.



RESOLUTION NO. 2017-1

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE JOHNSON COUNTY LIBRARY, APPROVING THE PROPOSED BUDGET FOR THE JOHNSON COUNTY LIBRARY TAXING DISTRICT FOR FISCAL YEAR 2018.

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At a regular meeting of the Board of Directors of the Johnson County Library (the Library Board) conducted Thursday, March 9, 2017, there came before the Library Board for consideration the matter of adopting a Resolution approving the proposed budget for the Johnson County Library Taxing District for fiscal year 2018. This proposed budget is subject to change, after review by the office of the County Manger and the Board of County Commissioners of Johnson County, Kansas, and prior to the time of final approval in August, 2017, or at such other time as may be set by the Library Board.

The Library Board, after full consideration, upon a motion duly made, seconded and carried, adopted Resolution No. 2017-1 to-wit:

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WHEREAS, the Board of County Commissioners of Johnson County, Kansas (BOCC) is the governing body of Johnson County, a taxing subdivision of the State of Kansas, and has the authority and responsibility to establish and provide necessary and prudent levels of governmental services and public improvements to serve the best interests of the County and its citizens and to preserve the public health, safety and welfare, while exercising fiscal responsibility to minimize the burden of taxation and to ensure the most cost-effective expenditure of public funds; and

WHEREAS, the BOCC annually adopts a budget for the governmental services of Johnson County, which includes three separate taxing fund districts: the Johnson County

Taxing District, the Johnson County Library Taxing District, and the Johnson County Park and Recreation Taxing District; and

WHEREAS, the Board of Directors of the Johnson County Library (the Library Board) is the governing body of the Johnson County Library, a taxing subdivision of the State of Kansas, and has the authority and responsibility to establish and provide necessary and prudent levels of library service in the Johnson County Library Taxing District, while exercising fiscal responsibility to minimize the burden of taxation and to ensure the most cost-effective expenditure of public funds; and

WHEREAS, the Board of Directors of the Johnson County Library evaluates and determines the level of services and needed expenditures prudently required to fund the fiscal year 2018 budget for the Johnson County Library Taxing District, and is now prepared to approve and send to the office of the County Manager and the BOCC its proposed budget for fiscal year 2018; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Johnson County Library that the Library Board shall and hereby approves a proposed budget for the 2018 budget year for the Library Taxing District that includes authorized expenditures of for the Library Taxing District in the amount of \$31,581,028 in the Operating Fund and \$4,629,441 in the Special Use fund, for a total of \$36,210,469, and directs that the proposed budget be forwarded to the office of the County Manager and the BOCC for review.

Adopted this 9<sup>h</sup> day of March, 2017.

BOARD OF DIRECTORS OF THE  
JOHNSON COUNTY LIBRARY

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Pamela Robinson, Chair

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ATTEST:

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Secretary

APPROVED AS TO FORM:

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