

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING

This First Amendment to Memorandum of Understanding (this “First Amendment”) is made effective as of the ____ day of November, 2016, by and between **WAKE COUNTY, NORTH CAROLINA**, a body politic and corporate (“Wake County” or the “County”) and **TOWN OF CARY**, a municipality of the State of North Carolina, hereinafter referred to “the Town.” Wake County and the Town are also referred to herein as “the Parties”.

RECITALS:

WHEREAS, the County and the Town entered into that certain **MEMORANDUM OF UNDERSTANDING** (the “MOU”) dated April 28, 2016, to provide a plan and set forth the understanding of the Parties as it relates to design and construction of the Cary Regional Library Project (as such term is defined in the MOU); and

WHEREAS, the Cary Town Council (‘Council’) at its September 8, 2016 meeting, approved schematic design of the Town Parking Deck (‘Parking Deck’), which included construction of the parking deck structure, lighting and other necessary utilities and enhanced brick façade, including glass within parts of the fire stair structures. The approval also authorized an increase in the scope of the Town’s portion of the Project to include the construction of restrooms and unconditioned space for the Town in the Library, the construction of a monumental stair and walkways, and the installation of integrated art. The Council also approved schematic design of the Wake County Regional Library (‘Library’). The Library, Parking Deck, South Parking Deck Façade Elevation and East and West Parking Deck Façade Elevations are shown on Exhibits A-C.

WHEREAS, the Wake County Board of Commissioners, at its September 19, 2016 meeting, approved schematic design for the Parking Deck as it was approved by the Council and approved schematic design for the Library, as approved by Council; and

WHEREAS, the Parties now desire to amend and supplement the terms of the MOU as set forth in this First Amendment.

NOW THEREFORE, in consideration of the promises and mutual understandings, the Parties hereby agree to the following terms and conditions:

1. Additional Items Added At Town Cost; Amended Cary Total Project Budget.

Pursuant to MOU, Town had approved a preliminary budget of \$8,150,000 for design and construction of Parking Deck and County agreed to contribute the amount of \$1,000,000 to the Town’s total cost of \$8,150,000 for the Parking Deck, which Parking Deck total project cost includes construction costs and professional services fees. Town has now approved the following additional scope of work to the Cary Regional Library Project:

- a. Construction of approximately 1,100 SF finished restrooms on the lowest basement level of the Library, which will have a grade entrance on its east side. This level already will include service space for library functions. For this 1,100 SF item, which is additional work, an increase of \$350,000 was approved by the Town.

Amendment No. 1 to Memorandum of Understanding for Cary Regional Library & Parking Deck
Wake County and Town of Cary

- b. Construction of approximately 2,200 SF of unfinished, unconditioned space on the lowest basement level of the Library for future use by the Town. Building systems and utilities for the Library will be designed with the capacity to accommodate in this 2,200 SF space a conventional community activity space, which may include a modest coffee bar, but will not include food preparation or food service. Utilities will be stubbed up for future connection and exterior walls will be designed with “knock out” panels such that windows can be constructed in the future. For this item, an increase of \$165,000 was approved by Town for this additional work as represented in Exhibit E – Lower Level Library Floor Plan
- c. Construction of a monumental stair on the north side of the Library and walkways to connect the Town’s performance space and street level along Dry Avenue/Kildaire Farm Road to the lower level plaza on the east side of the Library which will be one story lower in elevation. The walkways will also connect the performance space to the future Town park. For this item, an increase of \$115,000 was approved by Town for this additional work.
- d. Installation of integrated art onto the north façade of the Parking Deck. This item includes installation of a wall with an image of existing trees in the park constructed with brick masonry to include openings for light to penetrate through from the Parking Deck. This item also includes the installation of special art glass on the windows surrounding the northwest stairwell serving the Parking Deck. For this item, an increase of \$600,000 was approved by Town for this additional work. The amount represents the net increase to the originally budgeted enhanced façade for this face of the building. Refer to Exhibit D - North Parking Deck Façade.

All budget costs shown for these additional 4 items of work include construction, contingency, escalation and associated professional services fees. The costs for these items are exclusive to the Town. No County funds are being allocated for these 4 items. Costs are summarized below:

Lower Level Library Restrooms	\$ 350,000
Lower Level Unfinished Future Space	\$ 165,000
Monumental Stairs and Sidewalk Connectivity	\$ 115,000
<u>Integrated Art (Net Increase)</u>	<u>\$ 600,000</u>
Total Additional Scope by Town of Cary:	\$1,230,000
<u>Town original cost for Parking Deck:</u>	<u>\$7,150,000</u>
Town of Cary Total Project Budget:	\$8,380,000

2. Professional Services Anticipated During Construction

In accordance with the original MOU, the County entered into a Professional Services Agreement (‘Services Agreement’) with a design consultant for the Parking Deck, and this Services Agreement included schematic design services referred to as Phase 1. The MOU contemplates that, upon approval of Schematic Design for the Parking Deck and the Library by the Council, the County would amend or enter into a new agreement with the design consultant to complete Phase 2 of design services. Phase 2 represents and includes the Design Development through Construction Administration and Closeout/Warranty phases of the Project. In addition to the design fees, there are “Soft Costs” which include services for materials testing, and special inspections during construction, which are typically conducted by a 3rd party geotechnical engineering firm. These services are referred to as “CMT Services.” (Construction & Materials Testing) A consulting firm for these CMT services has not yet been selected but an allowance as shown in the below chart is to be carried at this point. Below is a summary

Amendment No. 1 to Memorandum of Understanding for Cary Regional Library & Parking Deck
Wake County and Town of Cary

of design fees including Soft Costs for the Parking Deck:

Phase 1 Schematic Design Services (Completed/Paid)	\$116,650
Phase 2 Compensation w/Reimbursable Expenses	\$498,136
Allowance for CMT Services	\$ 75,000
Reserve for Other Professional Services	\$136,450
Total Net Design Related Costs for	\$826,236
Parking Deck Payable by the Town	

The Phase 2 Compensation w/Reimbursable Expenses has been updated to reflect the current cost of \$498,136. Of this amount, the County remains responsible only for 12% of the originally anticipated Phase 2 design fee of \$460,950, which equals \$55,314.

Once the construction contract is awarded, the CMT fees and other professional services fees that the Parties agree are necessary for the Parking Deck, will be identified and confirmed and an equitable cost share arrangement between the Town and County will be defined in a future Interlocal Agreement that will replace this Memorandum of Understanding as amended.

3. Payment Provisions and Other General Conditions

- A. Town shall pay the County within 30 days of execution of this First Amendment, for Phase 2 (\$498,136), CMT Services (\$75,000) and Other Professional Services (\$136,450) for a total amount of **\$709,586**. This amount includes anticipated reimbursable expenses, less the County's contribution to fees and reimbursable directly attributable to the base cost for the parking deck.
- B. Overruns or underruns in the cost of Services, as well as cost sharing for other professional services not defined here, and determined to be necessary, will be equitably determined by the Parties based on Section 6 "Project Funding" of the original MOU dated April 28, 2016; such costs to be finalized in the Interlocal Agreement that will replace this MOU at or before the time the construction contract is awarded for the Project.
- C. Verification of Work Authorization; Iran Divestment Act Certification. The Parties, and all contractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes. Each Party hereby certifies that the Party, and all contractors, are not on the Iran Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58.
- D. Except as provided in this First Amendment, all of the terms, conditions, and agreements contained in the MOU shall remain unchanged and in full force and effect, and the same hereby are expressly ratified and confirmed by the County and the Town. In the event of a conflict between the terms and conditions of this First Amendment and the MOU, the terms of this First Amendment shall control.
- E. Any agreement hereinafter made shall be ineffective to change, modify or waive this First Amendment or the MOU in whole or in part, unless such agreement is in writing and is signed by the party against whom enforcement of the change, modification or waiver is sought.

F. The following is a recap of the Exhibits to this First Amendment:

Exhibit A – Area Site Plan

Exhibit B – South Parking Deck Façade Elevation

Exhibit C – East & West Parking Deck Façade Elevations

Exhibit D – North Parking Deck Façade Elevation (showing Integrated Public Art)

Exhibit E – Lower Level Library Floor Plan

IN TESTIMONY WHEREOF, WAKE COUNTY AND THE TOWN OF CARY through their authorized officers and by their own hands has hereunto set forth their hands and seals of the day and year first above written.

WAKE COUNTY

By: _____
Title: County Manager

Date: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Wake County Finance Director, or designee

TOWN OF CARY

By: _____
Title: Town Manager

Date: _____

Attest:

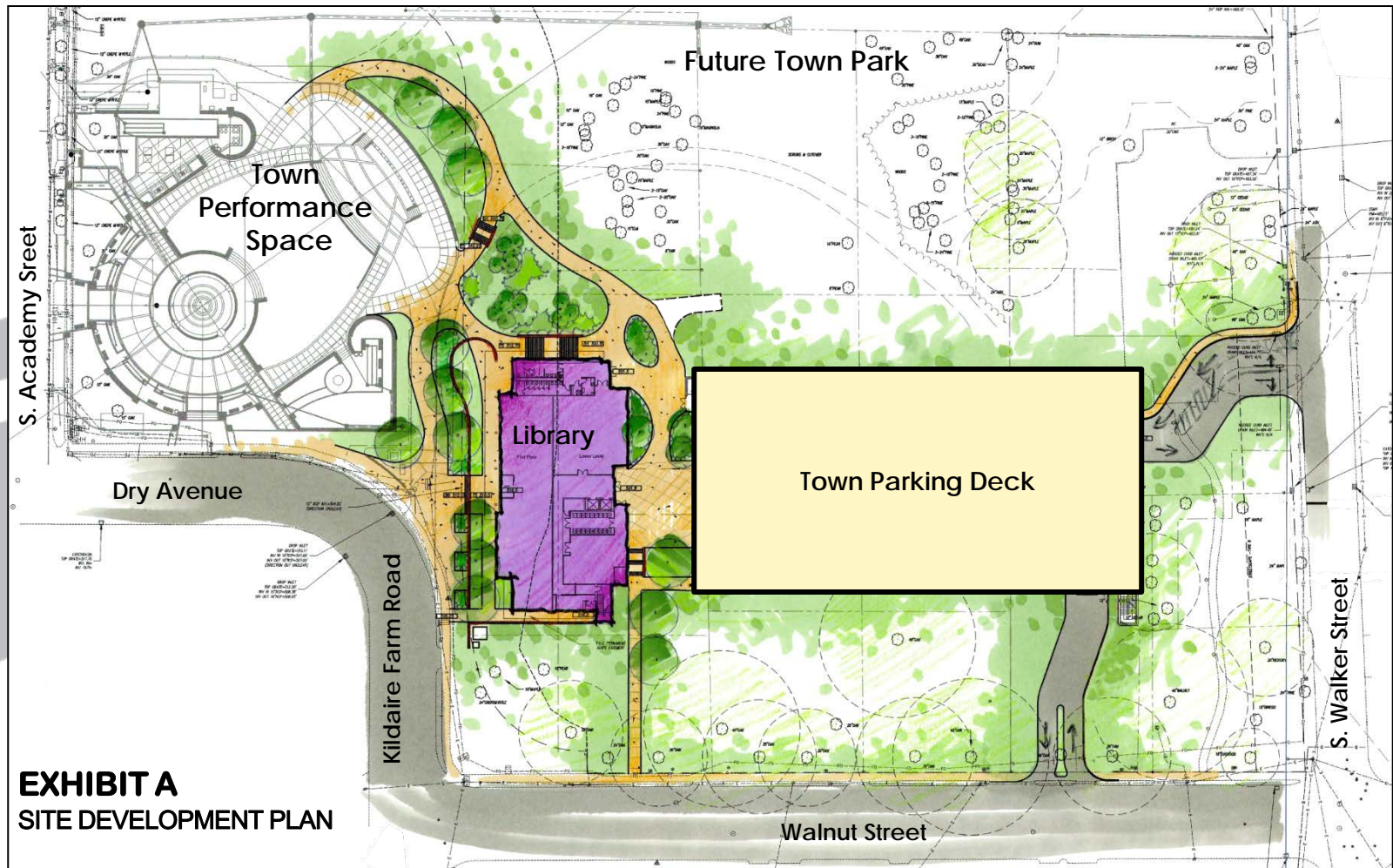
_____ [SEAL]
Secretary

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Town of Cary Finance Director, or designee

Amendment No. 1 to Memorandum of Understanding for Cary Regional Library & Parking Deck
Wake County and Town of Cary

CARY REGIONAL LIBRARY & DOWNTOWN PARKING DECK



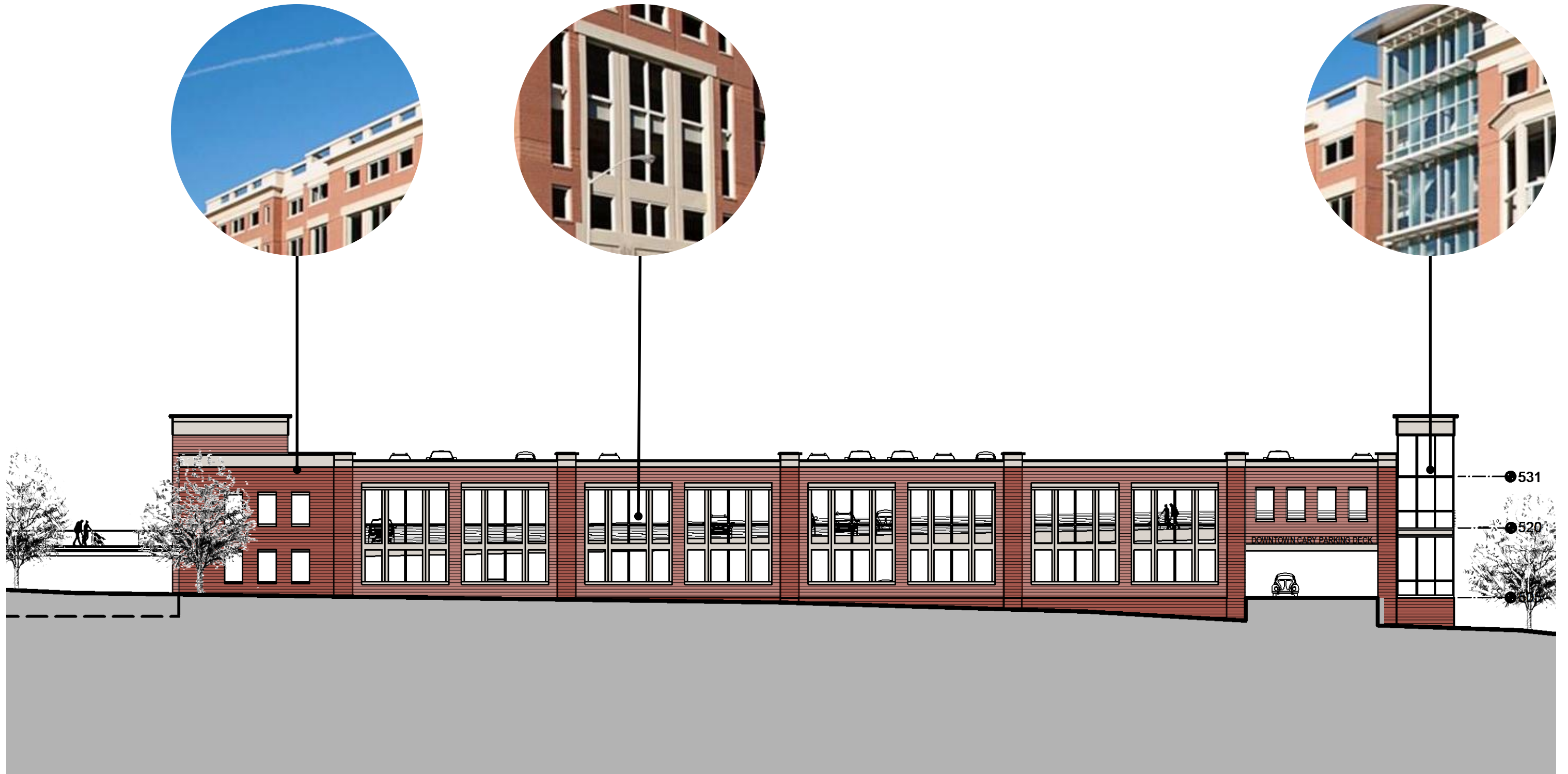


EXHIBIT B

CARY REGIONAL LIBRARY & DOWNTOWN PARKING DECK South Facade Elevation

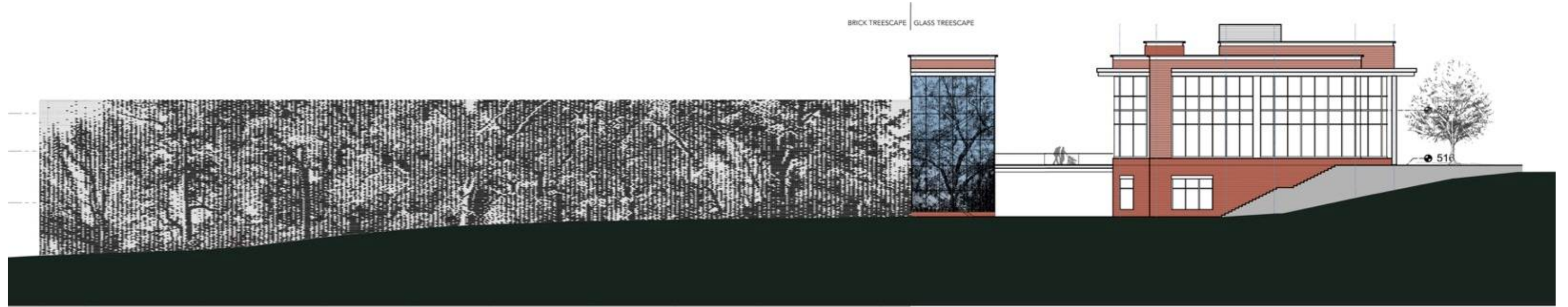


West Elevation



East Elevation

EXHIBIT C
CARY REGIONAL LIBRARY &
DOWNTOWN PARKING DECK
 East & West Facade Elevations



PARKING DECK FACADE WITH INTEGRATED PUBLIC ART

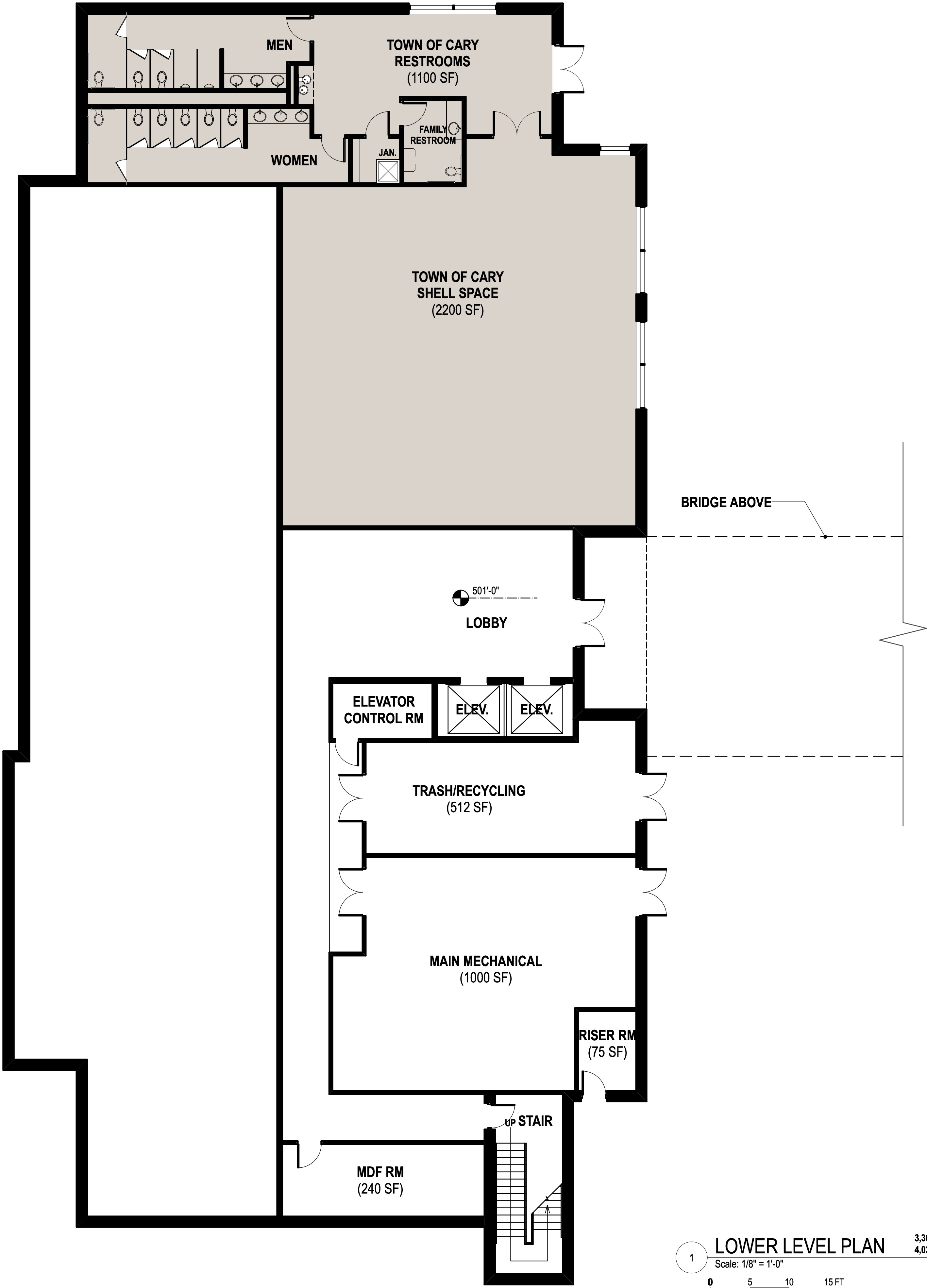
LIBRARY

EXHIBIT D

CARY REGIONAL LIBRARY & DOWNTOWN PARKING DECK

North Facade Elevation - Library & Parking Structure

CARY REGIONAL LIBRARY
LOWER FLOOR PLAN
EXHIBIT E



LEGEND
PICTURE BOOKS
BOARD BOOKS
BEGINNING READERS
YOUTH NON FICTION
YOUTH FICTION
YOUNG ADULT
YOUTH AUDIO
HOLDS
ADULT FICTION
ADULT NON FICTION
PERIODICALS
NEW BOOKS
IT'S YOUR LUCKY DAY COLLECTION
TOWN OF CARY SPACE