I. PROCLAMATIONS/PRESENTATIONS


2. Presentation on the status of the excess reserve funds given to Parks + Recreation in the Spring of 2018—Tim Laurent, Parks + Recreation.

II. UNFINISHED BUSINESS

III. CONSENT AGENDA

IV. NEW BUSINESS

A. COUNTY CLERK – Cynthia Beck

1. Consider all voucher payments.

2. Consider correction orders.

B. PARKS + RECREATION – John Knight

1. Consider authorization and execution of Contract C238-2019 with Senne Company for the Project Design-Build Fee for the Hillcrest Center Renovation Project at an estimated cost not to exceed $46,558.00 with funding from the Building Maintenance Fund.

2. Consider authorization and execution of Contract C239-2019 with Sunflower State Games to host the 2019 Sunflower State Games rowing event at Lake Shawnee on July 20, 2019 with compensation through a $500 special event fee.

3. Consider approval of request to fill a Park Police Officer position at a salary, including benefits, of $55,682.60 and to fill any position that becomes vacant as a result of filling this position.

4. Consider authorization and execution of the following contracts relating to the Deer Creek Trail extension:

   (a) Contract C240-2019, Amendment No. 1, with Cook, Flat & Strobel Engineers, P.A. to perform additional consulting to include geotechnical services for the retaining wall and four bridges in the amount of $33,950.00 with funding from the Building Maintenance Fund.

   (b) Contract C241-2019, Supplemental No. 1 to Agreement No. 94-180 with the Kansas Dept. of Transportation, reflecting an increase in federal funds of $51,604.00 to the Deer Creek Trail project.

C. STORMONT VAIL EVENTS CENTER – Kellen Seitz

1. Consider approval of the third year payment of the forklift rental agreement with Berry Material Handling in the amount of $5,514.60 to be paid to KS State Bank.

D. PARKS + RECREATION – John Knight

V. ADMINISTRATIVE COMMUNICATIONS

VI. EXECUTIVE SESSIONS
June 6, 2019

MEMO: Final Year End Report – Fiscal 2018

TO: Board of County Commissioners
Ambulance Advisory Board Members
Shawnee County Kansas

FROM: Nelson E Casteel – Ambulance Compliance Officer
Shawnee County Emergency Management

Please place the Contract C207-2016 Fiscal Year 2018 Final Year End Report on the June 24, 2019 meeting agenda for presentation by the Ambulance Compliance Officer.

The Ambulance Compliance Officer will also be providing a presentation that outlines and highlights specific areas of the report and will be displayed during the presentation.

As stated in the report, the Ambulance Compliance Officer can verify and confirm that AMR is in substantial compliance with all requirements contained in Contract C207-2016 for 2018.

Throughout 2017 and 2018, the Ambulance Compliance Officer has observed that there was an increase in effective communications as well as an increase in collaboration; including the efforts to standardize the protocols across all stakeholders.

Through the second full year of Contract C207-2016 between Shawnee County and AMR, the Ambulance Compliance Officer has observed and witnessed the benefits and advances, which were envisioned and intended, when the Board of County Commissioners directed that an RFP be formulated, released and later awarded/negotiated and signed.

While there were growing pains for the many different components involved, there have been considerable successes in the relatively short time the contract has been in place.

More information about the benefits and positive results are provided in the report and will be highlighted during the presentation.

is the year end Should you have any questions please feel free to contact:
Compliance Officer Nelson E Casteel at nelson.casteel@snco.us or 785-251-4558

###
SHAWNEE COUNTY AMBULANCE COMPLIANCE OFFICER REPORT

Is AMR in Compliance with Contract C207-2016?

Fiscal Year 2018 – Report Date June 2019

Purpose of Report

Contract C207-2016 was approved and signed by the Shawnee County Board of County Commissioners on June 30, 2016.

Contract C207-2016 was effective January 1, 2017 and shall continue in full force and effect for an initial term of five (5) years, through December 31, 2021.

Upon the completion of the initial term, Contract C207-2016 shall be automatically renewed for one or more extension terms of one (1) year(s), up to a maximum of 5 Extension Terms if AMR is in compliance with all terms under this Agreement.

In accordance with Contract C207-2016, each month the Shawnee County Compliance Officer submits a compliance and certification report.

That report outlines and entails response time compliance of AMR (American Medical Response) for only those calls/runs where AMR “arrived” on scene.

This report provides a certification and verification as to whether AMR is fully meeting the other requirements and parameters of Contract C207-2016.

Executive Summary

The Ambulance Compliance Officer can verify and confirm that AMR is in substantial compliance with all requirements contained in Contract C207-2016 for 2018.

Through the second full year of Contract C207-2016 between Shawnee County and AMR, the Ambulance Compliance Officer has observed and witnessed the benefits and advances, which were envisioned and intended, when the Board of County Commissioners directed that an RFP be formulated, released and later awarded/negotiated and signed.

While there were growing pains for the many different components involved, there have been considerable successes in the relatively short time the contract has been in place.

Throughout 2017 and 2018, the Ambulance Compliance Officer has observed that there was an increase in effective communications as well as an increase in collaboration; including the efforts to standardize the protocols across all stakeholders.

More information about the benefits and positive results can be found later in this document.

This document and all attachments herein are to be considered a matter of public record.

A copy of this document will be posted on the Ambulance Compliance section of the Shawnee County Website (www.snco.us/em).

Questions regarding this report can be relayed to Ambulance Compliance Officer Nelson E Casteel 785-261-4568 or nelson.casteel@snco.us.
Is AMR in Compliance with Contract C207-2016?

Background

In March 2015 the Shawnee County Board of County Commissioners directed the Shawnee County Ambulance Advisory Board to formulate a Request for Proposals (RFP) for Ambulance Services.

During the remainder of 2015 the AAB RFP Committee, which consisted of City of Topeka Fire Department Reps, County Rural Fire Rep, Hospital Reps and a Sheriff’s Office Rep, met and formulated an RFP to be approved by the Ambulance Advisory Board and then released by the Board of County Commissioners.

On December 2, 2015, the Ambulance Advisory Board approved the RFP formulated by the AAB RFP Committee.

On December 17, 2015, the Board of County Commissioners approved the RFP and the RFP was released to potential bidders on January 4, 2016.

In March 2016, the AAB RFP Committee, which consisted of City of Topeka Fire Department Reps, County Rural Fire Rep, Hospital Reps and a Sheriff’s Office Rep, met and formulated an RFP to be approved by the Ambulance Advisory Board and then released by the Board of County Commissioners.

On March 30, 2016, the Ambulance Advisory Board voted to accept and forward the rankings of the AAB RFP Evaluation Committee to the Board of County Commissioners. The AAB RFP Evaluation Committee consisted of City of Topeka Fire Department Reps, County Rural Fire Rep, Hospital Reps and a Sheriff’s Office Rep.

As a result of the recommendations of the Ambulance Advisory Board and its committees, as well as negotiations between Shawnee County and AMR, a new contract (C207-2016) was signed on June 30, 2016 by the Board of County Commissioners.

The intent of the RFP and the resulting contract was to ensure that there was room for expansion and innovations as the trends, best practices and lessons learned dictated.

Contract C207-2016 became effective January 1, 2017 and will continue in full force and effect for five years through December 31, 2021.

Upon the completion of the initial five year term, the contract shall be automatically renewed for one or more extension terms of one year(s), up to a maximum of 5 Extension Terms if AMR is in compliance with the contract.

As of January 1, 2019, there have been no amendments or modifications to Contract C207-2016, however during the 2019 Fiscal Year it is anticipated that a certain area of the contract pertaining to “stopping of the clock” will be see a change.

In 2016, the intent of the new contract with AMR was to ensure that there was more benefits, the chance for innovations and the advancement of best practices.
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- Innovations, benefits and practices advanced by the Contract 2
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- 2017 vs. 2018 Comparison of all calls 7

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- Monthly and Yearly Compliance Processes are different 8
- Response times 9
- Exemptions 10
- Short response times and random examinations 10
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Appendix 12
Innovations, benefits and practices advanced by the Contract:

This section outlines the observations of the Ambulance Compliance Officer pertaining to the innovations, benefits and practices advanced by the Contract as well as recognizing the performance of AMR employees.

A new Joint Medical Director (Dr. Kennen Thompson) was appointed by AMR in February 2018 and stream-lined protocols were formulated for approval by the Shawnee County Medical Society.

AMR and our first responders have been recognized and commended several times in the last two years; seen above where Dr. Thompson and KU-St Francis acknowledged their "save."

AMR and CECC are continuing their work on the CAD to CAD interface and relationships between the two organizations are improving.

AMR is working with first responders and the Compliance Officer to address the low acuity runs and calls that have increased over the course of the last two years.

AMR has provided Tuition Assistance funding for at least 8 different students to attend training and become certified EMT's.
Is AMR in Compliance with Contract C207-2016?

AMR has continued to address their staffing issues related to high-volume times.

AMR has shifted their staffing to meet the demand and has also implemented an "on-call" program to assist in staffing to meet the high demand periods.

AMR has locally implemented the Therapy Dog program for their employees and staff; and is planning on utilizing "Stryker" in coordination with their community and emergency partners throughout Shawnee County.

AMR has updated their response matrix whereby certain triages and/or complaints have specific upgrade and/or downgrade requirements.

AMR has implemented a directive that outlines responses to "Staged" calls so as to better ensure the health and welfare of the traveling public.

AMR has decided to provide additional free training sessions to Shawnee County First Responders during both 2017 and 2018.

These training sessions are above and beyond what they are required to provide for free by Contract C207-2016.

Each quarter AMR has asked subject matter experts and outside instructors to provide education on specific topics. Most of the training and education sessions of this nature have seen AMR provide food and snacks to the attendees.

AMR has continued to put new equipment/units on the street, in excess of what was required by the Contract terms.

Shawnee County is required to make certain payments to AMR

An important aspect of Contract C207-2016 that is not clearly understood relates to payments from Shawnee County to AMR.

Shawnee County does NOT pay AMR to provide 911 Ambulance Services.

Shawnee County pays a $300,000 subsidy to AMR to recover monies and recoup expenses from those patients that are not able to pay (listed as Uncompensated Care in their Audited Financials).

Shawnee County pays a $50,000 subsidy to AMR to make up for those expenses associated with placing their dispatchers into the CECC.

For 2018 the Uncompensated Care in their Audited Financials amounted to $3,552,353
For 2018 the Net Income in their Audited Financials amounted to $535,985

For 2017 the Uncompensated Care in their Audited Financials amounted to $3,392,117
For 2017 the Net Income in their Audited Financials amounted to $723,693
**SHAWNEE COUNTY AMBULANCE COMPLIANCE OFFICER REPORT**

Is AMR in Compliance with Contract C207-2016?

<table>
<thead>
<tr>
<th>Financial Comparisons</th>
<th>2017</th>
<th>2018</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue, net of C/A</td>
<td>10,460,756</td>
<td>10,327,303</td>
<td>-(153,453)</td>
</tr>
<tr>
<td>Other revenue</td>
<td>468,303</td>
<td>542,712</td>
<td>74,409</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>10,949,059</strong></td>
<td><strong>10,870,015</strong></td>
<td><strong>(79,044)</strong></td>
</tr>
<tr>
<td>Salaries</td>
<td>3,229,027</td>
<td>3,288,782</td>
<td>59,755</td>
</tr>
<tr>
<td>Provision for U/C</td>
<td>3,392,117</td>
<td>3,552,353</td>
<td>160,236</td>
</tr>
<tr>
<td>Benefits &amp; PR taxes</td>
<td>668,856</td>
<td>679,286</td>
<td>10,430</td>
</tr>
<tr>
<td>Depreciation &amp; amortization</td>
<td>301,667</td>
<td>365,452</td>
<td>63,785</td>
</tr>
<tr>
<td>Vehicle op costs</td>
<td>221,021</td>
<td>290,359</td>
<td>69,338</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>172,637</td>
<td>173,530</td>
<td>893</td>
</tr>
<tr>
<td>Facility rent &amp; other occupancy</td>
<td>105,253</td>
<td>101,614</td>
<td>-(3,639)</td>
</tr>
<tr>
<td>Other operating</td>
<td>129,053</td>
<td>152,057</td>
<td>23,004</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>61,264</td>
<td>74,405</td>
<td>13,141</td>
</tr>
<tr>
<td>Professional fees</td>
<td>21,320</td>
<td>53,578</td>
<td>32,258</td>
</tr>
<tr>
<td>Other G&amp;A</td>
<td>135,787</td>
<td>142,876</td>
<td>7,089</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>8,438,002</strong></td>
<td><strong>8,854,292</strong></td>
<td><strong>416,290</strong></td>
</tr>
</tbody>
</table>

| Management expense                     | 441,547    | 339,485    | -(102,061)   |
| Non-recurring transaction exp          | 111,340    | 117,268    | 5,928        |
| Billing services allocation            | 341,466    | 346,482    | 5,016        |
| Insurance                              | 206,987    | 202,065    | -(4,922)     |
| Dispatch services                      | -          | -          | -            |
| IT                                     | 73,414     | 85,458     | 12,044       |
| Other Regional support serv            | 185,526    | 224,777    | 39,251       |
| **TOTAL**                              | **1,360,280** | **1,315,536** | **(44,744)** |

| Total operating expenses               | 9,798,232  | 10,169,828 | 371,596      |
| Income from operations                 | 1,150,777  | 700,187    | -(450,590)   |
| Interest expense                       | -          | -          | -            |
| Net income before taxes                | 1,150,777  | 700,187    | -(450,590)   |
| Income taxes                           | 427,084    | 164,202    | (262,882)    |
| Net Income                             | 723,693    | 535,985    | (187,708)    |

**Income** 6.6%, **Expense** 4.9%
SHAWNEE COUNTY AMBULANCE COMPLIANCE OFFICER REPORT

Is AMR in Compliance with Contract C207-2016?

AMR is solely responsible for collection of all monies for the various additional services they provide to Shawnee County.

These various additional services include but are not limited to patient transfers, medical transfers, stand-by operations, special events and training/education.

For Fiscal 2018, Shawnee County made the following payments to AMR totaling $310,000.00:

<table>
<thead>
<tr>
<th>DATE</th>
<th>AMOUNT</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/5/2018</td>
<td>$77,500.00</td>
<td>First Quarter Allocation</td>
</tr>
<tr>
<td>3/28/2018</td>
<td>$77,500.00</td>
<td>Second Quarter Allocation</td>
</tr>
<tr>
<td>7/6/2018</td>
<td>$77,500.00</td>
<td>Third Quarter Allocation</td>
</tr>
<tr>
<td>10/3/2018</td>
<td>$77,500.00</td>
<td>Fourth Quarter Allocation</td>
</tr>
</tbody>
</table>

As noted elsewhere in this report, AMR signed an agreement (C101-2019) whereby they will be paying the CECC in the amount of $41,600.00, in lieu of rental payments (2017-2019), for implementation and purchase of the CAD to CAD interface.

As noted elsewhere in this report, AMR signed an agreement (C100-2019) whereby they will be paying the CECC in the amount of $1200 a month for rent starting in 2020 and going through the life of the Contract C207-2016.

AMR is required to make certain payments to Shawnee County and First Responders:

AMR provides compensation to a Medical Director who has oversight over all First Responder agencies and organizations in Shawnee County at no charge to those organizations. The contract outlines office hours and numerous communications requirements. The maximum compensation for Shawnee County oversight outlined in the Contract is $40,000.

Shawnee County receives an annual monitoring fee from AMR in the amount of $40,000 for the cost of monitoring AMR's operational and clinical performance and other compliance with the terms of this Agreement.

Each month AMR must provide local first responder agencies with two (2) classes per month at no charge to the county (all expenses absorbed and paid by AMR).

Each month AMR must provide an on-scene exchange of disposable medical supplies used by Shawnee County first responder agencies at no charge, subject to the terms of the disposable medical supplies protocol adopted by AMR, as amended from time to time.

Each month AMR must also provide a "one on one" exchange of oxygen (O2) to Shawnee County first responder agencies at no charge. (This applies only to D cylinders).
AMR each year must provide $10,000 in tuition assistance for Shawnee County first responders. (It was agreed by the nine Fire Chiefs and the AAB that each department will receive $1,111.11)

For Fiscal 2018, tuition assistance payments were made as follows:

### 2018 TUITION ASSISTANCE

<table>
<thead>
<tr>
<th>#</th>
<th>NAME</th>
<th>ORG</th>
<th>DESC</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>Chad Knochenmus</td>
<td>MTFD</td>
<td>Personnel attended and completed EMT Class</td>
<td>$1,111.11</td>
</tr>
<tr>
<td>16</td>
<td>Rick Deibert</td>
<td>SHFD</td>
<td>Personnel attended and completed EMT Class</td>
<td>$1,111.11</td>
</tr>
<tr>
<td>18</td>
<td>Karen Chmidling</td>
<td>MTAA</td>
<td>Personnel attended and completed EMT Class</td>
<td>$1,111.11</td>
</tr>
<tr>
<td>18</td>
<td>Raymond LaDuke</td>
<td>SCFD #1</td>
<td>Personnel attended and completed EMT Class</td>
<td>$1,111.11</td>
</tr>
<tr>
<td>18</td>
<td>Eric Wood</td>
<td>SCFD #2</td>
<td>Personnel attended and completed EMT Class</td>
<td>$1,428.57</td>
</tr>
<tr>
<td>18</td>
<td>Dirk Christian</td>
<td>SCFD #4</td>
<td>Personnel attended and completed EMT Class</td>
<td>$1,428.57</td>
</tr>
<tr>
<td>18</td>
<td>Richard Sigle</td>
<td>TFD</td>
<td>Personnel attended and completed MCI Class related to RTF</td>
<td>$1,428.57</td>
</tr>
<tr>
<td>18</td>
<td>Forrest Walter</td>
<td>MTFD</td>
<td>As there is no carryover allowed to the next year and the checks must be cut by AMR before October 1, 2018, the Ambulance Advisory Board at a Special Meeting on September 26, 2018 approved of the remaining $2,222.22 being dispersed; The remaining $2,222.22 was split 7 ways and provided to the 7 applicants who received this benefit this year that were previously approved.</td>
<td>$317.46</td>
</tr>
<tr>
<td>18</td>
<td>Rick Deibert</td>
<td>SHFD</td>
<td></td>
<td>$317.46</td>
</tr>
<tr>
<td>18</td>
<td>JT Ogrady</td>
<td>MTAA</td>
<td></td>
<td>$317.46</td>
</tr>
<tr>
<td>18</td>
<td>Joe Hawkins</td>
<td>SCFD #1</td>
<td></td>
<td>$317.46</td>
</tr>
</tbody>
</table>

Each year the Ambulance Compliance Officer notifies and reminds the permitted response agencies and departments to apply for the tuition assistance program provided by AMR. [http://www.snco.us/em/document/tuition_assistance_program.pdf](http://www.snco.us/em/document/tuition_assistance_program.pdf)

AMR must respond to all calls for service. The next page shows the number of responses and the number of transports to hospital as well as the number of cancellations and refusals.
## SHAWNEE COUNTY AMBULANCE COMPLIANCE OFFICER REPORT

Is AMR in Compliance with Contract C207-2016?

### 2017 vs. 2018 Comparison of all calls

<table>
<thead>
<tr>
<th>Jan-Dec</th>
<th>Dispatched</th>
<th>Cancellation</th>
<th>Arrived</th>
<th>Transported</th>
<th>Refused</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>22684</td>
<td>1413</td>
<td>21271</td>
<td>15344</td>
<td>5927</td>
</tr>
<tr>
<td>2018</td>
<td>24883</td>
<td>2034</td>
<td>22848</td>
<td>16041</td>
<td>6808</td>
</tr>
<tr>
<td><strong>Increase of</strong></td>
<td><strong>2199</strong></td>
<td><strong>621</strong></td>
<td><strong>1577</strong></td>
<td><strong>697</strong></td>
<td><strong>881</strong></td>
</tr>
</tbody>
</table>

#### MONTHLY TOTALS

<table>
<thead>
<tr>
<th>Year</th>
<th>Dispatched</th>
<th>Cancellation</th>
<th>Arrived</th>
<th>Transported</th>
<th>Refused</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17-Jan</td>
<td>1580</td>
<td>52</td>
<td>1528</td>
<td>1165</td>
<td>363</td>
</tr>
<tr>
<td>17-Feb</td>
<td>1312</td>
<td>41</td>
<td>1271</td>
<td>1005</td>
<td>266</td>
</tr>
<tr>
<td>17-Mar</td>
<td>1967</td>
<td>124</td>
<td>1843</td>
<td>1348</td>
<td>495</td>
</tr>
<tr>
<td>17-Apr</td>
<td>1813</td>
<td>90</td>
<td>1723</td>
<td>1259</td>
<td>464</td>
</tr>
<tr>
<td>17-May</td>
<td>1964</td>
<td>141</td>
<td>1843</td>
<td>1333</td>
<td>510</td>
</tr>
<tr>
<td>17-Jun</td>
<td>1963</td>
<td>131</td>
<td>1852</td>
<td>1325</td>
<td>527</td>
</tr>
<tr>
<td>17-Jul</td>
<td>2101</td>
<td>119</td>
<td>1982</td>
<td>1396</td>
<td>586</td>
</tr>
<tr>
<td>17-Aug</td>
<td>1960</td>
<td>132</td>
<td>1826</td>
<td>1289</td>
<td>539</td>
</tr>
<tr>
<td>17-Sep</td>
<td>2065</td>
<td>147</td>
<td>1918</td>
<td>1341</td>
<td>577</td>
</tr>
<tr>
<td>17-Oct</td>
<td>1997</td>
<td>136</td>
<td>1561</td>
<td>1331</td>
<td>530</td>
</tr>
<tr>
<td>17-Nov</td>
<td>1962</td>
<td>139</td>
<td>1823</td>
<td>1274</td>
<td>549</td>
</tr>
<tr>
<td>17-Dec</td>
<td>1980</td>
<td>161</td>
<td>1799</td>
<td>1278</td>
<td>521</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>22684</strong></td>
<td><strong>1413</strong></td>
<td><strong>21271</strong></td>
<td><strong>15344</strong></td>
<td><strong>5927</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Dispatched</th>
<th>Cancellation</th>
<th>Arrived</th>
<th>Transported</th>
<th>Refused</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18-Jan</td>
<td>2238</td>
<td>159</td>
<td>2079</td>
<td>1496</td>
<td>584</td>
</tr>
<tr>
<td>18-Feb</td>
<td>1983</td>
<td>124</td>
<td>1839</td>
<td>1338</td>
<td>501</td>
</tr>
<tr>
<td>18-Mar</td>
<td>2008</td>
<td>132</td>
<td>1874</td>
<td>1338</td>
<td>536</td>
</tr>
<tr>
<td>18-Apr</td>
<td>2032</td>
<td>194</td>
<td>1838</td>
<td>1232</td>
<td>606</td>
</tr>
<tr>
<td>18-May</td>
<td>2211</td>
<td>183</td>
<td>2026</td>
<td>1379</td>
<td>649</td>
</tr>
<tr>
<td>18-Jun</td>
<td>2128</td>
<td>191</td>
<td>1937</td>
<td>1306</td>
<td>631</td>
</tr>
<tr>
<td>18-Jul</td>
<td>2121</td>
<td>190</td>
<td>1931</td>
<td>1363</td>
<td>568</td>
</tr>
<tr>
<td>18-Aug</td>
<td>2119</td>
<td>181</td>
<td>1937</td>
<td>1334</td>
<td>604</td>
</tr>
<tr>
<td>18-Sep</td>
<td>2117</td>
<td>208</td>
<td>1909</td>
<td>1356</td>
<td>553</td>
</tr>
<tr>
<td>18-Oct</td>
<td>2038</td>
<td>168</td>
<td>1870</td>
<td>1328</td>
<td>542</td>
</tr>
<tr>
<td>18-Nov</td>
<td>1854</td>
<td>147</td>
<td>1707</td>
<td>1216</td>
<td>491</td>
</tr>
<tr>
<td>18-Dec</td>
<td>2056</td>
<td>157</td>
<td>1899</td>
<td>1356</td>
<td>543</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>24883</strong></td>
<td><strong>2034</strong></td>
<td><strong>22848</strong></td>
<td><strong>16041</strong></td>
<td><strong>6809</strong></td>
</tr>
</tbody>
</table>
Is AMR in Compliance with Contract C207-2016?

The Ambulance Compliance Officer and AMR Management have continued to assess this significant increase in the number of calls run by AMR.

Through the use of the "on call" program and the shift start-times initiative implemented by AMR, their response times are being kept in compliance.

This report outlines a large number of parameters and requirements that AMR must meet each year and throughout the year as is explained on the next pages.

AMR is in Substantial Compliance with Contract C207-2016

The next pages outlined the processes, objectives, scope and methodology of monthly and yearly compliance.

An appendix that examines each of the requirements as outlined in the contract provides specifics.

The Ambulance Compliance Officer can verify and confirm that AMR is in substantial compliance with all requirements contained in Contract C207-2016 for 2018.

Objectives, Scope & Methodology:

Monthly and Yearly Compliance Processes are different:

In accordance with Contract C207-2016, each month the Shawnee County Compliance Officer submits a compliance and certification report.

That report outlines and entails response time compliance of AMR for only those calls/runs where AMR “arrived” on scene.

This year-end report provides a certification and verification as to whether AMR is fully meeting the other requirements and parameters of Contract C207-2016.

Not all calls/runs made by AMR are a part of the compliance report and stats that the Shawnee County Compliance Officer submits each month as that report outlines and entails only those calls/runs where AMR “arrived” on scene.

To be on scene the AMR unit has to have ALS (at least one Paramedic) capabilities. This would include the Flycars that AMR added as a part of the new contract.

At this time, if AMR arrives on scene with less than ALS, the clock does not stop.
SHAWNEE COUNTY AMBULANCE COMPLIANCE OFFICER REPORT
Is AMR in Compliance with Contract C207-2016?

The Ambulance Compliance Officer examines the EMD process and asks that random audits be performed.

The Ambulance Compliance Officer communicates with the AMR CES at the end of each month to ensure that AMR has provided required training.

The Ambulance Compliance Officer also communicates with the AMR CES and the AMR Management regarding any complaints and/or commendations.

Many of these more in-depth, random and intentional processes/audits culminate into this final report each year.

Response times

After the 10th of each month, the Ambulance Compliance Officer examines ALL of the previous month’s emergency and non-emergency responses including those that were cancelled or disregarded before dispatching.

Contract C207-2016 requires that AMR shall arrive at the destination within the required minutes (identified below by zone) following Dispatch; at least 80% of time for all zones aggregated and calculated each calendar month.

<table>
<thead>
<tr>
<th>Zone</th>
<th>Emergency</th>
<th>Non-Emergency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>9:00</td>
<td>14:00</td>
</tr>
<tr>
<td>2</td>
<td>11:00</td>
<td>16:00</td>
</tr>
<tr>
<td>3</td>
<td>12:00</td>
<td>17:00</td>
</tr>
<tr>
<td>4</td>
<td>15:00</td>
<td>20:00</td>
</tr>
<tr>
<td>KTA SW</td>
<td>12:00</td>
<td>17:00</td>
</tr>
<tr>
<td>KTA SC</td>
<td>11:00</td>
<td>16:00</td>
</tr>
<tr>
<td>KTA EB</td>
<td>9:00</td>
<td>14:00</td>
</tr>
<tr>
<td>KTA WB</td>
<td>15:00</td>
<td>20:00</td>
</tr>
</tbody>
</table>

AMR is required to pay the county a penalty for each calendar month in which it has failed to meet the applicable standard at least 80% of time for all categories of calls combined. In making such calculation, all emergency and non-emergency calls shall be aggregated.

The Ambulance Compliance Officer also examines those calls that were canceled, reduced, exempted and/or downgraded.

Each call made by AMR has several questions to asked/answered:

1. Did AMR Arrive on time?
2. Did AMR Arrive late?
3. What is the reason for the lateness?
SHAWNEE COUNTY AMBULANCE COMPLIANCE OFFICER REPORT

Is AMR in Compliance with Contract C207-2016?

4. Is an exemption for that late call approvable?
5. Was the call properly upgraded/downgraded?
6. If AMR Arrived late, is there a fine/penalty to be assessed?

<table>
<thead>
<tr>
<th>Zone</th>
<th>Arrived more than</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>15:00</td>
<td>$10 per minute for all non-emergency and emergency calls over the amount for that specific zone (except KTA)</td>
</tr>
<tr>
<td>2</td>
<td>18:00</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>20:00</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>22:00</td>
<td></td>
</tr>
</tbody>
</table>

Exemptions

The Ambulance Compliance Officer examines all calls to determine whether AMR was late due to reasons beyond AMR’s reasonable control, including but not necessarily limited to the following reasons:

- Blizzard Warning
- Compliance Officer Discretion
- Flash Flood Warning
- Freezing Rain Advisory
- High Wind Warning
- Ice Storm Warning
- Locally declared state of emergency or disaster
- Severe Thunderstorm Warning
- Small Stream Flood Advisory
- Snow Advisory
- Tornado Warning
- Winter Storm Warning
- Winter Weather Advisory

Exemption requests for Compliance Officer Discretion are as follows:

- Downgraded runs
- Runs with wrong coding
- Interfacility Transfers
- Staged runs
- Missed Time Stamps
- Upgraded runs
- Multi-Unit Responses
- VA Hospital runs
- Rapid Response
- Wrong Addresses by caller

Short response times and random examinations

The Ambulance Compliance Officer is able to run a report that allows for examining of all calls that are under 3 minutes (no matter of the zone they occurred in) and is able to run a report that allows for a random 10% selection of the calls for the month to be examined.
SHAWNEE COUNTY AMBULANCE COMPLIANCE OFFICER REPORT
Is AMR in Compliance with Contract C207-2016?

Other compliance and examinations undertaken monthly

While the response time requirements are only put into place and enforced when AMR as an ALS has an arrival at the scene, in order to gauge the usage and the effectiveness of the Shawnee County Emergency Medical System, the Ambulance Compliance Officer keeps track of the all calls dispatched, calls arrived at, calls cancelled before arrival, calls where the patient(s) were transported, calls where the patient(s) refused transport, calls where patient was not found and calls where the patient was deceased.

Cancel reasons that are tracked by the Shawnee County Compliance Officer are as follows:

- Cancelled by Calling Party
- Cancelled by FD/PD/EMS
- Cancelled Fire Pre-Alert
- Transported by Medic
- Transported by Other Means

It is important to note that not all calls/runs AMR arrives on will result in a transport of a patient by AMR.

Non-Transport reasons that are tracked by the Shawnee County Compliance Officer are as follows:

- Patient DOA
- Patient Not Found
- Patient Refusal - Not Treated
- Patient Refusal - Treated

Each month the Ambulance Compliance Officer examines the reports to ensure that no improper downgrading during an emergency event by personnel who are not certified in EMT-B or higher occurs and that the EMD processes are not being intentionally circumvented.

Before issuing any fines, penalties and/or negative findings the Ambulance Compliance Officer communicates with the AMR Management to ensure that the findings for the month are correct.

Appendix

The appendix on the following pages examines each of the requirements as outlined in the contract provides specifics on AMR's performance for 2018.
### SHAWNEE COUNTY AMBULANCE COMPLIANCE OFFICER REPORT

**Is AMR in Compliance with Contract C207-2016?**

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<th>COMMENTS</th>
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</thead>
<tbody>
<tr>
<td>2.2 2</td>
<td>AMR shall respond to all requests for Services from a Communications Center as advanced life support (&quot;ALS&quot;) Ambulance, as determined in accordance with the Dispatch Protocols and subject to the availability of Ambulances. Each ALS Ambulance shall be staffed with two personnel, at least one licensed or certified at the level of Paramedic and at least one of whom shall be licensed or certified at the level of EMT-Basic or higher.</td>
<td>In Compliance</td>
<td>Through random and intentional examination(s) of AMR reports the Compliance Officer has found no instances where AMR operated below ALS.</td>
</tr>
<tr>
<td>2.3 2</td>
<td>All ambulances used to provide Services (the &quot;Ambulances&quot;) shall be licensed and equipped with all supplies and equipment required by State law and by Agency policies and procedures agreed upon by AMR (&quot;Agency Policies&quot;), and shall be maintained in good working order in accordance with AMR's maintenance policies and procedures. AMR agrees to provide five (5) new Ambulances to provide the Services within the first year of the Term of this Agreement.</td>
<td>In Compliance</td>
<td>As outlined in the 2017 Report, AMR provided the five new ambulances and they have been in service since as early as March 2017. The Compliance Officer can verify that AMR has also provided two additional new ambulances during the 2018 Fiscal Year for use in Shawnee County.</td>
</tr>
<tr>
<td>2.4 2</td>
<td>AMR agrees to perform its own dispatching in accordance with the Dispatch Protocols. The dispatching shall be located within the Shawnee County Communications Center. The parties agree to meet and determine a mutually agreeable timeline, set up, procedures and additional requirements for AMR's location within the Shawnee County Communications Center, which shall include any financial obligations of AMR for its occupancy within the Communications Center, including but is not limited to fair market valuation of rent and/or AMR's contribution of additional expenses required to operate within the Shawnee County Communications Center.</td>
<td>In Compliance</td>
<td>AMR dispatchers started dispatching from inside the County's 911 Center in March 2017. The delay in transition occurred through and due to technological and personnel related issues. The transition is still in progress with excellent collaboration occurring. The CAD to CAD interface contract was not resolved until after the start of 2019, however a Contract between AMR and Shawnee County (C100-2019) was signed on February 14, 2019.</td>
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### SHAWNEE COUNTY AMBULANCE COMPLIANCE OFFICER REPORT

**Is AMR in Compliance with Contract C207-2016?**

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<tr>
<td>2.5 2</td>
<td>Subject to the terms set forth herein, to assist in the delivery of Services hereunder, AMR shall implement the use of a Rapid Response Vehicle (RRV) also known as a &quot;fly car&quot; subject to procedures and protocol determined by AMR from time to time. This vehicle is staffed with paramedic personnel that will provide ALS-level care at times of peak demand. This vehicle can also return fire personnel from local scenes and healthcare facilities to their assigned duty station. The RRV will be equipped with emergency warning lights and equipment in the event another emergency response is required at the hospital to another emergency fire or EMS scene. The parties agree AMR would provide the RRV on a trial and evaluation period of six to twelve months to determine if the use and utilization of the RRV is meeting the parties' expectations; in the event after this trial period the parties mutually agree the RRV is not meeting the parties' expectations, AMR shall cease operation of the RRV.</td>
<td>In Compliance</td>
<td>Through reports from AMR as well as through Field Observations/Investigations the Compliance Officer has found that AMR has provided the RRV on a regular basis. This was to be a trial program by AMR which would be assessed after 12 months. It should be noted that this program as well as the changes made by AMR management regarding shift start-times has been a great asset to Shawnee County. Progress is being made for implementation of the B+A 2019 Trial Program which will further assist in these matters and allow for stellar innovative response to the needs of Shawnee County.</td>
</tr>
<tr>
<td>2.7 3</td>
<td>AMR shall perform the Services in accordance with prevailing standards of care in the ambulance industry. To help assure maintenance of such standards, AMR shall operate a quality improvement program consistent with industry standards.</td>
<td>In Compliance</td>
<td>The Compliance Officer has conversed regularly with the Shawnee County Joint Medical Director and the AMR CES to examine concerns that have been raised. There are no critical issues and there have been no negative patient impacts brought forth.</td>
</tr>
</tbody>
</table>
### SHAWNEE COUNTY AMBULANCE COMPLIANCE OFFICER REPORT
#### Is AMR in Compliance with Contract C207-2016?

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</table>
| 3.1 3           | The parties agree to select a joint medical director who shall be an active, unencumbered licensed doctor pursuant to Kansas law and who provides medical advice, direction, oversight and authorization to emergency medical services personnel at a licensed ambulance service and/or emergency medical services educational institution pursuant to the terms of the Medical Director Agreement set forth in Exhibit D attached hereto. The costs of the Medical Director shall be the obligation of AMR, not to exceed $40,000 or the fair market value of such services annually. The parties agree that the selection of the Medical Director shall be based upon the recommendation of a joint committee, consisting of a representative from (a) AMR; (b) the County; (c) the local community coalition; (d) the county Fire Department; (e) and the City. | In Compliance | In February 2018 a new Shawnee County Joint Medical Director was interviewed and appointed (Dr. Kennen Thompson).

During the Fiscal 2018, the AMR-Topeka-Shawnee County Protocol Working Group met on four occasions; twice with Dr. Thompson in attendance. Members of the AMR-Topeka-Shawnee County Protocol Working Group were tasked with amending the protocols and refining them so they meet the uniqueness of the Shawnee County Emergency Medical System.

The protocols were approved in February 2019 by the Shawnee County Medical Society, however the fire chiefs and EMS managers throughout Shawnee County and AMR have specific items that they would like to have addressed further in the protocols.

It has been the intent of this office and the AMR-Topeka-Shawnee County Protocol Working Group to help to ensure that objectives, goals and priorities are set for future changes, amendments and innovations. |
<table>
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<tbody>
<tr>
<td>8.8 6</td>
<td>In consideration of the Services hereunder, to reimburse AMR for the Services where set rates (Medicare, Medicaid, Government contractors &amp; etc.) do not adequately reimburse AMR, the County shall pay to AMR an annual subsidy in the amount of Three Hundred Thousand Dollars ($300,000.00) payable in quarterly installments. In addition, the County shall pay AMR a subsidy to place the Communication Center in Shawnee County pursuant to the terms of this Agreement in the amount of Fifty Thousand Dollars ($50,000.00) annually payable in quarterly installments. For the avoidance of doubt, the total subsidy shall be $350,000 annually as set forth above.</td>
<td>In Compliance</td>
<td>An important aspect of Contract C207-2016 that is not clearly understood relates to payments from Shawnee County to AMR. Shawnee County does NOT pay AMR to provide Ambulance Services. Shawnee County pays a $300,000 subsidy to AMR to recover monies and recoup expenses from those patients that are not able to pay (listed as Uncompensated Care in their Audited Financials). Shawnee County pays a $50,000 subsidy to AMR to make up for those expenses associated with placing their dispatchers into the CECC. For 2018 the Uncompensated Care in their Audited Financials amounted to $3,552,353 For 2018 the Net Income in their Audited Financials amounted to $536,985 For 2017 the Uncompensated Care in their Audited Financials amounted to $3,392,117 For 2017 the Net Income in their Audited Financials amounted to $723,693</td>
</tr>
</tbody>
</table>
### SHAWNEE COUNTY AMBULANCE COMPLIANCE OFFICER REPORT

**Is AMR in Compliance with Contract C207-2016?**

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<tr>
<td>9.2</td>
<td>Required Documentation. Audited financial statements of the AMR for the prior year shall be submitted to the Agency by May 1 of each year. They shall meet the specific requirements of Agency (Audit Finance). Unless a written extension is granted by Agency, failure to submit the required documents will result in a penalty of $100 per day starting on May 2.</td>
<td>In Compliance</td>
<td>The Compliance Officer received the 2017 Audited Financials on April 30, 2018. The Compliance Officer received the 2018 Audited Financials on April 29, 2019. There is a chart elsewhere in this report outlining the comparisons between 2017 and 2018.</td>
</tr>
<tr>
<td>10.3</td>
<td>AMR shall report to the County, or its designee on a monthly basis any and all required information mutually agreed upon by the parties and required hereunder, in a format mutually agreeable by the parties. Such report shall include but is not limited to: response time and related data required hereunder to include AMR’s compliance officer will provide detailed written documentation for every non-emergency and emergency request with a response time in excess of the time standards, a summary of any and all human resources actions taken by AMR related to employees providing services hereunder including terminations, narcotics or related drug testing, and any additional reportable events. AMR’s report to the County shall be due on or before the 5th business day of the month and report all matters for the preceding month. The parties may mutually determine an in person or telephonic meeting is required to address any issues in the report.</td>
<td>In Compliance</td>
<td>AMR continues to provide on-time reports to the Compliance Officer. AMR supervisors and personnel continue to provide the necessary documentation and AMR responds quickly when additional documentation is warranted. AMR management has remained transparent regarding their operations and has continued to address the concerns of the Compliance Officer in a timely and professional manner. AMR has been responsive to changes or suggestions related to the reporting platform that the Compliance Officer utilizes.</td>
</tr>
<tr>
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<tr>
<td>C-11 17</td>
<td>Community Paramedicine. During the Term of the Agreement, AMR shall cooperate with a local coalition of stakeholders to evaluate the benefits of a MIH program and consider its appropriate implementation under terms consistent with the parties intent under this Agreement.</td>
<td>In Compliance</td>
<td>Board Members, the Compliance Officer, the first responders and AMR continue to plan for implementation of Community Paramedicine in Shawnee County. There are several long term matters under consideration at this time.</td>
</tr>
<tr>
<td>C-4 16</td>
<td>Supply Exchange. AMR agrees to continue to provide an on-scene exchange of disposable medical supplies used by Shawnee County first responder agencies at no charge, subject to the terms of the disposable medical supplies protocol adopted by AMR, as amended from time to time. AMR agrees to provide a &quot;one on one&quot; exchange of oxygen (O2) to Shawnee County first responder agencies at no charge. For the avoidance of doubt, the oxygen exchange herein shall be applicable to bottles only, D Cylinders, and shall not include</td>
<td>In Compliance</td>
<td>AMR outlined a procedure for meeting this requirement which was provided to the first responders. As stated in the 2017 Report, at no time have there have been valid/credible complaints lodged regarding this matter.</td>
</tr>
<tr>
<td>C-5 24</td>
<td>Zone 1 - 15 minutes will be penalized at $10 per minute Zone 2 - 18 minutes will be penalized at $10 per minute Zone 3 - 20 minutes will be penalized at $10 per minute Zone 4 - 22 minutes will be penalized at $10 per minute All non-emergency and emergency calls over 45 minutes, regardless of Zone, will be penalized at $100 per minute in addition to the appropriate Zone 4 minute penalties.</td>
<td>In Compliance</td>
<td>AMR has been penalized on 819 calls for a total amount of $40,760. This amounts to 3.5% of the 22,848 calls AMR ran for 2018. All penalty checks have been received and deposited into the Special Revenue Fund (First Responder Grant Fund) in accordance with E-6 &amp; E-7 on page 25. The Compliance Officer has no concerns related to the increase in penalties or penalized calls as AMR saw a significant increase in calls (as is outlined elsewhere in this report).</td>
</tr>
<tr>
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</tr>
<tr>
<td>C-6 17</td>
<td>EMD Training. AMR agrees to provide initial EMD training for the primary PSAPS of Shawnee County, including those dispatch operators employed by Shawnee County on the Effective Date of this Agreement.</td>
<td>N/A</td>
<td>At this time this option has not been exercised by Shawnee County.</td>
</tr>
<tr>
<td>C-7 17</td>
<td>Purchasing. To the extent reasonably available, AMR agrees to continue to lend our purchasing power to Shawnee County first responder agencies, which may utilize our current pricing and purchasing agreements to offset the cost of investing in new equipment and technology. This commitment shall including, to the extent available from time to time, direct access to AMR's supply ordering platform to County first responder agencies, allowing them to self-order supplies under AMR contracts and have them delivered directly to station.</td>
<td>In Compliance</td>
<td>AMR outlined a procedure for meeting this requirement. The procedure was provided to the first responders. The Compliance Officer has at no time had complaints lodged regarding this matter.</td>
</tr>
<tr>
<td>C-8 17</td>
<td>Monitoring Fee. AMR agrees to pay Shawnee County an annual monitoring fee in the amount of Forty Thousand Dollars ($40,000) for the cost of monitoring AMR's operational and clinical performance and other compliance with the terms of this Agreement.</td>
<td>In Compliance</td>
<td>In accordance with 3.8 listed above, this fee has been automatically deducted from the quarterly subsidy payments.</td>
</tr>
<tr>
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</tr>
<tr>
<td><strong>C-9a 17</strong></td>
<td>First Responder Education. AMR will provide local first responder agencies with two (2) classes per month. These training classes will be hosted at various locations to allow responders to gain training/certification hours at their convenience. AMR will work with local organization to develop this program to meet the new Kansas state recertification protocol/statutes.</td>
<td>In Compliance</td>
<td>AMR provided free training to 226 first responders during 2018. AMR has provided four additional special trainings, consisting of guest speakers and innovative subject matter experts, at no charge to Shawnee County First Responders.</td>
</tr>
<tr>
<td><strong>C-9b 17</strong></td>
<td>Enhanced Communications. AMR strives to work with local first responder agencies to come up with policies and procedures to enhance communications between agencies while responding to calls.</td>
<td>In Compliance</td>
<td>As stated in meeting minutes, emails and other reports, AMR continues to be involved in many incidents, events, exercises and planning teams.</td>
</tr>
<tr>
<td><strong>C-9c 17</strong></td>
<td>Tuition Assistance. AMR will provide $10,000 in tuition assistance annually for Shawnee County first responders. Applications will be reviewed by AMR, then forwarded to the AAB for approval.</td>
<td>In Compliance</td>
<td>During 2018 7 out of 10 of the first responder departments took advantage of this opportunity with all of the funds being disbursed. Eight persons were able to complete EMT Classes and become certified from the usage of these funds.</td>
</tr>
</tbody>
</table>
### SHAWNEE COUNTY AMBULANCE COMPLIANCE OFFICER REPORT

Is AMR in Compliance with Contract C207-2016?

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</table>
| E-1 23          | For Emergent and Non-Emergent responses not canceled, reduced or exempted as provided below, AMR shall arrive at the Destination within the minutes identified below following Dispatch, at least 80% of time for all categories of calls combined calculated each calendar month. Zone Emergency Non-Emergency | In Compliance | AMR has again consistently exceeded the response time parameters during 2018.  
1-17 90.38% 7-17 89.44%  
2-17 90.32% 8-17 86.32%  
3-17 88.79% 9-17 88.21%  
4-17 91.19% 10-17 89.52%  
5-17 89.64% 11-17 91.10%  
6-17 90.86% 12-17 90.18%  
Total for 2018 89.64%  
For 2018, out of 22,848 calls AMR was on time for 20,482 and AMR was late for 2,366. |
| E-5 24          | AMR shall pay Agency a penalty for each calendar month in which it has failed to meet the applicable Standard at least 80% of time for all categories of calls combined. In making such calculation, all emergency and non-emergency calls shall be aggregated. Exempt calls shall be completely excluded from the calculation, including from the total number of calls. In the event AMR fails to meet Response Time Standards for all such calls combined during any month, it shall pay Agency, within thirty (30) days of receipt of an invoice from Agency, the following penalty based upon the percentage of total number of passes when compared to the total number of responded to and arrived: damages at the rate of $100 for each half percentage point below 80% . | In Compliance |  |
### SHAWNEE COUNTY AMBULANCE COMPLIANCE OFFICER REPORT

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<td>E-7 25</td>
<td>Late Responses. AMR shall provide detailed documentation in writing for every non-emergency and emergency request with a response time in excess of the time standards and shall identify and report the cause of such extended response times.</td>
<td>In Compliance</td>
<td>AMR continues to provide on-time well documented reports to the Compliance Officer. AMR has provided quick responses back to the Compliance Officer. AMR has also assisted in addressing trends and habits that can be found in examination of the monthly reports.</td>
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## SHAWNEE COUNTY AMBULANCE COMPLIANCE OFFICER REPORT

**Is AMR in Compliance with Contract C207-2016?**

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<td>28:01 to 29:00</td>
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<tr>
<td>45:01 to 50:00</td>
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<tr>
<td>50:01 or more</td>
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**TOTALS**

|                | 21271 | 22848 | 1,577 |

**COUNTYWIDE AVERAGE 2017**

6:06

**COUNTYWIDE AVERAGE 2018**

6:38
SHAWNEE COUNTY AMBULANCE COMPLIANCE OFFICER REPORT
Is AMR in Compliance with Contract C207-2016?

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<tr>
<th>Jan-Dec</th>
<th>DISPATCHED</th>
<th>CANCELLATION</th>
<th>ARRIVED</th>
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<th>REFUSED</th>
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<td>1577</td>
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INCREASE OF:
- DISPATCHED: 2199
- CANCELLATION: 621
- ARRIVED: 1577
- TRANSPORTED: 697
- REFUSED: 881
# 2018 GRANT PROCESS - FINAL REPORT

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<th>DESC</th>
<th>APPROVED AMOUNT</th>
<th>APPROVED BY</th>
<th>DATE OF CHECK DELIVERY DOCUMENTATION</th>
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<tbody>
<tr>
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<td>Dirk Christian</td>
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## APPROVED REQUESTS

- TOTAL AVAILABLE 06/01/18: $20,701.00
- TOTAL APPROVED 01/03/19: $9,267.24
- TOTAL REMAINING from 2018 Grant: $11,433.76

Current Fund Amount 2/11/19: $46,973.76

## GRANT FUND STATUS

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<tr>
<th>MONTH</th>
<th>AMOUNT</th>
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<tr>
<td>May-18</td>
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<td>Jul-18</td>
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<td>Sep-18</td>
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# 2018 TUITION ASSISTANCE REPORT - FINAL

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<th>NAME</th>
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<td>End of Year</td>
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<td>2018</td>
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</table>

The Ambulance Advisory Board and AMR has all agreed to the following:

The benefit of Tuition Assistance will commence after January 1, 2017 (and after January 1st each year)
All requests must be able to be paid out before October 1 of each year.
That the monies not paid out will not rollover each year.
The funds will be distributed through AMR directly to each department following approval from the Ambulance Advisory Board.
Documentation shall be provided to AMR and the county that shows where/when the monies were spent.

On November 9th, 2016 at the County Fire Chief's meeting, it was the consensus of the fire chiefs that each of the nine first responder organizations in Shawnee County will receive $1111.11 a year for tuition assistance.

The process to apply for this benefit can be found at [http://www.snco.us/em/document/tuition_assistance_program.pdf](http://www.snco.us/em/document/tuition_assistance_program.pdf)
June 13, 2019

TO: Board of County Commissioners
Shawnee County

FROM: John E. Knight, Director
Parks + Recreation

RE: Senne Company Design-Build Agreement - Hillcrest Center Renovation Project

Purpose: Board of Commissioners approval and execution of the Senne Agreement is requested for the Design-Build Fee with a Guaranteed Maximum Price (GMP) yet to be determined. The specific scope of work will be defined as Shawnee County Parks + Recreation and Senne Company work towards a mutually agreed upon GMP. The Design Builder’s Fee is estimated not to exceed $46,558.00 as noted in the Preconstruction Design-Phase Cost (attachment) and set to be funded from the Building Maintenance Fund. Parks + Recreation will return to the Board of Commissioners for approval to complete the project at the GMP.

Justification: On May 6, 2019, the Board of Commissioners approved the Professional Selection Committee’s recommendation to proceed with Senne Company as the contractor for the project. The overall project plan includes creating an inviting and safe entry and lobby; enhancements include wall and floor coverings, lighting, visuals, improved acoustics, and accessibility for both the public and staff. Approval of the agreement will allow Senne Company to proceed with plans that address immediate structural and engineering aspects, set limitations, planning and budgeting in order to propose a GMP. The services provide for improvements as future suggestions may be considered if alternate funding becomes available.

JEK/blt
TL
Attachments
ConsensusDocs® 410

STANDARD DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS
BETWEEN OWNER AND DESIGN-BUILDER (Cost of the Work Plus a Fee with a GMP)

TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
3. DESIGN-BUILDER'S RESPONSIBILITIES
4. OWNER'S RESPONSIBILITIES
5. SUBCONTRACTS
6. TIME
7. PAYMENT
8. COST OF THE WORK
9. CHANGES IN THE WORK
10. PAYMENT FOR CONSTRUCTION PHASE SERVICES
11. INDEMNITY, INSURANCE, AND BONDS
12. SUSPENSION, NOTICE TO CURE, AND TERMINATION
13. DISPUTE MITIGATION AND RESOLUTION
14. MISCELLANEOUS PROVISIONS
15. CONTRACT DOCUMENTS

ARTICLE 1 AGREEMENT

Job Number: 19-504

This Agreement is made this 15th day of May in the year 2019, by

and between Owner Board of County Commissioners of the County of Shawnee KS
and Design-Builder Senne & Company, Inc.
2001 NW Highway 24, Topeka, KS 66618

Tax Identification number (TIN) 0481062927
Contractor Licensing No., if applicable City of Topeka G2CO 201200000234
Design Professional Licensing No. in the state of the Project A6947

for services in connection with the following

PROJECT: Remodel Hillcrest Community Center, RFP #007-19
1800 SE 21st St, Topeka, KS 66607

ARTICLE 2 GENERAL PROVISIONS

2.1 TEAM RELATIONSHIP AND ETHICS Each Party agrees to act on the basis of good faith and fair
dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and
timely manner, including consideration of design modifications and alternative materials or equipment that
will permit the Work to be constructed within the Guaranteed Maximum Price (GMP) and, if established,
by the Dates of Substantial Completion and Final Completion.
2.1 Neither Design-Builder nor any of its agents or employees shall act on behalf of or in the name of Owner.

2.2 ETHICS Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest; (b) promptly disclose to the other Party any conflicts of interest which may arise. Each Party warrants it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, Design Professional, Subcontractors, Subsubcontractors, Suppliers, or Others, to secure preferential treatment.

2.3 DESIGN-PROFESSIONAL Design-Builder shall furnish architectural and engineering services ("Services") by Design-Builder licensed employees or procure such services from a licensed, independent design professional retained by Design-Builder. The person or entity providing architectural and engineering services shall be referred to as Design-Professional. If Design-Professional is an Independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between Design-Builder and Design-Professional.

2.3.1 Design-Builder shall furnish or provide the Services necessary to design the Project in accordance with Owner's requirements, as outlined in Owner’s Program and other relevant data defining the Project. The Services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, location, and complexity, during the time in which the Services are provided.

2.4 DEFINITIONS

2.4.1 "Agreement" means this ConsensusDocs 410 Standard Design-Build Agreement and General Conditions Between Owner and Design-Builder (Cost of the Work Plus a Fee with a GMP), as modified, amendments, exhibits, addenda, and attachments made part of this agreement upon its execution.

2.4.2 The following exhibits are a part of this Agreement:

Exhibit A: Basis of Design/Owner's Program
Exhibit B: Sonne's Rate Sheet
Exhibit C: Contractual Provisions Attachment

2.4.3 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.4.4 A "Change Order" is a written order signed by the Parties after execution of this Agreement, indicating a change in the scope of the Work, Cost of the Work, or Contract Time, including substitutions proposed by Design-Builder and accepted by Owner.

2.4.5 "Construction Schedule" is the document prepared by Design-Builder that specifies the dates on which Design-Builder plans to begin and complete various parts of the construction phase services Work, and the Project, including dates on which information and approvals are required from Owner.

2.4.6 The "Contract Documents" consist of those documents identified in §15.1.

2.4.7 The "Contract Time" is the period between the Date of Commencement and the total time authorized to achieve Final Completion.

2.4.8 "Cost of the Work" means the costs and discounts specified in ARTICLE 8.
2.4.9 "Day" means calendar day.

2.4.10 "Date of Commencement" is as provided for in §6.1.

2.4.11 "Design-Builder's Fee" means the compensation paid to Design-Builder for salaries and other mandatory or customary compensation of Design-Builder's employees at its principal and branch offices except employees listed in §8.2, general and administrative expenses of Design-Builder's principal and branch offices other than the field office, and Design-Builder's capital expenses, including interest on Design-Builder's capital employed for the Work, and profit.

2.4.12 "Defective Work" is any portion of the Work that does not conform to the requirements of the Contract Documents.

2.4.13 "Final Completion" occurs on the date when Design-Builder's obligations under this Agreement are complete and accepted by Owner and final payment becomes due and payable.

2.4.14 A Hazardous Material is any substance or material identified now or in the future as hazardous under any Laws or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or clean-up.

2.4.15 "Interim Directive" is any written order containing Work instructions that is signed by Owner after execution of this Agreement and prior to Substantial Completion of the Work directed by Owner pursuant to §9.3.

2.4.16 "Law" means a federal, state, or local law, ordinance, code, rule, or regulation applicable to the Work with which Design-Builder must comply that is enacted as of the Agreement date.

2.4.17 "Others" means Owner's other: (a) contractors/constructors/design-binders, (b) suppliers, (c) subcontractors, subsubcontractors, or suppliers of (a) and (b), and others employed directly or indirectly by (a), (b), or (c) or any by any of them or for whose acts any of them may be liable.

2.4.18 "Overhead" shall mean (a) payroll costs and other compensation of Design-Builder's employees in Design-Builder's principal and branch offices; (b) general and administrative expenses of Design-Builder's principal and branch offices including charges against Design-Builder for delinquent payments; and (c) Design-Builder's capital expenses, including interest on capital used for the Work.

2.4.19 "Owner" is the person or entity identified in ARTICLE 1, and includes Owner's Representative.

2.4.20 "Owner's Program" is an initial description of Owner's objectives that may include budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

2.4.21 The "Parties" are collectively Owner and Design-Builder.

2.4.22 The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which Design-Builder is to perform the Work under this Agreement. It may also include Improvements to be undertaken by Owner or Others.

2.4.23 "Project schedule" is a schedule that shows the timing and sequencing of the design and construction required to meet the time criteria set forth in Owner's Program. The Project includes the Construction Schedule and is coordinated with design phase service activities.
2.4.24 A "Subcontractor" is a person or entity retained by Design-Builder as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a portion of the Work. The term Subcontractor does not include Design-Professional or any separate contractor employed by Owner or any separate contractor's subcontractors.

2.4.25 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that Owner may occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unapproved disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond Design-Builder's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Parties.

2.4.26 "Subsubcontractor" is a party or entity who has an agreement with a Subcontractor or another Subsubcontractor or Supplier to perform any portion of the Work or to supply material or equipment.

2.4.27 A "Supplier" is a person or entity retained by Design-Builder to provide material or equipment for the Work.

2.4.28 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.4.29 The "Work" means the design phase services procured or furnished in accordance with §3.1, the GMP Proposal provided in accordance with §3.2, the Construction Phase services provided in accordance with §3.3, Design-Builder shall provide or procure the following Additional Services upon the request of Owner ("Additional Services") that may be provided in §3.9, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

2.4.30 "Worksite" means the area of the Project location identified in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 DESIGN-BUILDER'S RESPONSIBILITIES

Design-Builder shall be responsible for procuring or furnishing the design and for the construction of the Work consistent with Owner's Program, as such Program may be modified by Owner during the course of the Work. Design-Builder shall use its diligent efforts to perform the Work in an expeditious manner, but does not warrant nor guarantee schedules and estimates other than those that are part of the GMP proposal described in §3.2.1. Design-Builder represents that it is an independent contractor and that it is familiar with the type of Work required by this Agreement.

The Parties may establish a fast-track approach to the design and construction services necessary to complete the Project. Such agreement establishing a fast-track approach and the Project Schedule, shall be included as an exhibit to this Agreement. In the absence of such agreement, the Parties shall proceed in accordance with §3.1 and §3.3 below.

3.1 DESIGN PHASE SERVICES
3.1.1 PRELIMINARY EVALUATION Design-Builder shall review Owner's Program to ascertain the requirements of the Project and shall verify such requirements with Owner. Design-Builder's review shall also provide to Owner a preliminary evaluation of the site with regard to access, traffic, drainage, parking, building placement, and other considerations affecting the building, the environment, and energy use, as well as information regarding laws and requirements. Design-Builder shall also propose alternative architectural, civil, structural, mechanical, electrical, and other systems for review by Owner, to determine the most desirable approach on the basis of cost, technology, quality, and speed of delivery. Design-Builder will also review existing test reports but will not undertake any independent testing nor be required to furnish types of information derived from such testing in its Preliminary Evaluation. Based upon its review and verification of Owner's Program and other relevant information, Design-Builder shall provide a Preliminary Evaluation of the Project's feasibility for Owner's acceptance. Design-Builder's Preliminary Evaluation shall specifically identify any deviations from Owner's Program.

3.1.2 PRELIMINARY SCHEDULE Design-Builder shall prepare a preliminary Project Schedule. Owner shall provide written approval of milestone dates established in the preliminary Schedule of the Work. The Project Schedule shall be updated periodically with the level of detail for each schedule reflecting the information then available. If an update indicates that a previously approved Project Schedule will not be met Design-Builder shall recommend corrective action to Owner in writing.

3.1.3 PRELIMINARY ESTIMATE When sufficient Project information has been identified, Design-Builder shall prepare for Owner's acceptance a preliminary estimate utilizing area, volume, or similar conceptual estimating techniques. The estimate shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary estimate or any update exceeds Owner's budget, Design-Builder shall make recommendations to Owner.

3.1.4 SCHEMATIC DESIGN DOCUMENTS Design-Builder shall submit for Owner's written approval Schematic Design Documents, based on the agreed upon Preliminary Evaluation. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Project's basic elements, scale, and their relationship to the Worksite. One set of these documents shall be furnished to Owner. When Design-Builder submits the Schematic Design Documents, Design-Builder shall identify in writing all material changes and deviations that have taken place from Design-Builder's Preliminary Evaluation, preliminary Project Schedule, and estimate. Design-Builder shall update the preliminary Project Schedule and estimate based on the Schematic Design Documents.

3.1.5 PLANNING PERMITS Design-Builder shall obtain and Owner shall pay for all planning permits necessary for the construction of the Project.

3.1.6 DESIGN DEVELOPMENT DOCUMENTS Design-Builder shall submit for Owner's written approval Design Development Documents on the approved Schematic Design Documents. The Design Development Documents shall further define the Project, including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical, and electrical systems. One set of these documents shall be furnished to Owner. When Design-Builder submits the Design Development Documents, Design-Builder shall identify in writing all material changes and deviations that have taken place from the Schematic Design Documents. Design-Builder shall update the Project Schedule and estimate based on the Design Development Documents.

3.1.7 CONSTRUCTION DOCUMENTS Design-Builder shall submit for Owner's written approval Construction Documents based on the approved Design Development Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall consist of
3.1.8 OWNERSHIP OF DOCUMENTS

3.1.8.1 OWNERSHIP OF TANGIBLE DOCUMENTS Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data, and information ("Documents") prepared, provided, or procured by Design-Builder, its Design-Professional, Subcontractors, or consultants and distributed to Owner for this Project, upon the making of final payment to Design-Builder or, in the event of termination under ARTICLE 12, upon payment for all sums due to Design-Builder pursuant to ARTICLE 12. Owner's acquisition of the copyright shall be subject to Owner's making of all payments required by this Agreement.

3.1.8.2 COPYRIGHT The Parties agree that Owner ☐ shall □ shall not obtain ownership of the copyright of all Documents. Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by the subsection above and the payment of the fee reflecting the agreed value of the copyright set forth below:

If the Parties have not made a selection to transfer copyright interests in the Documents, the copyright shall remain with Design-Builder.

3.1.8.3 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to ARTICLE 12, Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under this section, provided payment has been made pursuant to §3.1.8.

3.1.8.4 OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, Owner may reuse, reproduce, or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. Owner's use of the Documents without Design-Builder's involvement or on other projects is at Owner's sole risk, except for Design-Builder's indemnification obligations, and Owner shall indemnify and hold harmless Design-Builder, its Design-Professional, Subcontractors, and consultants, and the agents, officers, directors, and employees of each of them, from and against any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from such any prohibited use.

3.1.8.5 DESIGN-BUILDER'S USE OF DOCUMENTS Where Design-Builder has transferred its copyright interest in the Documents under §3.1.8, Design-Builder may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

3.1.8.6 Design-Builder shall obtain from its Design-Professional, Subcontractors, and consultants rights and rights of use that correspond to the rights given by Design-Builder to Owner in this Agreement, and Design-Builder shall provide evidence that such rights have been secured.
3.2 GUARANTEED MAXIMUM PRICE (GMP)

3.2.1 GMP PROPOSAL At such time as Owner and Design-Builder jointly agree, Design-Builder shall submit a GMP Proposal in a format acceptable to Owner. Unless the Parties mutually agree otherwise, the GMP shall be the sum of the estimated Cost of the Work as defined in ARTICLE 8 and Design-Builder's Fee as defined in ARTICLE 7. The GMP is subject to modification as provided in ARTICLE 9. Design-Builder does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with this Agreement.

3.2.1.1 If the Design-Build Documents are not complete at the time the GMP Proposal is submitted to Owner, Design-Builder shall provide in the GMP for further development of the Design-Build Documents consistent with Owner’s Program. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

3.2.2 BASIS OF GUARANTEED MAXIMUM PRICE Design-Builder shall include with the GMP Proposal a written statement of its basis, which shall include:

3.2.2.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

3.2.2.2 a list of allowances and a statement of their basis;

3.2.2.3 a list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

3.2.2.4 the Date of Substantial Completion and the Date of Final Completion upon which the proposed GMP is based, and the Schedule of the Construction Work upon which the Date of Substantial Completion and the Date of Final Completion is based; (a) a schedule of applicable alternative prices; (b) schedule of applicable unit prices; (c) a statement of Additional Services Included, if any; (d) the time limit for acceptance of the GMP proposal; (e) Design-Builder’s contingency as provided in §3.2.7; (f) a statement of any work to be self-performed by Design-Builder; and (g) a statement identifying all patented or copyrighted materials, methods, or systems selected by Design-Builder and incorporated in the Work that are likely to require the payment of royalties or license fees.

3.2.3 REVIEW AND ADJUSTMENT TO GMP PROPOSAL Design-Builder shall meet with Owner to review the GMP Proposal. If Owner has any comments relative to the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design-Builder, who shall make appropriate adjustments to the GMP, its basis, or both.

3.2.4 ACCEPTANCE OF GMP PROPOSAL Upon acceptance by Owner of the GMP Proposal, the GMP and its basis shall be set forth in Amendment 1.

3.2.5 FAILURE TO ACCEPT THE GMP PROPOSAL Unless Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies Design-Builder, the GMP Proposal shall not be effective. If Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, Owner shall have the right to:
3.2.5.1 request modifications to the GMP Proposal. If such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted in accordance with §3.2.4;

3.2.5.2 direct Design-Builder to proceed on the basis of reimbursement as provided in ARTICLE 7 and ARTICLE 8 without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

3.2.5.3 terminate the Agreement for convenience. The Parties may establish a Date of Substantial Completion and a Date of Final Completion.

3.2.6 PRE-GMP WORK Prior to Owner's acceptance of the GMP Proposal, Design-Builder shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as Owner may specifically authorize in writing.

3.2.7 DESIGN-BUILDER'S CONTINGENCY The GMP Proposal will contain, as part of the estimated Cost of the Work, Design-Builder's Contingency, a sum mutually agreed upon and monitored by Design-Builder and Owner to cover costs which are properly reimbursable as a Cost of the Work but are not the basis for a Change Order. Design-Builder's Contingency shall not be used for changes in scope or for any item that would be the basis for an increase in the GMP. Design-Builder shall provide Owner with a monthly accounting of charges against Design-Builder's Contingency, if applicable, with each application for payment.

3.2.8 COST REPORTING Design-Builder shall maintain complete and current records that comply with generally accepted accounting principles and calculate the Cost of Work. Owner shall be afforded access during normal business hours to all Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by Law.

3.3 CONSTRUCTION PHASE SERVICES

3.3.1 The Construction Phase will commence upon the issuance by Owner of a written notice to proceed with construction. If construction commences prior to execution of Amendment No. 1, Design-Builder shall prepare for Owner's written approval a list of the documents that are applicable to the part of the Work which Owner has authorized, which list shall be included in Owner's written notice to proceed.

3.3.2 In order to complete the Work, Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and subcontracted items.

3.3.3 COMPLIANCE WITH LAWS Design-Builder shall comply with all Laws at its own costs. Design-Builder shall be liable to Owner for all loss, cost, and expense, attributable to any acts or omissions by Design-Builder, its employees, subcontractors, and agents resulting from the failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if notice to Owner was given, and advance approval by appropriate authorities, including Owner, is received.

3.3.3.1 CHANGES IN LAW The GMP, Design-Builder's Fee, and Contract Time shall be equitably adjusted by Change Order pursuant to ARTICLE 9 for additional costs and time resulting from any changes in Laws, including increased taxes, which were enacted after the date of this Agreement, or in the case of the GMP, after the date of an accepted GMP proposal.
3.3.4 Design-Builder shall obtain and Owner shall pay for the building permits necessary for the construction of the Project.

3.3.5 Design-Builder shall provide periodic written reports to Owner on the progress of the Work in such detail as is reasonably agreed to by the Parties.

3.3.6 Design-Builder shall develop a system of cost reporting for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be presented to Owner at mutually agreeable intervals.

3.3.7 Design-Builder shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.3.8 Design-Builder shall prepare and submit to Owner either:

☐ final marked-up as-built drawings, or
☐ updated electronic data
☐ such documentation as defined by the Parties by attachment to this Agreement, in general documenting how the various elements of the Work were actually constructed or installed.

3.4 CONSTRUCTION SCHEDULE Design-Builder shall prepare and submit a Schedule of Work for Owner's written approval. This Schedule shall indicate the commencement and completion dates of the various stages of the Work, including the dates when information and approvals are required from Owner. The Schedule shall be revised on a monthly basis or as mutually agreed by the Parties.

3.5 SAFETY OF PERSONS AND PROPERTY

3.5.1 SAFETY PRECAUTIONS AND PROGRAMS Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of Laws.

3.5.2 Design-Builder shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect:

3.5.2.1 its employees and other persons at the Worksite;

3.5.2.2 materials, supplies, and equipment stored at the Worksite for use in performance of the Work; and

3.5.2.3 the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.5.3 DESIGN-BUILDER'S SAFETY REPRESENTATIVE Design-Builder shall designate an individual at the Worksite in the employ of Design-Builder who shall act as Design-Builder's designated safety representative with a duty to prevent accidents. Unless otherwise identified by Design-Builder in writing to Owner, the designated safety representative shall be Design-Builder's project...
superintendent. Design-Build will report promptly in writing all recordable accidents and injuries occurring at the Worksite to Owner. When Design-Build is required to file an accident report with a public authority, Design-Build shall furnish a copy of the report to Owner.

3.5.4 Design-Build shall provide Owner with copies of all notices required of Design-Build by law. Design-Build’s safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.

3.5.5 Damage or loss not insured under property insurance that arises from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of Design-Build, or anyone for whose acts Design-Build may be liable, shall be promptly remedied by Design-Build. Damage or loss attributable to the acts or omissions of Owner or Others and not to Design-Build shall be promptly remedied by Owner.

3.5.6 If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Design-Build’s safety program, may require Design-Build to stop performance of the Work or take corrective measures satisfactory to Owner, or both. If Design-Build does not adopt corrective measures, Owner may perform them and reduce by the costs of the corrective measures the amount of the GMP, or in the absence of a GMP, the Cost of the Work as provided in ARTICLE 9. Design-Build agrees to make no claim for damages, for an increase in the GMP, compensation for Design Phase services, Design-Build’s Fee, or the Date of Substantial Completion or the Date of Final Completion based on Design-Build’s compliance with Owner’s reasonable request.

3.6 EMERGENCIES In any emergency affecting the safety of persons or property, Design-Build shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the GMP, estimated Cost of the Work, Design-Build’s Fee, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate the compensation for Design Phase services, on account of emergency work shall be determined as provided for in ARTICLE 8.

3.7 HAZARDOUS MATERIALS

3.7.1 Design-Build shall not be obligated to commence or continue Work until any Hazardous Material discovered at the Worksite has been removed, rendered, or determined to be harmless by Owner as certified by an independent testing laboratory and approved by the appropriate governmental agency.

3.7.2 If, after commencing the Work, Hazardous Material is discovered at the Project, Design-Build shall be entitled to immediately stop Work in the affected area. Design-Build shall promptly report the condition to Owner and, if required, the governmental agency with jurisdiction.

3.7.3 Design-Build shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.7.4 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole responsibility of Owner, and shall be performed in a manner minimizing any adverse effect upon the Work.

3.7.5 If Design-Build incurs additional costs or is delayed due to the presence or remediation of Hazardous Material discovered at the Worksite, Design-Build shall be entitled to an equitable
adjustment in the GMP, compensation for Design Phase services, Design-Builder’s Fee, or the Date of Substantial Completion or the Date of Final Completion.

3.7.6 To the extent permitted under §6.5 and to the extent not caused by the negligent or intentionally wrongful acts or omissions of Design-Builder, its Subcontractors, Suppliers, and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, Owner shall defend, indemnify, and hold harmless Design-Builder, its Subcontractors, and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys’ fees, costs, and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.7.7 MATERIAlS BROUGHT TO THE SITE

3.7.7.1 Safely Data Sheets (SDS) as required by Law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Design-Builder, Subcontractors, Owner, or Others, shall be maintained at the Project by Design-Builder and made available to Owner and Subcontractors.

3.7.7.2 Design-Builder shall be responsible for the proper handling, application, storage, removal, and disposal of all materials brought to the Worksite by Design-Builder. Upon the issuance of the Certificate of Substantial Completion, Owner shall be responsible for materials and substances brought to the Worksite by Design-Builder if such materials or substances are required by the Contract Documents.

3.7.7.3 To the extent caused by the negligent or intentionally wrongful acts or omissions of Design-Builder, its agents, officers, directors, and employees, Design-Builder shall indemnify and hold harmless Owner, its agents, officers, directors, and employees, from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorneys’ fees, costs, and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the delivery, handling, application, storage, removal, and disposal of materials and substances brought to the Worksite by Design-Builder.

3.7.8 §3.7 shall survive the completion of the Work or Agreement termination.

3.8 WARRANTY

3.8.1 Design-Builder warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the Date of Substantial Completion of the Work or of a designated portion.

3.8.2 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. To the extent products, equipment, systems, or materials incorporated in the Work are specified by Owner but purchased by Design-Builder and are inconsistent with selection criteria that otherwise would have been followed by Design-Builder, Design-Builder shall assist Owner in pursuing warranty claims. ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.
3.8.3 Design-Builder shall secure required certificates of inspection, testing, or approval and deliver them to Owner.

3.8.4 Design-Builder shall collect all written warranties and equipment manuals and deliver them to Owner in a format directed by Owner.

3.8.5 With the assistance of Owner’s maintenance personnel, Design-Builder shall direct the checkout of utilities and start-up operations, and adjusting and balancing of systems and equipment for readiness.

3.9 CORRECTION OF WORK WITHIN ONE YEAR

3.9.1 Before Substantial Completion and within one year after the date of Substantial Completion of the Work or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents, if any Defective Work is found, Owner shall promptly notify Design-Builder in writing. Unless Owner provides written acceptance of the condition, Design-Builder shall promptly correct the Defective Work at its own cost and time and bear the expense of Additional Services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Owner discovers and does not promptly notify Design-Builder or give Design-Builder an opportunity to test or correct Defective Work as reasonably requested by Design-Builder, Owner waives Design-Builder’s obligation to correct that Defective Work as well as Owner’s right to claim a breach of the warranty with respect to that Defective Work.

3.9.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall commence when that portion of Work is complete. Correction periods shall not be extended by corrective work performed by Design-Builder.

3.9.3 If Design-Builder fails to correct Defective Work within a reasonable time after receipt of written notification from Owner before final payment, Owner may correct it in accordance with Owner’s right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due Design-Builder. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts, Design-Builder shall pay the difference to Owner.

3.9.4 Design-Builder’s obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Work which Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Design-Builder and allow Design-Builder an opportunity to correct the Work if Design-Builder elects to do so. If Design-Builder elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Design-Builder does not elect to correct the Work, Owner may have the Work corrected by itself or others, and, if Owner intends to seek recovery of those costs from Design-Builder, Owner shall promptly provide Design-Builder with an accounting of actual correction costs.

3.9.5 If Design-Builder’s correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, Design-Builder shall be responsible for the cost of correcting the destroyed or damaged property.

3.9.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Design-Builder’s other obligations under the Contract Documents.
3.9.7 Before final payment, at Owner's option and with Design-Builder's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.10 CONFIDENTIALITY Design-Builder shall treat as confidential and not disclose to third-persons, nor use for its own benefit ("Treat as Confidential"); any of Owner's confidential information, know-how, discoveries, production methods, and the like disclosed to Design-Builder or which Design-Builder may acquire in performing the Work. To the extent necessary to perform the Work, Design-Builder's confidentiality obligations do not apply to disclosures to Subcontractors, Subsubcontractors, and Suppliers. Owner shall Treat as Confidential all of Design-Builder's estimating systems and historical and parameter cost data disclosed to Owner in performing the Work. Except for information that Owner obtains through ownership of the copyright, Owner shall treat as confidential all design systems that may be disclosed to Owner in connection with the performance of this Agreement. Each Party shall specify and mark confidential items as "Confidential." Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit the other Party's legal objection.

3.11 ADDITIONAL SERVICES Design-Builder shall provide or procure the following additional services upon the request of Owner. A written agreement between Owner and Design-Builder shall define the extent of such Additional Services before they are performed by Design-Builder. If a GMP has been established for the Work or any portion of the Work, such Additional Services shall be considered a Change in the Work, unless they are specifically included in the statement of the basis of the GMP as set forth in Amendment 1.

3.11.1 Assisting in developing Owner's Program and Project budget, investigating sources of financing, general business planning, and other information and documentation as may be required to establish the feasibility of the Project.

3.11.2 Consultations, negotiations, and documentation supporting the procurement of Project financing.

3.11.3 Surveys, site evaluations, legal descriptions, and aerial photographs.

3.11.4 Appraisals of existing equipment, existing properties, new equipment, and developed properties.

3.11.5 Soils, subsurface, and environmental studies, reports, and investigations required for submission to governmental authorities or others having jurisdiction over the Project.

3.11.6 Consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits.

3.11.7 Investigation or making measured drawings of existing conditions or the reasonably required verification of Owner-provided drawings and information.

3.11.8 Artistic renderings, models, and mockups of the Project or any part of the Project or the Work.

3.11.9 Inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the Project.
3.11.10 Interior design and related services, including procurement and placement of furniture, furnishings, artwork, and decorations.

3.11.11 Making revisions to the Schematic Design, Design Development, Construction Documents, or documents forming the basis of the GMP after they have been approved by Owner, and which are due to causes beyond the control of Design-Builder. Causes beyond the control of Design-Builder do not include acts or omissions on the part of Subcontractors, Suppliers, Subsubcontractors, or the Design-Professional.

3.11.12 Design, coordination, management, expediting, and other services supporting the procurement of materials to be obtained, or work to be performed, by Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems, and other specialty systems which are not a part of the Work.

3.11.13 Estimates, proposals, appraisals, consultations, negotiations, and services in connection with the repair or replacement of an insured loss, provided such repair or replacement did not result from the negligence of Design-Builder.

3.11.14 The premium portion of overtime work ordered by Owner, including productivity impact costs, other than that required by Design-Builder to maintain the Schedule of Construction Work.

3.11.15 Out-of-town travel by the Design-Professional in connection with the Work, except between the Design-Professional’s office, Design-Builder’s office, Owner’s office, and the Worksite.

3.11.16 Obtaining service contractors and training maintenance personnel, assisting and consulting in the use of systems and equipment after the initial start-up.

3.11.17 Services for tenant or rental spaces not required by this Agreement.

3.11.18 Services requested by Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice.

3.11.19 Except when Design Professional is a party to the proceeding, serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project.

3.11.20 Document reproduction exceeding the limits provided for in this Agreement.

3.11.21 Providing services relating to Hazardous Material discovered at the Worksite.

3.11.22 Acting as a Green Building Facilitator as identified in the ConsensusDocs 310 Green Building Addendum or separate addenda, which, at a minimum, shall include: (a) coordinating and facilitating the achievement of selected green measures and green status, such as achieving Leadership in Energy and Environmental Design "LEED" certification; (b) identifying, preparing, and submitting necessary documentation for selected green status; and (c) identifying project participants responsible to complete physical and procedural green measures;

3.11.23 Performing formal commissioning services; and

3.11.24 Other services as agreed to by the Parties and identified in an attached exhibit.

3.12 DESIGN-BUILDER’S REPRESENTATIVE Design-Builder shall designate a person who shall be Design-Builder’s representative. Design-Builder’s Representative is Cindy Hill.
ARTICLE 4 OWNER’S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY OWNER Owner's responsibilities under this article shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION Before commencing the Work and thereafter, at the written request of Design-Builder, Owner shall provide Design-Builder evidence of Project financing. Evidence of such financing shall be a condition precedent to Design-Builder's commencing or continuing the Work. Design-Builder shall be notified before any material change in Project financing.

4.3 WORKSITE INFORMATION To the extent Owner has obtained, or is required in the Contract Documents to obtain, then Owner shall provide the following Worksite Information to Design-Builder:

4.3.1 information describing the physical characteristics of the site, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations;

4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law;

4.3.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and

4.3.4 any other information or services requested in writing by Design-Builder which are required for Design-Builder's performance of the Work and under Owner's control.

4.4 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving Design-Builder's written request, Owner shall provide Design-Builder with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner's interest in the real property interests of the Worksite and the record legal title.

4.5 RESPONSIBILITIES DURING DESIGN PHASE

4.5.1 Owner shall provide Owner's Program at the inception of the Design Phase and shall review and timely approve in writing schedules, estimates, Preliminary Estimate, Schematic Design Documents, Design Development Documents, and Construction Documents furnished during the Design Phase, and the GMP Proposal.

4.6 RESPONSIBILITIES DURING CONSTRUCTION PHASE

4.6.1 Owner shall review the Construction Schedule and timely approve the milestone dates set forth.

4.6.2 If Owner becomes aware of any error, omission, or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, Owner shall give prompt written notice to Design-Builder. The failure of Owner to give such notice shall not relieve Design-Builder of its obligations to fulfill the requirements of the Contract Documents.

4.6.3 Owner shall have no contractual obligations to Subcontractors, suppliers, or the Design-Professional.

4.6.4 Owner shall provide insurance for the Project as provided in ARTICLE 11.
ARTICLE 5 SUBCONTRACTS

5.1 RETAINING SUBCONTRACTORS Design-Builder shall not retain any Subcontractor to whom Owner has a reasonable and timely objection, provided that Owner agrees to compensate Design-Builder for any additional costs incurred by Design-Builder as a result of such objection. Owner may propose subcontractors to be considered by Design-Builder. Design-Builder shall not be required to retain any subcontractor to whom Design-Builder has a reasonable objection.

5.2 MANAGEMENT OF SUBCONTRACTORS Design-Builder shall be responsible for the management of Subcontractors in the performance of their work.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACT

5.3.1 If this Agreement is terminated, each subcontract agreement shall be assigned by Design-Builder to Owner, subject to the prior rights of any surety, provided that:

5.3.1.1 this Agreement is terminated by Owner pursuant to §12.3 or §12.4; and

5.3.1.2 Owner accepts such assignment, after termination by notifying in writing Design-Builder and Subcontractor or Design-Builder and Supplier, and assumes all rights and obligations of Design-Builder pursuant to each subcontract or supply agreement.

5.3.2 If Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, Subcontractor's or Supplier's compensation shall be equitably adjusted as a result of the suspension.

5.4 BINDING OF SUBCONTRACTORS AND SUPPLIERS Design-Builder agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and significant suppliers) to all the provisions of this Agreement and the Contract Document's applicable provisions to that portion of the Work.
ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in ARTICLE 1 unless otherwise set forth below: [______]. The Work shall proceed in general accordance with the approved Project Schedule which may be amended from time to time, subject, however, to other provisions of this Agreement.

6.2 SUBSTANTIAL/FINAL COMPLETION Unless the Parties agree otherwise, the Date of Substantial Completion and the Date of Final Completion shall be established in Amendment 1 to this Agreement subject to adjustments as provided for in the Contract Documents. If such dates are not established upon the execution of this Agreement, at such time as a GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in Amendment 1. If a GMP is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in Amendment 1.

6.2.1 The deadlines for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.2.2 Time is of the essence with regard to the obligations of the Contract Documents.

6.2.3 Unless instructed by Owner in writing, Design-Builder shall not knowingly commence the Work before the effective date of insurance required to be provided by Design-Builder.

6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If Design-Builder is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Design-Builder, Design-Builder shall be entitled to an equitable extension of the Date of Substantial Completion or the Date of Final Completion. Examples of causes beyond the control of Design-Builder include, but are not limited to, the following: (a) acts or omissions of Owner or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials unanticipated by Design-Builder, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under §12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Design-Builder; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Design-Builder shall process any requests for equitable extensions of the Date of Substantial Completion or the Date of Final Completion in accordance with the provisions of ARTICLE 9.

6.3.2 In addition, if Design-Builder incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, Design-Builder shall be entitled to an equitable adjustment in the GMP subject to §6.5.

6.3.3 If delays to the Project are encountered for any reason, the Parties agree to take reasonable steps to mitigate the effect of such delays.

6.4 LIQUIDATED DAMAGES
6.5 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES. Except for damages mutually agreed upon by the Parties as liquidated damages in §6.4 and excluding bases covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. Owner agrees to waive damages including but not limited to Owner’s loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation, or insolvency. Design-Builder agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The following items of damage are excluded from this mutual waiver: ________

6.5.1 The Parties shall require similar waivers in contracts with Subcontractors and Others retained for the Project.

ARTICLE 7 PAYMENT

7.1 DESIGN PHASE PAYMENTS

7.1.1 To the extent required by Law, the cost of services performed directly by Design-Professional is computed separately and is independent from Design-Builder’s compensation for work or services performed directly by Design-Builder; these costs shall be shown as separate items on applications for payment. If any Design-Professional is retained by Design-Builder, the payments to Design-Professional shall be as detailed in a separate agreement between Design-Builder and Design-Professional.

7.1.2 Owner shall pay Design-Builder for services performed during the Design Phase, including preparation of a GMP Proposal, if applicable, as follows: Cost of the Work plus Design Builder’s Fee. Some’s hourly rates are attached and incorporated herein as Exhibit B.

7.1.3 Compensation for Design Phase services, as part of the Work, shall include Design-Builder’s Fee, paid in proportion to the services performed, subject to adjustment.

7.1.4 Compensation for Design Phase services shall be equitably adjusted if such services extend beyond August 1, 2019 for reasons beyond the reasonable control of Design-Builder or as provided in §6.1. For changes in Design Phase services, compensation shall be adjusted as follows: Cost of the Work plus 20%.

7.1.5 No later than seven (7) Days after receipt of an application for payment, Owner shall give written notice to Design-Builder of Owner’s acceptance or rejection, in whole or in part, of such application for payment. Owner shall pay the amount due on a payment application, no later than fifteen (15) Days after accepting such application. Owner may deduct amounts previously paid by Owner. If such application is rejected in whole or in part, Owner shall indicate the reasons for its rejection. If the Parties cannot agree on a revised amount, then, within fifteen (15) Days after its initial rejection in part of such application, Owner shall pay to Design-Builder the appropriate amount for those items not rejected by Owner for which application for payment is made, less amounts
previously paid by Owner. Those items rejected by Owner shall be due and payable when the reasons for the rejection have been removed.

7.1.4 If Owner fails to pay Design-Builder at the time payment of any amount becomes due, then Design-Builder may, at any time thereafter, upon serving written notice that the Work will be stopped within seven (7) Days after receipt of the notice by Owner, and after such seven (7) Day period, stop the Work until payment of the amount owing has been received.

7.1.7 Payments due pursuant to §7.1.5, may bear interest from the date payment is due at the prime rate prevailing at the location of Project.

7.2 CONSTRUCTION PHASE PAYMENTS

7.2.1 Owner shall pay Design-Builder for Work performed following the commencement of the Construction Phase on the following basis:

7.2.1.1 the Cost of the Work as allowed in ARTICLE 8; and

7.2.1.2 Design-Builder's Fee paid in proportion to the services performed subject to adjustment.

7.2.2 The compensation to be paid under this section shall be limited to the GMP established in Amendment 1, which may be adjusted under ARTICLE 9.

7.2.3 Payment for Construction Phase services shall be as set forth in ARTICLE 10. If Design Phase services continue to be provided after construction has commenced, Design-Builder shall continue to be compensated as provided in §7.1, or as mutually agreed.

7.3 DESIGN-BUILDER’S FEE Design-Builder’s Fee shall be as follows, subject to adjustment as provided in §7.4: 8% for volume $250,000 - $500,000; 7% for volume $500,001 - $750,000; 6% for volume $750,000 and higher.

7.4 ADJUSTMENT IN DESIGN-BUILDER’S FEE Adjustment in Design-Builder’s Fee shall be made as follows:

7.4.1 for changes in the Work as provided in ARTICLE 9, Design-Builder’s Fee shall be adjusted as follows: no adjustment.

7.4.1.1 except as provided in §6.3.2, Design-Builder may seek an equitable adjustment in Design-Builder’s Fee to compensate Design-Builder for increased expenses not caused by Design-Builder, pursuant to ARTICLE 9, and

7.4.2 if Design-Builder is placed in charge of managing the replacement of an insured or uninsured loss, Design-Builder shall be paid an additional fee in the same proportion that Design-Builder’s Fee bears to the estimated Cost of the Work for the replacement.

7.5 SHARED SAVINGS If at Final Completion, Cost of the Work plus Design-Builder’s Fee is less than the GMP, the difference shall be shared as follows: The savings, if any, shall accrue fifty percent (50%) to Owner and fifty percent (50%) to Design-Builder. The shared savings shall be calculated and paid as part of final payment. Design-Builder shall not be entitled to any portion of the shared savings if either Party terminates this Agreement except for a termination for convenience pursuant to §12.4, Design-Builder's termination pursuant to §12.5, or, in the case of a termination for default under §12.3, if §12.5 applies.
ARTICLE 8 COST OF THE WORK

Owner agrees to pay Design-Builder for the Cost of the Work as defined in this article. This payment shall be in addition to Design-Builder's Fee stipulated in §7.3.

8.1 COST ITEMS FOR DESIGN PHASE SERVICES

8.1.1 Compensation for Design Phase services as provided in §7.1.

8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES

8.2.1 Labor Wages directly employed by Design-Builder performing the Work;

8.2.2 Salaries of Design-Builder's employees when stationed at the field office to the extent necessary to complete the applicable Work, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office for work performed directly managing and attributable to this project;

8.2.3 Cost of employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Design-Builder's standard personnel policy. Insofar as such costs are paid to employees of Design-Builder who are included in the Cost of the Work under §8.2.1 and §8.2.2;

8.2.4 Reasonable transportation, travel, hotel, and moving expenses of Design-Builder's personnel incurred in connection with the Work;

8.2.5 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, transportation, storage, and handling;

8.2.6 Payments made by Design-Builder to Subcontractors for performed Work;

8.2.7 Fees and expenses for design services procured or furnished by Design-Builder except as provided by the Design-Professional and compensated in §7.1;

8.2.8 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value, and cost less salvage value on such items used, but not consumed, that remain the property of Design-Builder;

8.2.9 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Design-Builder or others, including installation, repair, and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from Design-Builder or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.

8.2.10 Cost of the premiums for all insurance and surety bonds which Design-Builder is required to procure or deemed necessary, and approved by Owner, including any additional premium incurred as a result of any increase in the GMP.
8.2.11 Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Design-Builder is liable.

8.2.12 Permits, fees, licenses, tests, and royalties.

8.2.13 Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work or redesign during the Construction Phase and for a one-year period following the Date of Substantial Completion, provided that such corrective work or redesign did not arise from Design-Builder's negligence.

8.2.14 All costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office.

8.2.15 All water, power, and fuel costs necessary for the Work.

8.2.16 Cost of removal of all non-hazardous substances, debris, and waste materials.

8.2.17 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in Design-Builder's Fee as set forth in ARTICLE 7, which are reasonably inferable from the Contract Documents.

8.3 DISCOUNTS All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner. To the extent payments are made with funds of Design-Builder, all cash discounts shall accrue to Design-Builder. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

ARTICLE 9 CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished, without invalidating this Agreement, by Change Order, Interim Directive, or a minor change in the work, subject to the limitations stated in the Contract Documents.

9.1 CHANGE ORDER

9.1.1 Design-Builder may request or Owner, without invalidating this Agreement, may order changes in the Work within the general scope of the Contract Documents consisting of additions, deletions, or other revisions to the GMP or the estimated cost of the work, compensation for Design Phase services, Design-Builder's Fee, or the Date of Substantial Completion or the Date of Final Completion being adjusted accordingly. All such changes in the Work shall be authorized by applicable Change Order, and processed in accordance with this article.

9.1.2 Each adjustment in the GMP or estimated Cost of the Work resulting from a Change Order shall clearly separate the amount attributable to compensation for Design Phase services, other Cost of the Work, and Design-Builder's Fee, with Design-Builder's Fee not to exceed the fee schedule at section 7.3.

9.1.3 The Parties shall negotiate an appropriate adjustment to the GMP or the estimated Cost of the Work, compensation for Design Phase services, Design-Builder's Fee, or the Date of Substantial Completion or the Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the GMP, the estimated Cost of the Work, compensation for Design Phase services, Design-Builder's Fee, or the Date of Substantial Completion or the Date of Final Completion shall not be unreasonably withheld.
9.1.4 NO OBLIGATION TO PERFORM Design-Builder shall not be obligated to perform changes in the Work until a Change Order has been executed or Interim Directive has been issued.

9.2 INTERIM DIRECTIVE

9.2.1 Owner may issue an Interim Directive directing a change in the Work before agreeing on an adjustment. If, in the GMP, estimated Cost of the Work, Design-Builder's Fee, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate, the compensation for Design Phase services or directing Design-Builder to perform Work that Owner believes is not a change. If the Parties agree that the Interim Directive work is within the scope of the Work, Design-Builder shall perform the disputed Work and furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

9.2.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP, estimated Cost of the Work, Design-Builder's Fee, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate the compensation for Design Phase services, arising out of the Interim Directive. As the changed Work is performed, Design-Builder shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directive. If there is a dispute as to the cost to Owner, Owner shall pay Design-Builder fifty percent (50%) of its actual (Incurred or committed) cost to perform such Work. In such event, the Parties reserve their rights as to the disputed amount subject to the requirements of ARTICLE 9.2. Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work. Design-Builder's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work. Undisputed amounts may be included in applications for payment and shall be paid by Owner in accordance with this Agreement.

9.2.3 When the Parties agree upon the adjustments in the GMP, estimated Cost of the Work, Design-Builder's Fee, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate the compensation for Design Phase services, for a change in the Work directed by an Interim Directive, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directives on which Owner and Construction Manager have reached agreement on the GMP or the Date of Substantial Completion or Date of Final Completion issued since the last Change Order.

9.3 MINOR CHANGES IN THE WORK

9.3.1 Design-Builder may make minor changes in the design and construction of the Project consistent with the intent of the Contract Documents which do not involve an adjustment in the GMP, estimated Cost of the Work, Design-Builder's Fee, the Date of Substantial Completion, or the Date of Final Completion, and do not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, the performance of any materials, equipment, or systems specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.

9.3.2 Design-Builder shall promptly inform Owner in writing of any such changes and shall record such changes on the Design-Build Documents maintained by Design-Builder.

9.4 CONCEALED OR UNKNOWN SITE CONDITIONS. If a condition encountered at the Worksite is (a) a subsurface or other physical condition materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract...
Documents, Design-Builder shall stop affected Work after the concealed or unknown condition is first observed and give prompt written notice of the condition to Owner. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Design-Builder is to proceed. Design-Builder shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the GMP, estimated Cost of the Work, Design-Builder’s Fee, and the dates of Substantial and Final Completion as a result of the condition, including any dispute about its existence or nature, shall be determined as provided in this article.

9.5 DETERMINATION OF COST

9.5.1 An increase or decrease in the GMP or estimated Cost of the Work resulting from a change in the Work shall be determined by one or more of the following methods:

9.5.1.1 unit prices set forth in this Agreement or as subsequently agreed;

9.5.1.2 a mutually accepted itemized lump sum;

9.5.1.3 costs determined as defined in §7.2 and ARTICLE 8 and a mutually acceptable Design-Builder’s Fee as determined in §7.4.1; or

9.5.2 If an increase or decrease in GMP or Contract Time cannot be agreed to as set forth in §9.5.1 above, and Owner issues an interim Directive, the cost of the change in the Work shall be determined by the Cost of the Work expense incurred and savings as defined in ARTICLE 8 realized in the performance of the Work resulting from the change. If there is a net increase in the GMP, Design-Builder’s Fee shall be adjusted as set forth in §7.4.1. In case of a net decrease in the GMP, Design-Builder’s Fee shall not be adjusted unless ten percent (10%) or more of the Project is deleted. Design-Builder shall maintain a documented, itemized accounting evidencing the Cost of Work expenses and savings.

9.5.3 If unit prices are indicated in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to Owner or Design-Builder, such unit prices shall be equitably adjusted.

9.5.4 If Owner and Design-Builder disagree as to whether work required by Owner is within the scope of the Work, Design-Builder shall furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner’s interpretations. If Owner issues a written order for Design-Builder to proceed, Design-Builder shall perform the disputed work and Owner shall pay Design-Builder fifty percent (50%) of its actual, direct cost to perform the work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. Owner’s payment does not prejudice its right to be reimbursed should it be determined that the disputed work was not within the scope of Work. Design-Builder’s receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work was not within the scope of the Work.

9.6 CLAIMS FOR ADDITIONAL COST OR TIME For any claim for an increase in the GMP, estimated Cost of the Work, Design-Builder’s Fee, and the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design Phase services, Design-Builder shall give Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or fourteen (14) Days after Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by Owner, but which do not
proceed, shall be made within twenty-one (21) Days after the decision is made not to proceed. Thereafter, Design-Builder shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. Owner shall respond in writing denying or approving Design-Builder's claim no later than fourteen (14) Days after receipt of Design-Builder's documentation of claim. Owner's failure to so respond shall be deemed a denial of Design-Builder's claim. Any change in the GMP, estimated Cost of the Work, Design-Builder's Fee, the Date of Substantial Completion, or the Date of Final Completion, and the appropriate compensation for Design Phase services, resulting from such claim shall be authorized by Change Order.

9.7 CHANGES NOTICE Owner may direct Design-Builder to perform incidental changes in the Work upon concurrence with Design-Builder that such changes do not involve adjustments in the Cost of the Work or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Owner shall initiate an incidental change in the Work by issuing an Interim Directive

ARTICLE 10 PAYMENT FOR CONSTRUCTION PHASE SERVICES

10.1 PROGRESS PAYMENTS

10.1.1 On the last Day of each month after the Construction Phase has commenced, Design-Builder shall submit to Owner an application for payment consisting of the Cost of the Work performed up to the last Day of the month, along with a proportionate share of Design-Builder's Fee. Prior to submission of the next application for payment, Design-Builder shall furnish to Owner a statement accounting for the disbursement of funds received under the previous application. The extent of such statement shall be as agreed upon between Owner and Design-Builder.

10.1.2 Within seven (7) Days after receipt of each monthly application for payment, Owner shall give written notice to Design-Builder of Owner's acceptance or rejection, in whole or in part, of such application for payment. Within fifteen (15) Days after accepting such application, Owner shall pay directly to Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by Owner. If such application is rejected in whole or in part, Owner shall indicate the reasons for its rejection. If Owner and Design-Builder cannot agree on a revised amount then, within fifteen (15) Days after its initial rejection in part of such application, Owner shall pay directly to Design-Builder the appropriate amount for those Items not rejected by Owner for which application for payment is made, less amounts previously paid by Owner. Those Items rejected by Owner shall be due and payable when the reasons for the rejection have been removed.

10.1.3 If for any reason not the fault of Design-Builder, Design-Builder does not receive a progress payment from Owner within seven (7) Days after the time such payment is due, then Design-Builder, upon giving seven (7) Days' written notice to Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Design-Builder has been received, including interest for late payment. If Design-Builder incurs costs or is delayed resulting from shutdown, delay, and start-up, Design-Builder may seek an equitable adjustment in compensation, time, or both, under ARTICLE 9.

10.1.4 Payments due but unpaid pursuant to §10.1.2, less any amount retained pursuant to §10.2 and §10.3 may bear interest from the date payment is due at the prime rate prevailing at the place of the Project.

10.1.5 Design-Builder warrants and guarantees that title to all Work, materials, and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to Owner upon receipt of such payment by Design-Builder, free and clear of all liens, claims, security interests, or encumbrances, hereinafter referred to as liens.
10.1.6 Owner's progress payment, occupancy, or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

10.1.7 Upon Substantial Completion of the Work, Owner shall pay Design-Builder the unpaid balance of the Cost of the Work, compensation for Design Phase services, and Design-Builder's Fee, less one hundred and fifty percent (150%) of the cost of completing any unfinished items as agreed to between Owner and Design-Builder as to extent and time for completion. Owner thereafter shall pay Design-Builder monthly the amount retained for unfinished items as each item is completed.

10.1.8 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the Contract Documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite, including applicable Insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on submission by Design-Builder of bills of sale and proof of required insurance, or such other procedures satisfactory to Owner to establish the proper valuation of the stored materials and equipment, Owner's title to such materials and equipment, and to otherwise protect Owner's interests therein, including transportation to the worksite.

10.2 RETAINAGE From each progress payment made prior to the time of Substantial Completion, Owner may retain five percent (5%) of the amount otherwise due after deduction of any amounts as provided in §10.3, provided such percentage doesn't exceed the Law. If Owner chooses to use this retainage provision:

10.2.1 after the Work is fifty percent (50%) complete, Owner shall withhold no additional retainage and shall pay Design-Builder the full amount due on account of subsequent progress payments;

10.2.2 Owner may, in its sole discretion, reduce the amount to be retained at any time;

10.2.3 Owner may release retainage on that portion of the Work a Subcontractor has completed, in whole or in part, and which work Owner has accepted;

10.2.4 in lieu of retainage, Design-Builder may furnish a retention bond or other security interest acceptable to Owner, to be held by Owner.

10.3 ADJUSTMENT OF DESIGN-BUILDER'S APPLICATION FOR PAYMENT Owner may adjust or reject an application for payment or notify a previously approved Design-Builder application for payment, in whole or in part, as to any reason that reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Design-Builder is responsible under this Agreement:

10.3.1 Design-Builder's repeated failure to perform the Work as required by the Contract Documents;

10.3.2 except as accepted by the insurer providing Builder's Risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by Design-Builder to Owner or others to whom Owner may be liable;

10.3.3 Design-Builder's failure to properly pay either Design-Professional, Subcontractors, or Suppliers for labor, materials, equipment, or supplies furnished in connection with the Work, provided that Owner is making payments to Design-Builder in accordance with this Agreement;
10.3.4 Rejected or Defective Work not corrected in a timely fashion;

10.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Date of Substantial Completion or the Date of Final Completion, and that the unpaid balance of the GMP is not sufficient to offset any direct damages that may be sustained by Owner as a result of the anticipated delay caused by Design-Builder;

10.3.6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work; and

10.3.7 uninsured third-party claims involving Design-Builder or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Design-Builder furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

10.3.8 No later than seven (7) Days after receipt of an application for payment, Owner shall give written notice to Design-Builder, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by Design-Builder in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

10.4 OWNER OCCUPANCY OR USE OF COMPLETED OR PARTIALLY COMPLETED WORK Owner may use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) or sureties consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. Design-Builder shall not unreasonably withhold consent to partial occupancy or use. Owner shall not unreasonably refuse to accept partial occupancy or use, provided such partial occupancy or use is of value to Owner.

10.5 FINAL PAYMENT

10.5.1 Final Payment, consisting of the unpaid balance of the Cost of the Work, compensation for Design Phase services, and Design-Builder's Fee, shall be due and payable when the work is fully completed. Before issuance of final payment, Owner may request satisfactory evidence that all payrolls, material bills, and other indebtedness connected with the Work have been paid or otherwise satisfied.

10.5.2 In making final payment Owner waives all claims except for:

10.5.2.1 outstanding liens;

10.5.2.2 improper workmanship or defective materials appearing within one year after the Date of Substantial Completion;

10.5.2.3 work not in conformance with the Contract Documents; and

10.5.2.4 terms of any special warranties required by the Contract Documents.

10.5.3 In accepting final payment, Design-Builder waives all claims except those previously made in writing and which remain unsettled.
ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS

11.1 INDEMNITY

11.1.1 To the fullest extent permitted by law, Design-Builder shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees (the Indemnities) from all claims for bodily injury and property damage other than to the Work itself and other property required to be insured, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Design-Builder, Subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Design-Builder shall not be required to indemnify or hold harmless the Indemnities for any negligent or intentionally wrongful acts or omissions of the Indemnities. Design-Builder shall be entitled to reimbursement of any defense costs paid above Design-Builder's percentage of liability for the underlying claim to the extent provided for by the subsection below.

11.1.2 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Design-Builder, its officers, directors or members, Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner or Others, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Owner or Others. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for by the subsection above.

11.1.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnities by any employee of Design-Builder, anyone directly or indirectly employed by Design-Builder or anyone for whose acts Design-Builder may be liable, the Indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Design-Builder under workers' compensation acts, disability benefit acts, or other employee benefit acts.

11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

11.2.1 Before commencing the Work and as a condition precedent to payment, Design-Builder shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Design-Builder shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. Design-Builder's Employers' Liability, Business Automobile Liability, and CGL policies shall be written with at least the following limits of liability:

11.2.1.1 Employers' Liability Insurance
   (a) $500,000 bodily injury by accident per accident
   (b) $500,000 bodily injury by disease policy limit
   (c) $500,000 bodily injury by disease per employee

11.2.1.2 Business Automobile Liability Insurance per accident $500,000.

11.2.1.3 Commercial General Liability Insurance

CONTENT SECURITY: PG61C47-D19E
11.2.2 Employers' Liability, Business Automobile Liability, and CGL coverage required under §11.2.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

11.2.3 Design-Builder shall maintain in effect all insurance coverage required under §11.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Design-Builder fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Design-Builder, or terminate this Agreement.

11.2.4 To the extent commercially available to Design-Builder from its current insurance company, insurance policies required under §11.2.1 shall contain a provision that the insurance company or its designee must give Owner written notice transmitted in paper or electronic format: (a) 30 days before coverage is nonrenewed by the insurance company and (b) within 10 business days after cancellation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, Design-Builder shall furnish Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §11.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be canceled, Design-Builder shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise directed in writing by Owner, before starting the Work, Design-Builder shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also: (a) name Design-Builder, Subcontractors, Subsubcontractors, Suppliers, and Design Professional as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy; and (c) insure at least against and not exclude:

11.3.1.1 the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused;

11.3.1.2 damage resulting from defective design, workmanship, or material;

11.3.1.3 coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant, or structures. Coverage shall be to the extent loss or damage arises out of Constructor's activities or operations at the Project;

11.3.1.4 equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment;
11.3.1.5 Testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and

11.3.1.8 Physical loss resulting from Terrorism.

11.3.2 The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party obtaining and maintaining the Builder's Risk Policy pursuant to §11.3.1 shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Design-Builder has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Design-Builder shall provide a copy of the property policy or policies obtained in compliance with §11.3.1.

11.3.3 If Owner elects to purchase the property insurance required by this Agreement, including all of the same coverages and deductibles for the same duration specified in §11.3.1, then Owner shall give written notice to Design-Builder and the Design Professional before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with §11.3.1. Owner may then provide insurance to protect its interests and the interests of the Design-Builder, Subcontractors, Suppliers, and Subsubcontractors. The cost of this insurance shall be paid by Owner in a Change Order. If Owner gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Owner shall be responsible for costs reasonably attributed to such failure.

11.3.4 The Parties waive all rights against each other and their respective employees, agents, contractors, subcontractors and subsubcontractors, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance.

11.3.5 To the extent of the limits of Design-Builder's CGL specified in §11.2.1 or (___) dollars ($___), whichever is more, Design-Builder shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent of the negligent acts or omissions of Design-Builder, Subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

11.3.6 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Party obtaining and maintaining the Builder's Risk Policy pursuant to section 11.3.1 until the Date of Final Completion.

11.4 ADDITIONAL GENERAL LIABILITY COVERAGE Owner [ ] shall/ [ ] shall not require Design-Builder to purchase and maintain additional liability coverage. If required, Design-Builder shall provide:

11.4.1 [ ] Additional Insured. Owner shall be named as an additional insured on Design-Builder's CGL specified, for on-going operations and completed operations, excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability
for bodily injury, property damage, or personal and advertising injury to the extent caused by the
negelect acts or omissions of Design-Builder, or those acting on Design-Builder's behalf, in the
performance of Design-Builder's Work for Owner at the worksite. The insurance of the Design-
Builder and its Subcontractors shall be primary and non-contributory to any insurance available to
the Additional Insureds.

11.4.2 ☐ OCP. Design-Builder shall provide an Owners' and Contractors' Protective Liability
Insurance ("OCP") policy with limits equal to the limits on CGL specified, or limits as otherwise
required by Owner.

Any documented additional cost in the form of a surcharge associated with procuring the additional
general liability coverage in accordance with this subsection shall be paid by Owner directly or the costs
may be reimbursed by Owner to Design-Builder and by increasing the GMP to correspond to the actual
cost required to purchase and maintain the coverage. Prior to commencement of the Work, Design-
Builder shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that
Owner has been named as an additional insured, as applicable. The insurance of the Design-Builder shall
be primary and non-contributory to any insurance available to the Additional Insureds.

11.5 ROYALTIES, PATENTS, AND COPYRIGHTS Design-Builder shall pay all royalties and license fees
which may be due on the inclusion of any patented or copyrighted materials, methods, or systems
selected by Design-Builder and incorporated in the Work. Design-Builder shall defend, indemnify, and
hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of
such selection. Owner agrees to defend, indemnify and hold Design-Builder harmless from any suits or
claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted
materials, methods, or systems specified by Owner.

11.6 PROFESSIONAL LIABILITY INSURANCE Design-Builder shall obtain, either itself or through Design
Professional, professional liability Insurance for claims arising from the negligent performance of
professional services under this Agreement, which shall be:

☒ Practice Policy or ☐ Project Specific Coverage written for not less than one million dollars
($1,000,000) per claim and in the aggregate with a deductible not to exceed two million dollars
($2,000,000). The Professional Liability Insurance shall include prior acts coverage sufficient to
cover all services rendered by the Design-Professional. This coverage shall be continued in effect
for 2 year(s) after the Date of Substantial Completion.

11.7 BONDING Performance and Payment Bonds ☐ are/ ☐ are not required of Design-Builder. Such
bonds shall be issued by a surety admitted in the state in which the Project is located and must be
acceptable to Owner. Owner's acceptance shall not be withheld without reasonable cause.

11.7.1 Such Performance Bond shall be issued in the penal sum equal to one-hundred percent,
(100%) of the:

☒ GMP (if there is no GMP, then the agreed estimated cost of the Project, including design
and construction)

☐ Agreed estimated construction cost of the Project.

Such Performance Bond shall cover the cost to complete the Work, but shall not cover any
damages of the type specified to be covered by the insurance pursuant to §11.2 and §11.3, whether
or not such insurance is provided or is in an amount sufficient to cover such damages.
11.7.2 The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond, Design-Builder's Payment Bond for the Project, if any, shall be made available by Owner or Design-Builder upon Subcontractor's written request.

11.7.3 Any increase in the GMP Price that exceeds ten percent (10%) in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such ten percent (10%) amount, the penal sum of the bond shall remain equal to one-hundred percent (100%) of the GMP or as otherwise provided in §11.7.1. Design-Builder shall endeavor to keep its surety advised of changes within the scope of the initial Agreement potentially impacting the GMP or the Dates of Substantial Completion or Final Completion, though Design-Builder shall require that its surety waives any requirement to be notified of any alteration or extension of time.

ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION

12.1 SUSPENSION BY OWNER FOR CONVENIENCE

12.1.1 Owner may order Design-Builder in writing to suspend, delay, or interrupt all or any part of the Work without cause for its convenience.

12.1.2 Adjustments caused by suspension, delay, or interruption shall be made for increases in the GMP, compensation for Design Phase services, Design-Builder's Fee, or the Date of Substantial Completion or the Date of Final Completion. No adjustment shall be made if Design-Builder is or otherwise would have been responsible for the suspension, delay, or interruption of the Work, or if any other provision of this Agreement is applied to render an equitable adjustment.

12.2 NOTICE TO CURE A DEFAULT If Design-Builder persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work, or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards Laws or orders of any public authority having jurisdiction, or is otherwise guilty of a breach of a provision of this Agreement, Design-Builder may be deemed in default.

12.2.1 If Design-Builder fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default, then Owner shall give Design-Builder notice, if applicable, the second default notice to correct the default within a three (3) Day period.

12.2.2 After receiving Owner's written notice, if Design-Builder fails to promptly commence and continue satisfactory correction of the default, then Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite, (b) complete the Work utilizing any reasonable means; (c) withhold payment due to Design-Builder; and (d) as Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge Design-Builder the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

12.2.3 In the event of an emergency affecting the safety of persons or property, Owner may immediately commence and continue satisfactory correction of any default without first giving written notice to Design-Builder, but shall give Design-Builder prompt notice.

12.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

12.3.1 TERMINATION BY OWNER FOR DEFAULT Upon expiration of the second notice for default period pursuant to §12.2 and absent appropriate corrective action, Owner may terminate this Agreement by written notice. Termination for default is in addition to any other remedies available to
Owner under §12.2. If Owner's costs arising out of Design-Builder's failure to cure, including the
costs to complete the Work and reasonable attorneys' fees, exceed the GMP, Design-Builder shall
be liable to Owner for such excess costs. If Owner's costs are less than the GMP, Owner shall pay
the difference to Design-Builder. If Owner exercises its rights under this section, upon the request of
Design-Builder, Owner shall furnish to Design-Builder a detailed accounting of the costs incurred by
Owner.

12.3.2 If Design-Builder files a petition under the Bankruptcy Code, this Agreement shall terminate
if: (a) Design-Builder or Design-Builder's trustee rejects the Agreement; (b) a default occurred and
Design-Builder is unable to give adequate assurance of required performance; or (c) Design-Builder
is otherwise unable to comply with the requirements for assuming this Agreement under the
applicable provisions of the Bankruptcy Code.

12.3.3 Owner shall make reasonable efforts to mitigate damages arising from Design-Builder's
default, and shall promptly invoice Design-Builder for all amounts due pursuant to §12.2.2.

12.4 TERMINATION BY OWNER FOR CONVENIENCE If Owner terminates this Agreement other than
as set forth in §12.2, Owner shall pay Design-Builder for all Work executed and for all proven loss, cost,
or expense in connection with the Work, plus all demobilization costs. In addition, Design-Builder shall be
paid an amount calculated as set forth below:

12.4.1 If Owner terminates this Agreement before commencing the Construction Phase, Design-
Builder shall be paid for Design-Builder's Design Phase services provided to date as set forth in
§7.1.2 and §7.1.3, and a premium as set forth below: $20,000

12.4.2 If Owner terminates the Agreement after commencement of the Construction Phase, Design-
Builder shall be paid for (a) the Construction Phase services provided to date pursuant to §7.2.1; (b)
reasonable attorneys' fees and costs related to termination; and (c) a premium as set forth below:
$20,000

12.4.3 Owner shall also pay to Design-Builder fair compensation, either by purchase or rental at the
election of Owner, for all equipment retained. Owner shall assume and become liable for obligations,
commitments, and unsettled claims that Design-Builder has previously undertaken or incurred in
good faith in connection with the Work or as a result of the termination of this Agreement. As a
condition of receiving the payments provided under this article, Design-Builder shall cooperate with
Owner by taking all steps necessary to accomplish the legal assignment of Design-Builder's rights and
benefits to Owner, including the execution and delivery of required papers.

12.5 TERMINATION BY DESIGN-BUILDER

12.5.1.1 Seven (7) Days after Owner's receipt of Design-Builder's written notice, Design-Builder may
terminate this Agreement, if the Work has been stopped for a thirty (30) Day period through no fault
of Design-Builder for any one of the following reasons: (a) under court order or order of other
governmental authorities having jurisdiction; (b) as a result of the declaration of a national
emergency or other governmental act emergency during which, through no act or fault of Design-
Builder, materials are not available; or (c) Work is suspended by Owner for Convenience.

12.5.2 In addition, upon seven (7) Days' written notice to Owner and an opportunity to cure within
three (3) Days, Design-Builder may terminate this Agreement if Owner:

12.5.2.1 fails to furnish reasonable evidence pursuant to §4.2 that sufficient funds are
available and committed for Project financing; or
12.5.2.2 assigns this Agreement over Design-Builder's reasonable objection; or

12.5.2.3 fails to pay Design-Builder in accordance with this Agreement and Design-Builder stopped Work in compliance with §10.1.3; or

12.5.2.4 otherwise materially breaches this Agreement.

12.5.3 Upon termination by Design-Builder in accordance with this section, Design-Builder is entitled to recover from Owner payment for all Work executed and for all proven loss, cost or expense in connection with the Work, plus all demobilization costs and reasonable damages. In addition, Design-Builder shall be paid an amount calculated as set forth either in §12.4.1 or §12.4.2, depending on when the termination occurs, and §12.4.3.

ARTICLE 13 DISPUTE MITIGATION AND RESOLUTION

13.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, Design-Builder shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If Design-Builder continues to perform, Owner shall continue to make payments in accordance with the Agreement.

13.2 DIRECT SETTLEMENT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days from the date of first discussion, the Parties' representatives shall mutually select a resolution proceeding designated below. The dispute resolution proceeding shall be mutually selected and appointed by the Parties, shall continue to make payments in accordance with the Agreement.

13.3 MITIGATION If the Parties select one of the dispute mitigation procedures below, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in §13.5. The Parties agree that the dispute mitigation procedure shall be:

- Project Neutral ("Neutral"); or
- Dispute Review Board ("DRB").

13.3.1 MITIGATION PROCEDURES As soon as practicable after the execution of this Agreement, the Neutral or DRB shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of responsibilities, including requirements for nonbinding findings. Costs and expenses of the Neutral or DRB shall be shared equally by the Parties. The Neutral or DRB shall be available to either Party, upon request, throughout the course of the Project, and shall make regular visits to the Project so as to maintain an up-to-date understanding of the Project progress and issues and to enable the Neutral or DRB to address matters in dispute between the Parties promptly and knowledgeably.

13.3.2 If the matter remains unresolved following the issuance of the nonbinding findings or such findings are not made within five (5) Business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in §13.5.
13.3.3 If the Parties execute a DRB Addendum, then the dispute mitigation procedures and time requirements in §13.3.1 and §13.3.2 shall be governed by that DRB Addendum.

13.4 MEDIATION If direct discussions pursuant to §13.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under §13.3, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Business Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties. The Parties choose mediation through:

☐ the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), and administered by AAA.
☐ the current Mediation Guidelines of JAMS and administered by JAMS.
☐ the current rules and administration by [ ].

If no box is checked the default is AAA rules and administration.

13.5 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

13.5.1 ARBITRATION

☐ The Parties choose binding arbitration for any claim or dispute arising out of or relating to this Agreement. EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW, WITH OR WITHOUT A JURY. Arbitration does not involve a judge or jury. Instead, an arbitrator with the power to award damages and other appropriate relief will decide claims and disputes. An arbitrator’s award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

13.5.1.1 Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purpose of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

13.5.1.2 The arbitration shall use the following rules:

☐ the current AAA Construction Industry Arbitration Rules and AAA administration.
AAA Construction Fast Track Rules shall apply to all two-party cases when neither
Party’s disclosed claim or counterclaim exceeds $250,000. If arbitration is selected but no rules are selected, then this subsection shall apply by default.

☐ the current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by JAMS; or

☐ the current arbitration rules of [_____] and administered by [_____].

13.5.2 LITIGATION

☐ Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

If not indicated, then litigation is default as opposed to arbitration.

13.5.3 COSTS The costs of any binding dispute resolution procedures and reasonable attorneys’ fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

13.5.4 VENUE The Project location shall serve as the venue.

13.6 MULTIPARTY PROCEEDING All Parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding, if possible. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution proceedings.

13.7 LIEN RIGHTS. Nothing in this article shall limit any rights or remedies not expressly waived by Design-Builder which Design-Builder may have under lien laws.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Parties and not for the benefit of any third party.

14.2 ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other except that Owner may assign the Agreement to a wholly-owned subsidiary of Owner when Owner has fully indemnified Design-Builder or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Design-Builder than this Agreement. In the event of such assignment, Design-Builder shall execute any consent reasonably required. In such event, the wholly-owned subsidiary or lender shall assume Owner’s rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other Party.

14.3 GOVERNING LAW The law in effect at the location of the Project shall govern this Agreement.

14.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.
14.5 NOTICE Unless changed in writing, a Party’s address indicated in Article 1 shall be used when delivering notices or a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

14.6 NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

14.7 TITLES The titles given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.8 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

ARTICLE 15 CONTRACT DOCUMENTS

15.1 CONTRACT DOCUMENTS The Contract Documents are as follows:
   (a) This Agreement.
   (b) Basis of Design/Owner’s Program.
   (c) Owner provided information pursuant to §3.7.4 and other Owner information identified as intended to be a contract document.
   (d) The Schematic Design Documents upon Owner approval pursuant to §3.1.4.
   (e) The Design Development Documents upon Owner approval pursuant to §3.1.6.
   (f) The Construction Documents upon Owner approval under §3.1.7.
   (g) Change Order, Interim Directives, and amendments issued in accordance with this Agreement.
   (h) Other: Exhibit B Rate Sheet, and Exhibit C Contractual Provisions Attachment

15.2 ORDER OF PRECEDENCE In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement, including Amendment 1; (b) this Agreement; (c) Exhibit C Contractual Provisions Attachment; (d) design documents approved by Owner pursuant to §3.1.4 through §3.1.7 in order of the most recently approved; (e) information furnished by Owner pursuant to §3.7.4 or designated as a Contract Document in §15.1; (f) other documents listed in this Agreement. Except as otherwise provided, among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Where figures are given, they shall be preferred to scaled dimensions. Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

OWNER: Board of County Commissioners of the County of Shawnee KS

BY: ___________________________ NAME: ___________________________ TITLE: ___________________________

WITNESS: ___________________________ NAME: ___________________________ TITLE: ___________________________

Approved as to Legality
and Form: Date, C-15-17

ASST. CO. COUNSELOR
DESIGN BUILDER: Senne & Company, Inc.

BY: Name: Mike McLean TITLE: President

WITNESS: Name: Matt McQueen TITLE: Counsel Counsel

END OF DOCUMENT.
May 15, 2019

Shawnee County Parks & Recreation
3137 SE 29th St.
Topeka, KS 66605

RE: Hillcrest Community Center Renovation
Basis of Design/Owner’s Program | Exhibit A to Design-Build Agreement

SCPR,

The basis for all future design and construction work at this time is:

- the information in RFP #007-19,
- the statements made at the February 4, 2019 prebid conference,
- Addendum One to RFP #007-19 issued February 5, 2019,
- Senne’s responsive proposal sent to SCPR on March 1, 2019 – specifically part 5 of the responsive proposal, the “Understanding of SCPR’s Goals” section.

We will meet with SCPR stakeholders to further refine the basis and ensure SCPR’s objectives are prioritized and/or met within the specified budget. Relevant portions of the above mentioned documents are enclosed.

Sincerely,

Senne & Company, Inc.

[Signature]

Matthew McGivern
General Counsel and
Director of Business Development

Senne & Company, Inc.
2001 NW Highway 24
Topeka, KS 66618
NOTICE TO SUCCESSFUL BIDDERS: The successful bidder will be notified by letter or telephone as soon as possible after bids have been opened, tabulated, analyzed and awarded by the Board of County Commissioners.

NOTICE TO UNSUCCESSFUL BIDDERS: Unsuccessful bidders will not be notified. However, information regarding bids will be available three working days after the bid opening. At that time, the results will be available in the Purchasing Division.

NOTE: In the event that goods or services delivered by the vendor are unsatisfactory and remain unsatisfactory after a notice and an opportunity to correct the deficiencies, the County reserves the right to purchase substitute goods or services from the other bidders.

The County is exempt from the payment of Federal and excise taxes and from Kansas sales tax.

INSURANCE REQUIREMENTS

Minimum limits of insurance required to be in effect and maintained by the Contractor under this specification shall be not less than the amounts herein set forth. Insurance carrier shall also certify that the coverage of the Contractor is extended to the Owner as an added named insured.

A. Statutory Worker's Compensation as required by the labor laws, employee's liability $500,000.

B. Contractor's Protective Liability, Bodily Injury - $500,000 each occurrence, Property damage - $100,000 each occurrence, Property damage - $100,000.

C. The above-required insurances shall be maintained and enforced throughout the contract period. Insurer shall notify the owner 10 days in advance of any cancellation or change in insurance contract.

D. Three copies of the aforementioned insurance's shall be required from the successful bidder. Certificates of Insurance will not be accepted unless the insurer is authorized by the Kansas Commissioner of Insurance to do business in Kansas.

SCOPE OF PROJECT

Overview:

Shawnee County Parks + Recreation is requesting proposals for a contractor to design and build rooms and open areas within Hillcrest Community Center, a new entry vestibule, and general contracting work throughout the center. The work would include removal of several whole or partial walls to be replaced with glass or left as open areas with the addition of support columns. Finishing work will be expected, to include completed flooring, electrical relocations, windows installed, new lighting, interior paint, installed fixtures, built in capability for IT expansion, and complete cleanup once completed. All improvements should meet ADA guidelines. Contractor will be responsible for hauling away old materials. All components must meet required Shawnee County specifications. Copy of
Feasibility Study for Structural Modifications to the Hillcrest Community Center completed by Professional Engineering Consultants, P.A. will be provided. Copy of conceptual drawings completed by Falk Architects will be provided.

Lobby improvements:
Remove pit area and surrounding railing, make floor level with remainder of lobby
New light fixtures (possible indirect lighting)
Update ceiling materials (possibility of exposing wood underneath)
Incorporate sound panels in other design to help with sound in open lobby
Incorporate centralized circular front desk in line with added main entry (add electrical and IT conduit)
Flooring to include mix of tile, LVT, stained concrete, or carpet squares
Office 1, add partial glass panels for better visibility of lobby and gym
Equipment Room 1, remove north, west, and south walls (to become part of open lobby area)
Janitor closet, replace janitor mop sink
Office 2, south wall removed (to be rebuilt farther south to create virtual reality room)

Multipurpose Room improvements:
Multipurpose Room 1, remove east and partial south walls, details about existing closets below
South and partial east wall may be replaced with support beams and/or glass panel walls
Multipurpose Room 1, move east wall of closet 2 farther east to include electrical panel from closet 1.
Remove remaining walls from closet 1.
Multipurpose Room 1, floor drain should be filled or find another solution
Multipurpose Room 1, remove cabinets from north wall
Multipurpose Room 1, remove sink station in NE corner
Multipurpose Room 1, add a storage closet to the north end of the room
Multipurpose Room 2, remove north and east walls
North and partial east wall may be replaced with support beams and/or glass panel walls
Multipurpose Room 2, remove stage area, sound booth, and counter
Multipurpose Rooms 1 and 2 flooring to tie in with lobby flooring
Multipurpose Room 3, remove partial east wall to be replaced with glass panel walls
Multipurpose Room 3 flooring to be stained concrete, LVT, or tile
Multipurpose Room 3, wall constructed on north end to make room approx 600 square feet, with divider down the middle. Use existing doors to access each room if divider is in use.
Multipurpose Room 3, add larger glass windows to all doors
Multipurpose Rooms 1, 2, and 3, new light fixtures (possible indirect lighting)

Racquetball Room improvements:
Racquetball rooms 1, 2, and 3, remove partial walls between these 3 courts to create a large workout room that includes a walking track.
Racquetball rooms 1, 2, 3, and 4, replace portions of west walls with glass panels and/or support beams
Drop a floating ceiling in all rooms for better sound
Rubberized flooring in rooms 1, 2, and 3 with defined track layout in flooring
May use existing wood for track and rubberized flooring within track
Resurface room 4 flooring
Add natural lighting windows to upper east walls of racquetball rooms 1, 2, 3, and 4
Racquetball rooms 1, 2, 3, and 4, new light fixtures

Bathroom improvements:
Replace bathroom stools
Replace bathroom sinks and fixtures
Non-porous and minimal seamed flooring with baseboards or equivalent
New partitions and mirrors
New light fixtures
Baby changing station added to men's bathroom
Update baby changing station in women's bathroom

Gym improvements:
Add natural lighting windows to upper gym walls west side
Add natural lighting windows to middle-upper walls on east side
Replace portions of north wall between gym and racquetball room with glass panels
Replace portions of west wall between gym and lobby with glass panels
Improve image of materials on upper wall to look cleaner
Capability of adding a projector and sound system for movie viewings
Adding white space on the wall to serve as projector screen
Add larger windows to doors between gym and lobby (2 sets of doors)
Gym floor sanded down to remove all existing lines, logos, and words. Restriped and SCPR logo and branding colors stained into center court and within 3 point areas. Resealed.
Equipment Room 2, remove north, south, and west walls to widen hallway entry
Partial south wall to be replaced with glass panel wall

Kitchen improvements:
Kitchen, portions of north wall converted to glass panel for gym viewing
Kitchen, portions of west walls replaced with glass panels for visibility from hallway
Kitchen, remove wall between existing closets to create space for chair and table storage
Create larger opening to combined closet in kitchen to accommodate chair and table storage
Would like converted to a kitchenette with more space for seating
Including oven range, deep 2 bay sink, large refrigerator
Flooring to include mix of tile, LVT, stained concrete, or carpet squares
Add larger window to door between kitchen and hallway for better viewing
New light fixtures

Front Entry Vestibule:
Addition of vestibule as main entry to building on west side of building
Entering into area where computers currently sit
Electronic door system with central unit to control all exterior doors
Key fob entry for main exterior doors and lockdown capabilities

Men's locker room improvements:
New partitions and mirrors
New shower fixtures
New toilets
Baby changing station added

Women's locker room improvements:
New partitions and mirrors
New shower fixtures
New toilets
Update baby changing station

EXHIBIT A Page 4 of 10
Mechanical Room improvements:
Inaccessible area located behind mechanical room 2, which can only be seen from mechanical room 1 from high access point, needs to be utilized and accessible.
Evaluation of HVAC system to include necessary upgrades and upgrade to a building energy management system.

Additional options may be presented to improve efficiencies or incorporate reuse of materials outside of score presented.

Contractor should provide a timeline of work to include an estimate of when building will be able to be open to public, partially open to public, or closed to public. Access to gym from 3pm until 10pm for as much of the project timeline as possible would be preferred.

Attachment A is a map that labels each room.
Attachment B is a copy of the Design Plans for Hillcrest Community Center completed by Falk Architects, Inc.
Attachment C is a copy of the Feasibility Study for Structural Modifications to the Hillcrest Community Center completed by Professional Engineering Consultants, P.A.

Following selection of a vendor, an agreement will be proposed with guaranteed maximum price to perform required work.

Contractor Responsibility:

Bonded Project
Acquiring all necessary permits
Material testing as required for demolition
Bid Page

Title Page
Show the RFP name, name, address, telephone number, facsimile number, email address and the name of contact person.

Letter of Introduction
One page, introducing the company, signed by the person(s) authorized to sign on behalf of, and bind the company to, statements made in the proposal.

Company Profile/Project Team Qualifications/Skills/Experience
Indicate the company's capabilities for the project.

Design of Scope of Work
Indicate design, based on information provided.

Price of Work
Provide the total price for all inclusive work to be done.

Be sure to include an address and all mandatory items/criteria as required in the Request for Price Proposals.
UNDERSTANDING OF SCPR'S GOALS
PART 5: UNDERSTANDING OF SCPR'S GOALS

UNDERSTANDING OF SCPR'S GOALS

We understand your limited budget at this stage of the renovation of Hillcrest. Our team will jump in with both feet to help SCPR prioritize the objectives and goals of a long range plan for the Center. We will study the areas of work from a practical viewpoint utilizing the experience of our team members. The work at the Community Center can be separated into phases which can be completed as the budget allows.

Relocating the front entrance and reconfiguring the front lobby area to open up sight lines will be of primary significance. By removing a few walls, filling in the foosball pit, adding interior windows to the gym and updating the flooring, ceilings, paint and lighting, we will be able to make the “first impression” much more inviting. The security systems will be evaluated and updated. The use of high quality and durable flooring, acoustical ceilings and LED lighting will be sustainable features that can become standards for the rest of the Community Centers in the future.

Conceptual picture of Hillcrest main lobby looking northwest, showing renovated open floorplan with main entrance vestibule located inside building to reduce potentially high costs.

Conceptual picture of Hillcrest main lobby looking northeast, showing renovated open floorplan with large front reception desk.
Our team includes PKMR Engineers, the company that designed the complete heating, ventilation, and air conditioning upgrades to the entire Hillcrest Community Center in 2006. This 2006 project also included upgrading the domestic hot water system, fire alarm system, electrical system, and some of the lighting in the building. This project included high efficient sustainable systems.

This firsthand knowledge of the history of the renovation process in this building as well as a complete set of plans of the latest mechanical and electrical systems in the building, gives our team the expertise and experience to properly assist SCPR in making informed decisions about the best path forward with the new renovation projects. We will share our knowledge of what has been upgraded in this building and what we recommend be upgraded now or within the next several years. This will assist the entire design and construction team's understanding of SCPR's goals to work from the front of the building to the back, while getting the most for the money, with consideration to sustainable upgrades to the building.

We will find solutions that allow the Community Center to remain open during the construction period. Our team has much experience finding creative ways to work "around" the public without diminishing their use of the facility.

Conceptual floorplan of newly renovated Hillcrest front lobby, showing interior glass panels adding light and sight lines from gym, service desk, space for virtual reality, and new main entrance overhang with interior glass vestibule.
Conceptual picture of Hillcrest exterior showing a new main entrance. Reuse of the existing parking and drive lane with landscaped island to improve aesthetics and highlight new entrance while keeping costs to a minimum.
<table>
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<td>Principal</td>
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<td>Laborer</td>
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**Preconstruction Design-Phase Cost**

Based on Budget of $425,000

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<td>Structural Engineering - Certus</td>
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<td>MEP Engineering - PKMR</td>
<td>$7,398</td>
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<td>Preconstruction Work - Senne (Prelim Evals, Scheduling, Estimating, Constructability and Feasibility Evals, VE, GMP Proposal)</td>
<td>$6,850</td>
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<tr>
<td>Misc.</td>
<td>$3,000</td>
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</table>

**Total:** $46,558
ATTACHMENT TO
SHAWNEE COUNTY CONTRACT 9238-2019

CONTRACTUAL PROVISIONS ATTACHMENT

The undersigned parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, and said contract being dated the ___ day of ___, 20___.

1. TERMS HEREIN CONTROLLING PROVISIONS: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control the terms of any other conflicting provision in any other document relating to and a part of the contract in which such attachment is incorporated.

2. AGREEMENT WITH KANSAS LAW: It is agreed by and between the undersigned that all disputes and matters whatsoever arising under, in connection with or incident to this contract shall be litigated, if at all, in and before a Court located in the State of Kansas, U.S.A., to the exclusion of the Courts of any other states or countries. All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

3. TERMINATION DUE TO LACK OF FUNDING APPROPRIATION: Shawnee County is subject to the Kansas Cash Basis Law, K.S.A. 10-1101 et seq. If, in the judgment of the Financial Administration, Audit-Finance Office, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, County may terminate this agreement at the end of its current fiscal year. County agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year. In the event this agreement is terminated pursuant to this paragraph, County will pay to the contractor any and all regular contractual payments incurred through the end of such fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the County or the contractor.

4. DISCLAIMER OF LIABILITY: Neither the County of Shawnee nor any department thereof shall be held harmless or indemnify any contractor for any liability whatsoever.

5. ANTI-DISCRIMINATION CLAUSE: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act, (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) [ADA] and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission of access to or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out in K.S.A. 44-1031 and 44-1115; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (d) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract; (f) if the contracting agency determines that the contractor has violated applicable provisions of ADA, that violation shall constitute a breach of contract; (g) if (e) or (f) occurs, the contract may be cancelled, terminated or suspended in whole or in part by the County.

6. ACCEPTANCE OF CONTRACT: This contract shall not be considered accepted, approved or otherwise effective until the required approvals and certifications have been given and this is signed by the Board of County Commissioners of the County of Shawnee, Kansas.

7. ARBITRATION, DAMAGES, WARRANTIES: Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the County shall not agree to pay attorney fees and the payment charges, and no provisions will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

8. REPRESENTATIVE’S AUTHORITY TO CONTRACT: By signing this document, the representative of the contractor hereby represents that such person is duly authorized by the contractor to execute this document on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. RESPONSIBILITY FOR TAXES: The County shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. INSURANCE: The County shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the County to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 44-5101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property to which vendor or lessor holds title.

11. AUTOMATED CLEARING HOUSE (ACH): Shawnee County prefers to pay its vendor invoices via electronic funds transfers through the automated clearing house (ACH) network. Shawnee County may require vendors to accept payments via ACH. To initiate payment of invoices, vendors shall execute the County’s standard ACH Vendor Authorization Agreement. Upon verification of the data provided, the Payment Authorization Agreement will authorize the County to deposit payment for services rendered or goods provided directly into vendor accounts with financial institutions. All payments shall be made in United States currency.

VENDOR/CONTRACTOR:

By: ________________________________

Title: ______________________________

Date: ______________________________

BOARDS OF COUNTY COMMISSIONERS
SHAWNEE COUNTY, KANSAS

Robert B. Archer, Chair

Date: ______________________________

ATTEST:

Cyndia A. Beck, Shawnee County Clerk
June 12, 2019

TO: Board of Commissioners
Shawnee County

FROM: John E. Knight, Director
Parks + Recreation

RE: Sunflower State Games Rowing - Agreement
Park Services Division – Sports

Purpose: Board of Commissioners authorization and execution on the attached agreement between the Sunflower State Games (SSG) and Parks + Recreation is requested to host the 2019 SSG rowing event at Lake Shawnee on July 20, 2019. SSG will compensate the department through a $500 special event fee.

Justification: This agreement serves as an example of a service partner. SSG is a 501(c)(3) hosting their 30th season of games which 15 have been held in Topeka. In 2019, SSG anticipates participants from over 370 cities across the state will visit Shawnee County to participate in one or more of the 45 different events. SSG utilizes volunteers to manage the events, all of whom have a common interest of competition in mind and the activities provide an outlet for individual health and community benefits. Their use of another department service partner, Greater Topeka Rowing Association, to help manage the event further serves as an example of the variety of partnerships the department engages in.

JEK/blt
RL
Attachment
SPECIAL EVENT AGREEMENT FOR USAGE
OF LAKE SHAWNEE PARKLAND AND FACILITIES

THIS AGREEMENT is entered into this _____ day of __________, 2019, by and between The Board of County Commissioners of the County of Shawnee, a duly organized municipal corporation, hereinafter referred to as "County," and the Sunflower State Games (SSG), hereinafter referred to as "Organizer."

WHEREAS, the County is the owner of Lake Shawnee and operates the public park and facilities located therein for the recreational use by the public and patrons of the park; and

WHEREAS, it would be of mutual benefit to the parties that certain rights, privileges and covenants be granted by the County to the Organizer in exchange for the consideration to be paid for services rendered by the Organizer for said rights, privileges and covenants, as they are hereinafter set forth; and

WHEREAS, the Organizer wishes to conduct the 2019 Sunflower State Games Rowing Championships, Saturday, July 20, 2019, hereinafter referred to as "Event" at Lake Shawnee, hereinafter referred to as "Premises"; and

WHEREAS, Shawnee County Parks + Recreation hereinafter referred to as the "Department" shall be the department responsible for carrying out the responsibilities of the County; and

WHEREAS, the County and Organizer, hereinafter referred to as the "Parties", wish to set out terms and conditions regarding the Event; and

NOW, THEREFORE, in consideration of the mutual covenants provided herein, the County and the Organizer agree as follows:

1. EVENT DATE. The date of the Event shall be July 20, 2019.

2. TERM. This Agreement shall be effective from the date written above. Either party may terminate this Agreement without cause providing ten (10) days written notice to the other party.
Any violation of the terms of this Agreement shall be grounds for immediate termination of this Agreement. In the event this Agreement is terminated for any reason, the Organizer shall honor any financial commitment made prior to the termination.

3. **LOCATION.** The County does hereby assign to the Organizer the use of Lake Shawnee as outlined in the site plan (Attachment A) for the Event detailed herein. The mutually agreed upon site plan includes the named facilities but is not limited to the Rowing Association Building, Lake Shawnee Northeast Cove, and Lake Shawnee Shelter #4 with additional parking in Tinman Circle.

4. **USE OF PREMISES.** The Parties agree that Lake Shawnee and surrounding parkland is a public entity first and foremost for the public enjoyment and use. Parties shall coordinate Event related scheduling, park and equipment usage, lake restrictions, weather and public safety plans, income/expenses, volunteer and staff duties, and those duties as stated herein.

   a. Event is defined as the 2019 Sunflower State Games Rowing Championships point of admission, designated parking area, beach/shore areas which support the Organizer’s activities, water areas designated for Event related activities and to include preparation operations through conclusion of Event activities, for the times and dates set forth in this agreement.

   b. Site preparations may begin Friday, July 19.

   c. Per the approval of the 2019 Lake Shawnee Restrictions, No Wake boating shall apply from 6 a.m., Saturday, July 20 until 3 p.m., Sunday, July 21 for this Event. Fishing is permitted. Non event vessels should use South Boat Ramp.

5. **RESPONSIBILITIES OF THE COUNTY:**

   a. In accordance with County Code, Chapter 21, Art II, Sec 21-55, Special Uses of the Parks, the County does hereby grant the Organizer permission to host the Event on the Premises in relation to the site plan detailed in Attachment A. The County shall allow temporary structures, traffic control and activities in relation to the Event and site plan. County shall reserve the ski area and no wake area exclusively to the Organizer as the site for the Event. The land and immediate shoreline adjacent to the Rowing Association shall be available for setup starting July 19, 2019, and continue through July 20, 2019, during park hours.
b. Department shall perform routine maintenance necessary and provide Lake Shawnee in a safe and useable condition. The Department shall bear all expense related to such maintenance outlined in the Master Plan Maintenance and Facility Standards prior to the Event.

c. Provide existing utilities and refuse service.

d. Provide one (1) employee to receive inquiries during Event operations.

e. Lake Shawnee is patrolled periodically by Park Police between 8 a.m. and 11 p.m. Any security needs between 11 p.m. and 8 a.m. daily must be coordinated through Mike Cope, Park Police Chief, 785-251-2631.

f. County hereby grants Organizer the right to use the Premises as detailed herein.

g. County hereby grants Organizer the option to utilize County owned property listed below for the Event:

   i. Two (2) employees for Event water course preparations and conclusion

   ii. Four (4) additional trash receptacles

   iii. Four (4) low profile docks

6. **RESPONSIBILITIES OF ORGANIZER:**

   a. Organizer shall produce a family oriented Event designed to capture community interest and media attention.

   b. Organizer is responsible for all related Event water and land preparations, activities, and conclusion of said Event activities. This includes, but is not limited to; recreational vehicles, additional utilities, Event mgmt materials, litter control throughout participant and spectator sites, KS Boating safety laws and requirements, and routine service of specified areas for typical use during the Event.

   c. Marketing and Advertising:

      i. Organizer shall provide all media campaigns, announcements and signage for the Event.

      ii. Organizer shall identify Lake Shawnee and utilize if so desired, the Department name and logo without alteration in all media advertising at no cost to the County. Any use of the logo must follow Department guidelines and may be secured by contacting the Communications and Public Information Supervisor.

   d. Organizer agrees to not use or occupy the Premises in any manner deemed hazardous or for any unlawful purpose. Organizer shall comply with any and all applicable state
and federal laws, boating and safety regulations, County Code and Resolutions, and any applicable Parks + Recreation standards, policies, parkland and facility guidelines.

c. Organizer shall provide an Emergency Action Plan (EAP) by the start of the Event should such need arise due to weather, safety, or any other matter deemed necessary or pertinent for the Event.

d. Organizer agrees that persons associated with the Event will not possess, consume, or provide controlled substances, alcoholic or cereal malt beverages, or illegal drugs on the Premises.

e. Organizer shall grant County employees Event access and permission to monitor, enforce compliance, video or photograph the Event for purposes outlined in this Agreement.

f. Organizer shall provide volunteers for Event management including but not limited to parking, traffic control, operations prior, during, and after the Event. Organizer and Event volunteers agree to cooperate by following the Department Volunteer Policy set forth for volunteer accountability and recording of such details.

i. Organizer shall be responsible for ordering portable restrooms, fees, service, and removal by Monday, July 22, 2019. Location and quantity accommodating the Event participants and spectators shall be agreed upon by Parties.

j. Organizer shall furnish the following to produce the Event including but not limited to and in relation to the participation and spectators present:

i. Watercraft, cables, buoys, docks

ii. Equipment- tents, PA system, portable restrooms, fencing, boat racks

iii. Commodities and safety items- gas, water, first aid

iv. Marketing and advertising

v. Labor and means necessary for setup, operations, and conclusion of Event in addition to Department commitment in 5.g above.

k. Organizer may contract with one (1) or more entities to provide or sell photography rights of participants, vending operations including food, and/or promotional commemorative items in connection with the Event as set forth in the Use of Premises above. The contracts, sale of any such services and products, shall be in accordance with applicable Federal, State and Local laws and regulations. Organizer shall be responsible to require or obtain from said vendors necessary permits, licenses, taxes for the Event.
1. Organizer shall be responsible for all participant registrations, fees, licenses or permits necessary to provide the Event.

7. ALTERATIONS AND IMPROVEMENTS. Organizer may not make such alterations, improvements, repairs and maintenance on or at the Event site. The parklands and facilities will be returned to original condition and remain County property after the end of the agreement, subject to the terms of the paragraph(s) following:

   a. County assumes no liability for the acts of the Organizer or its agents performed during the term of this Agreement.

   b. The parties acknowledge and agree in writing upon what assets and property placed or located at the Event shall be removed. All personal property brought unto or placed at the Event by the Organizer or volunteers shall be at their own risk, and the County will not be liable for damages, theft, or by any other acts.

   c. Organizer shall reimburse the County for any additional damages to property or facilities related to the Event. Invoice(s) of repairs and services shall be provided by the Department to the Organizer within thirty (30) days.

8. INSURANCE. The Event is included in the umbrella policy for the Sunflower State Games, Inc (Attachment C). Organizer shall provide and maintain for the duration of this agreement, at its expense, general liability insurance with a good and solvent insurance company or companies licensed to do business in the State of Kansas in the amount of at least One Million Dollars and No/100 ($1,000,000.00) with respect to injury or death to any one person and Three Hundred Thousand Dollars and No/100 ($300,000.00) with respect to damages to property. The certificate shall contain a provision that coverage afforded under the policy will not be cancelled unless at least thirty (30) days prior written notice has been given to County. The certificate of insurance shall name the County, its officers and employees as additional insured on their general liability and/or Event liability insurance policy applicable to the Event. Said policy shall be provided to the Department by July 18.

9. WORKERS' COMPENSATION. Organizer agrees to supervise and to be responsible for its employees and agents on the facilities and parkland. Organizer agrees to hold and save the County harmless from any and all claims, settlements, judgments (to include reasonable investigative fees,
attorney's fees, suit and court costs), and personal injury and/or death benefits to its agents, servants, and employees pursuant to the Kansas Workers' Compensation Act.

10. **FINANCIALS.** Organizer shall pay a $500 Special Event Fee (non-refundable) by July 18, 2019, payable at the location stated in paragraph 17.
   a. Organizer shall retain all revenues from the Event.

11. **INDEMNIFICATION.** The Organizer covenants and agrees to indemnify, protect, defend, and save County harmless from and against any and all claims, demands, liabilities, and costs, including reasonable attorney's fees, arising from damage or injury, actual or claimed, of whatsoever kind or character, to property or persons occurring or allegedly occurring in, on, or about the Premises, or arising as a result of the Event of any use thereof or program operated therefrom by the Organizer and from all costs and expenses related thereto. Upon notice from County, Organizer shall defend County in any action or proceeding brought thereon.

12. **NON-DISCRIMINATION.** Organizer agrees to not unlawfully discriminate against any person because of race, religion, creed, color, age, sex, disability, national origin, or ancestry in the admission or access to, or treatment in, any programs, activities, or events.

13. **SURRENDER; WASTE.** Nothing contained herein shall be construed to hold or to make County a partner, joint venturer, or associate of Organizer, and neither party shall be deemed the agent of the other, it being expressly understood and agreed that the relationship between the parties hereto is and shall at all time remain contractual as provided by the terms and conditions of this Agreement.

14. **LIENS.** Organizer shall keep the Premises free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by Organizer during the term of this Agreement or any extension thereof. Organizer may not obtain ownership of or exclusionary rights in the Premises, improvements or facilities of the Premises regardless of any financial investment it may make in their development.
15. **WAIVER.** Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of said party's rights hereunder. No waiver by any party at any time, expressed or implied, of any breach of any provision of this Agreement shall be deemed a waiver of breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent and approval of the other party, the other party’s consent to or approval of such action on any one occasion shall not be deemed to be a consent to or approval of said action on any subsequent occasion. Any and all rights and remedies which either party many have under this agreement, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, shall be deemed to be an exclusion of any other.

16. **SEVERABILITY.** The provisions of this agreement are severable. In the event any paragraph or portion of the agreement is declared illegal or unenforceable, the remainder of the agreement shall remain in effect and binding upon parties.

17. **NOTICE.** Any notice by either party to the other shall be in writing and shall be deemed to be given only if delivered personally or mailed by registered/certified mail as follows:

To County:  
Mr. John E. Knight, Director  
Shawnee County Parks + Recreation  
3137 SE 29th Street  
Topeka, KS 66605

To Organizer:  
Mr. Mitch Gross, Executive Director  
Sunflower State Games  
501 SE Jefferson St. Suite 22  
Topeka, KS 66607

18. **ASSIGNMENT.** This agreement may be assigned by Organizer only with prior written consent of the County.

19. **CANCELLATION.** The County has the right to cancel or postpone the event if public safety in jeopardy due to inclement weather or reasonable cause.

20. **ENTIRE AGREEMENT.** The Contract Provisions Attachment (CPA), attached to this agreement, is incorporated by reference and made a part of this Agreement. Together, this Agreement, Attachment A, B, C and CPA represents the entire agreement and understanding between Organizer and the County. No terms, conditions, course of performance, usage of trade, understandings, or agreements
purporting to modify, supplement, or explain any provision of this Agreement shall be effective unless in writing, signed by representatives of both parties authorized to amend the Agreement.

By signing this Agreement, the Organizer representative hereby represents that he or she is duly authorized by the Sunflower State Games, to execute this Agreement on its behalf, and that the Sunflower State Games, agrees to be bound by the provisions hereof.

IN WITNESS THEREOF, the parties have hereto executed this agreement as of the day and year first above written.

SUNFLOWER STATE GAMES

Mitch Gross, Executive Director

BOARD OF COUNTY COMMISSIONERS
SHAWNEE COUNTY, KANSAS

Robert E. Archer, Chair

ATTEST:

Cynthia A. Beck, Shawnee County Clerk
CONTRACTUAL PROVISIONS ATTACHMENT

The undersigned parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being dated the ______ day of _________, 20___.

1. TERMS HEREIN CONTROLLING PROVISIONS. It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.

2. AGREEMENT WITH KANSAS LAW. It is agreed by and between the undersigned that all disputes and matters whatsoever arising under, in connection with or incident to this contract shall be litigated, if at all, in and before a Court located in the State of Kansas, U.S.A., to the exclusion of the Courts of any other state or country. All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

3. TERMINATION DUE TO LACK OF FUNDING APPROPRIATION. Shawnee County is subject to the Kansas Cash Basis Law, K.S.A. 10-1101 et seq. If, in the judgment of the Financial Administrator, Audit-Finance Office, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, County may terminate this agreement at the end of its current fiscal year. County agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year. In the event this agreement is terminated pursuant to this paragraph, County will pay to the contractor all regular contractual payments incurred through the end of such fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the County or the contractor.

4. DISCLAIMER OF LIABILITY. Neither the County of Shawnee nor any department thereof shall hold harmless or indemnify any contractor for any liability whatsoever.

5. ANTI-DISCRIMINATION CLAUSE. The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 26-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, age in the admission of access to or treatment or employment or its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out in K.S.A. 44-1331 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (a) above or if the contractor is found by a court of law or other authority to have violated any of the laws, rules or regulations of the Kansas Human Rights Commission, shall constitute a breach of contract; (f) if the contracting agency determines that the contractor has violated applicable provisions of ADA, that violation shall constitute a breach of contract; (g) if (e) or (f) occurs, the contract may be cancelled, terminated or suspended in whole or in part by the County.

6. ACCEPTANCE OF CONTRACT. This contract shall not be considered accepted, approved or otherwise effective until the required approvals and certifications have been given and this is signed by the Board of County Commissioners of the County of Shawnee, Kansas.

7. ARBITRATION, DAMAGES, WARRANTIES. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or any payment of damages or penalties upon the occurrence of a contingency. Further, the County shall not agree to pay attorney fees and late payment charges, and no provisions will be given effect which attempts to exclude, modify, or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

8. REPRESENTATIVE'S AUTHORITY TO CONTRACT. By signing this document, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this document on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. RESPONSIBILITY FOR TAXES. The County shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. INSURANCE. The County shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the County to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessee shall bear the risk of any loss or damage to any personal property to which the vendor or lessor holds title.

11. AUTOMATED CLEARING HOUSE (ACH). Shawnee County prefers to pay its vendor invoices via electronic funds transfers through the automated clearing house (ACH) network. Shawnee County may require vendors to accept payments via ACH. To initiate payment of invoices, vendors shall execute the County's standard ACH Vendor Payment Authorization Agreement. Upon verification of the terms of the agreement, the County shall deposit payment for services rendered or goods provided directly into vendor accounts with financial institutions. All payments shall be made in United States currency.

VENDOR/CONTRACTOR:

[Signature]

By: [Signature]

Title: Executive Director

Date: 6/13/19

BOARD OF COUNTY COMMISSIONERS
SHAWNEE COUNTY, KANSAS

Robert E. Archer, Chair

Date: 

ATTEST:

Cynthia A. Beck, Shawnee County Clerk
2019 Sunflower State Games Rowing Event
Attachment A
January 24, 2019

To: Board of Commissioners
Shawnee County

FROM: John E. Knight, Director
Parks + Recreation

RE: 2019 Lake Shawnee Restrictions and Closings
Park Services Division

Purpose: Board of Commissioners approval is requested on the attached Lake Shawnee closing and restricted uses for 2019.

Justification: The closings and restrictions are necessary for preparations, operations and concluding of special events and trout stocking held on Lake Shawnee waters. The Shawnee County, Kansas Code, Chapter 21, Art. II, Sec. 21-55 notes Special Uses of the Parks.

Sec. 21-55. Special Uses Of The Parks.
(B) Lake or parks closings for special events must have the approval of the Director of Shawnee County Parks and Recreation and the Board of County Commissioners.

Approval of the dates for restrictions and closings is requested in order to provide ample notice to Lake Shawnee visitors. The dates will be made available to the public via P+R website and social media along with typical County correspondence to media outlets.

JEK/blt
RL
Attachment
2019 Lake Shawnee Closings and Restrictions

**Trout Stockings**
Lake closed to all fishing from 6 a.m., Saturday, February 23 until 6 a.m., Saturday, March 2
*(Note: Boating is permitted).*

Lake closed to all fishing from 6 a.m., Saturday, October 26 until 6 a.m., Saturday, November 2
*(Note: Boating is permitted).*

**Lake Shawnee Spring Rowing Classic**
No Wake Boating 6 a.m., Monday, April 22 until 11 p.m., Friday, April 26. Lake closed to all boating Saturday, April 27, 6 a.m., until 11 p.m., Sunday, April 28 (except for event vessels).

No Wake Boating 6 a.m. – 11 p.m., Monday, April 29
*Note: Fishing is permitted.*

**Topeka Tinman Triathlon**
No Wake Boating 6 a.m., Friday, June 14 until 11 p.m., Saturday, June 15

Ski Area closed 6 a.m - 12 p.m., Saturday, June 15 (except for event vessels).
*Note: Fishing is permitted. Non-event vessels should use South Boat Ramp.*

**Spirit of Kansas**
No Wake Boating 5 p.m. – 11 p.m., Wednesday, July 4 (except for event vessels in Ski Area during Spirit of Kansas Water Ski Show).

South Boat Ramp is closed from 5 – 11 p.m., Wednesday, July 4
*Note: Fishing is permitted.*

**Sunflower State Games – Rowing Championships**
No Wake Boating 6 a.m., Saturday, July 20 until 3 p.m., Sunday, July 21
*Note: Fishing is permitted. Non event vessels should use South Boat Ramp.*
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFRMS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
NFP Property & Casualty Services, Inc.
8900 Keystone Crossing Suite 1200
Indianapolis, IN 46240

INSURED
Sunflower State Games Inc
601 SE Jefferson Street Suite 22
Topeka, KS 66607

CONTACT NAME
Melody Thammavong

PHONE (317) 559-7557
FAX (317) 559-7547
EMAIL melody.thammavong@nfp.com

INSURER(S) AFFORDING COVERAGE

NATIONAL CASUALTY COMPANY
11991

NATIONAL WIDE LIFE INSURANCE COMPANY
86869

COVERAGE

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

<table>
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<td>PRODUCTS - COMPO DOC AGG</td>
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DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (ACORD 101): Additional Remarks Schedule, may be attached if more space is required

CERTIFICATE HOLDER
Shawnee County
200 SE 7th Street
Topeka, KS 66603

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2016/03) © 1988-2015 ACORD CORPORATION. All rights reserved. The ACORD name and logo are registered marks of ACORD
June 13, 2019

TO: Board of County Commissioners
Shawnee County

FROM: John E. Knight, Director
Parks + Recreation

RE: Fill Vacant Position – Park Police Officer
Park Services Division

Purpose: Board of Commissioners approval is requested to allow the department to fill a vacant position within the department. The Park Police Officer position provides security and law enforcement functions for all park lands and facilities in the Shawnee County park system.

Justification: Under the supervision of the Park Police Chief, this position completes preventative patrol of the park lands and park waterways; performs traffic duties (accident investigation, enforcement, etc.); responds to calls for service; makes citizen contacts in resolving disputes involving park facilities, prepares and submits paper and computer reports pertaining to criminal activity, vehicular accidents, citations and summons, memorandums, security and law enforcement surveys and related correspondence and assists other local agencies pertaining to law enforcement.

The annual salary, including benefits for a Park Police Officer is $55,682.60. Sufficient funding for this position is available in the department's operating budget. The department requests approval to fill this position and any subsequent position that becomes open as a result of filling this vacancy.

JEK/1k
OM
June 6, 2019

TO: Board of Commissioners
    Shawnee County

FROM: John E. Knight, Director
      Parks + Recreation

RE: Deer Creek Trail Amendment
    Park Planning and Development Division

Purpose: Board of Commissioners consideration and approval is requested on the Amendment No. 1 to Shawnee County Contract C263-2018 for Cook, Flat & Strobel Engineers, P.A. (CFS) to perform additional consulting. The Scope of Services is amended to include geotechnical services for the retaining wall and four (4) bridges per Kansas Department of Transportation (KDOT) specifications in the amount of $33,950. This amendment would classify as non-participating funds which are to be provided by Shawnee County. The total amount owed to CFS shall not exceed $203,950 with funding from the Building Maintenance Fund.

Justification: The Secretary of Transportation, Kansas Department of Transportation (KDOT) administers the trail project grant and this is a requirement to continue the design as it ensures safety in case of a catastrophic event. In July 2017, the Board of County Commissioners approved Resolution No. 2017-38 which declared eligibility to submit an application for the Transportation Alternatives Trail Grant with a total project estimate at $2,430,896.

Shawnee County is responsible for 20% match of participating funds and total non-participating funds which are approximately $250,000 as identified by Parks + Recreation Building Maintenance Fund. Non-participating estimates include Professional Engineering (design services), ROW (right of way acquisition) and Utilities (relocates).

JEK/blt
TL
Attachments
AMENDMENT NO. 1 TO SHAWNEE COUNTY CONTRACT NO. C263-2018

THIS AMENDMENT No. 1 to Shawnee County Contract No. C263-2018 is entered into this ___ day of ________________, 2019, by and between Shawnee County, Kansas, hereinafter referred to as "County" and Cook, Flatt & Strobel Engineers, P.A., hereinafter referred to as "Engineer."

WHEREAS, County and Engineer entered into Contract No. C263-2018 on August 23, 2018, for the purpose of Deer Creek Trail Extension; and

WHEREAS, County desires Engineer to perform certain additional consulting work.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. The total amount of compensation set forth in Attachment B of Contract No. C263-2018 shall increase by $33,950.00 for Geotechnical Services for a total not to exceed amount of $203,950.00. The payment for the additional services to be performed under this amendment shall be made monthly in the amounts which are consistent with the amount of engineering services provided, as set forth in Attachment B of the original contract.

2. The Scope of Services set forth in Attachment A of Contract No. C263-2018 shall be amended to include the following:

   a. Geotechnical Services, including field investigation and laboratory testing, for design and construction of retaining wall under the I-70 Bridge over Deer Creek Trafficway per Kansas Department of Transportation (KDOT) specifications.

   b. Geotechnical Services, including field investigation and laboratory testing for design and construction of four (4) bridges along the Deer Creek Trail extension per Kansas Department of Transportation (KDOT) specifications.
3. All other terms and conditions of Shawnee County Contract No. C263-2018 not specifically amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereto executed this Amendment as of the day and year first above written.

THE BOARD OF COUNTY COMMISSIONERS
SHAWNEE COUNTY, KANSAS

________________________
Chair

________________________
Shawnee County Clerk

________________________
Date

Cook, Flatt & Strobel Engineers, P.A.

________________________
Kevin Holland
Vice President

ATTEST:

________________________
Daniel W. Holloway, P.E.
Vice President

Approved as to Legality and Form: Date 10/05/17

ASST. CO. COUNSELOR
June 6, 2019

TO: Board of Commissioners
    Shawnee County

FROM: John E. Knight, Director
       Parks + Recreation

RE: Supplemental Agreement No. 1
    Park Planning and Development Division

Purpose: Board of Commissioners consideration and approval is requested on the Supplemental Agreement No. 1 (Agreement No. 94-18) to Shawnee County Contract C263-2018 for the Transportation Alternatives Project (Deer Creek Trail), as it reflects an increase in federal funds. Non-participating funding is covered by the Parks + Recreation Building Maintenance Fund (397). Participating funding will be paid from the Building Maintenance Fund until long-term funding is secured. The approval reflects an increase of $51,604.00 to the project.

Justification: In July 2017, the Board of County Commissioners approved Resolution No. 2017-38 which declared eligibility to submit an application for the Transportation Alternatives Trail Grant with the Secretary of Transportation, Kansas Department of Transportation (KDOT) as partners with Shawnee County. The financial obligation as noted in Supplemental Agreement No. 1 is $2,482,500.00, which reflects an increase in our share of $51,604.

Shawnee County is responsible for 100% of the total actual costs of preliminary engineering, right-of-way and utility adjustments along with any non-participating costs incurred for the project including associated non-participating construction engineering costs. As previously noted, non-participating estimates include Professional Engineering (design services), ROW (right-of-way acquisition) and utilities (relocates). Shawnee County is responsible for a 20% match of participating funds.

JEK/bjt
TL
Attachments
SUPPLEMENTAL AGREEMENT No. 1

This Agreement, made and entered into effective the date signed by the Secretary or designee, is by and between the Secretary of Transportation, Kansas Department of Transportation (KDOT) (the “Secretary”) and the Shawnee County, Kansas (“County”), collectively, the “Parties.”

RECITALS:

A. The Parties entered into an Agreement dated August 24, 2018 for construction of bike-pedestrian path extension on Deer Creek Trail (the “Original Agreement”).

B. The Parties mutually desire to supplement the Original Agreement to reflect an increase in the maximum federal funds allowed for the Project.

NOW, THEREFORE, the Parties agree as follows:

1. On page 4 of the Original Agreement, Article II, paragraph 4, be replaced in its entirety to read as follows:

   4. Payment of Costs. The Secretary agrees to be responsible for eighty percent (80%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, but not to exceed $1,986,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed $2,482,500.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project.

2. On page 10 of the Original Agreement, Article III, paragraph 15, be replaced in its entirety to read as follows:

   15. Inspections. The County is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the current KDOT approved construction engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the County or the Consultant. The Secretary does not undertake for the benefit of the County, the Contractor, the Consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the Contractor’s errors, omissions, or deviations from the final Design Plans. The County will require at a minimum all personnel performing Construction Engineering to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. The agreement for inspection services must contain this requirement as a
minimum. The County may require additional clothing requirements for adequate visibility of personnel.

3. On pages 11-12 of the Original Agreement, Article III, paragraph 19, be replaced in its entirety to read as follows:

19. Financial Obligation. The County will be responsible for twenty percent (20%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, up to $2,482,500.00 for the Project. In addition, the County agrees to be responsible for one hundred percent (100%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed $2,482,500.00 for the Project. Further, the County agrees to be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project. The County shall also pay for any Non-Participating Costs incurred for the Project along with the associated Non-Participating Construction Engineering costs.

THIS SUPPLEMENTAL AGREEMENT shall not be construed to alter, modify, or void the terms, provisions or conditions of the Original Agreement, incorporated herein by reference, except as herein specifically provided.

IN WITNESS WHEREOF, the Parties have caused this Supplemental Agreement to be signed by their duly authorized officers.

ATTEST:

COUNTY CLERK (Date)
(SEAL)

CHAIRPERSON

MEMBER

MEMBER

Kansas Department of Transportation
Secretary of Transportation

By:

Burt Morey, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

Supplemental Agreement- Master (11-14)
Memorandum

To: Robert E. Archer, Chair, Shawnee County Commission  
   Kevin J Cook, Vice Chair, Shawnee County Commission  
   Bill Riphahn, Shawnee County Commissioner  
   Jim Crowl, Shawnee County Counselor  
   Betty Greiner, Shawnee County Financial Administrator

From: Kellen Seitz, General Manager  
      Justin Gregory, Director of Operations

Re: Forklift Agreement – Capital Expenditure

Date: June 14, 2019

Please add this request to the Shawnee County Commission agenda on Thursday, June 20, 2019.

The Stormont Vail Events Center is requesting payment for the third year of the forklift rental agreement with Berry Material Handling in the amount of $5,514.60 to be paid to KS State Bank. This is year three out of a total of five on these payments.

Attached is the invoice that we received for payment as well as the original paperwork for the five year agreement.

Thank you for your consideration of this request.
INVOICE

BILL TO:
SHAWNEE COUNTY KANSAS
ATTN: ACCOUNTS PAYABLE
200 SE 7TH ST RM 107
TOPEKA, KS 66603

REMIT TO:
KS STATEBANK
GOVERNMENT FINANCE DEPARTMENT
PO BOX 69
MANHATTAN, KS 66505-0069
FOR INQUIRIES: (877) 987-4654

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<th>PAYMENT DUE DATE</th>
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DESCRIPTION | PAYMENT AMOUNT
---|--------
RENTAL AGREEMENT DATED AS OF FEBRUARY 20, 2017 | $5,514.60

(2) 2017 YALE PNEUMATIC FORKLIFTS

Additional interest will be assessed on any payment received after the Due Date.

TOTAL DUE: $5,514.60
EXHIBIT B
PAYMENT SCHEDULE

RE: Rental Agreement dated as of February 20, 2017, between Berry Material Handling Division of Berry Companies, Inc. (Owner) and Shawnee County, Kansas (Renter)

<table>
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<th>Due Date</th>
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Shawnee County, Kansas

Signature

Printed Name and Title

*Assumes all rental Payments due to date are paid

$35547.71 PD is not Fair Market Value (FMV), and should not be interpreted as same. FMV, as referenced in 8.0.5, can only be obtained from Owner at end of term.

Juaiba -
# TABULATION OF BIDS

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<th>Expocentre</th>
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<th>SEP 12 2016 PM 2:00</th>
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<td>Michele Hanshaw and Cassy Duar</td>
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<td></td>
<td>Date 09-12-16</td>
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<td>NAMES OF BIDDERS</td>
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**Permission to reject all bids and negotiate new terms was granted on October 31st by THE SAWMILLS COUNTY B.C.**

**BIDS FOR OPERATING LEASE TERMS (5 YEARS)**

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DOCUMENTATION INSTRUCTIONS

The instructions listed below should be followed when completing the enclosed documentation. Please print on single sided paper only. Documentation completed improperly will delay funding. If you have any questions regarding the Conditions to Funding, Instructions or the documentation, please call us at (316) 945-0101.

I. Attached Documentation

1. Rental Agreement
   - An authorized individual that is with the Renter should sign on the first space provided.
2. Exhibit A - Description of Equipment
   - Review equipment description. Complete serial number/VIN if applicable.
   - List the location where the equipment will be located after delivery/installation.
3. Exhibit B - Payment Schedule
   - Sign and print name and title
4. Exhibit C - Certificate of Acceptance
   - Sign and print name and title
5. Exhibit D - Certificate of Authorization
   - Print or type the name and title of the individual(s) who is authorized to execute the Agreement.
   - The secretary, chairman or other authorized board member of the Renter must sign the Certificate where indicated.
   - A different individual must attest the Certificate where indicated.
6. Notice of Assignment
   - Sign and type name and title
7. Insurance Requirements
   - Complete insurance company contact information where indicated.
8. Debit Authorization - (Preferred)
   - Complete form and attach a voided check

II. Additional Documentation Required

1. Insurance Certificate as stated on the insurance requirements form
2. Vendor invoice for the amount to finance listing applicable SN/VIN, down payment, trade, etc.
3. First payment check as stated on attached invoice
4. Front and back copies of MSDO or title listing "KS State Bank AGMA" as first lien holder
5. Signed and completed Credit Application

III. Condition to Funding

If, for any reason: (1) the required documentation is not returned by January 1, 2017, is incomplete, or has unresolved issues relating thereto, or (2) on or prior to the return of the documentation, there is a change of circumstance which adversely affects the expectations, rights or security of the Owner or its assignee; then Owner or its assignee reserves the right to adjust the quoted interest rate or withdraw/void its offer to fund this transaction in its entirety. Neither KS State Bank nor Keystone Government Finance is acting as an advisor to the municipal entity/obligated person and neither owes a fiduciary duty pursuant to Section 159 of the Exchange Act of 1934.

All documentation should be returned to:
Berry Material Handling Division of Berry Companies, Inc.
3759 McCormick
Wichita, Kansas 67213
SHAWNEE COUNTY
RENTAL AGREEMENT
CONTRACT #C-9-2017

Renter
Shawnee County, Kansas
200 Southeast 7th Street
Topeka, Kansas 66603
Federal ID#: 48-628279

Owner
Berry Material Handling Division of Berry Companies, Inc.
3768 McCormick
Wichita, Kansas 67213
Federal ID#: 11-4828759

Dated as of February 20, 2017

This Rental Agreement creates as of the date stated above between Owner and Renter is hereby described as a "Rental" and shall be referred to in this Agreement. The terms and conditions of this Agreement which are set forth below.

I. Definitions

Section 1.01 Definitions. The following terms shall have the meanings indicated below unless the context clearly requires otherwise:

"Equipment" means all of the items of Equipment listed on Exhibit "A" and all replacements, restorations, modifications and improvements.

"Owner" means the Renter's state and county, as the case may be, or any of its agencies.

"Original Term" means the period from the commencement date until the end of the term of this Agreement.

"Rental Period" means the term of this Agreement. The term of this Agreement shall begin on the commencement date and end on the last day of the term of this Agreement.

"Rental Payment" means the amount of money required to rent Equipment under this Agreement.

"Renewal Term" means the renewal term which begins the next year of the term of this Agreement and is subject to the term and conditions of this Agreement.

"Site" means the location where the Equipment is located.

II. Equipment and Rental Payments

Section 2.01 Equipment and Rental Payments. The Owner shall provide the Renter with the Equipment described in Exhibit "A" and all modifications, improvements and additions thereto. The Equipment shall be delivered to the Site at Renter's expense. The Equipment shall be returned to Owner at the end of the term of this Agreement. The Equipment shall be delivered and installed at the Site at Renter's expense. The Equipment shall be used for the purpose for which it was intended, and any breach of this Agreement by the Renter shall be deemed a default under this Agreement. The Renter shall pay to the Owner the Rental Payment agreed upon for the term of the Agreement. The Renter shall pay to the Owner the Rental Payment agreed upon for the term of the Agreement. The Renter shall pay to the Owner the Rental Payment agreed upon for the term of the Agreement. The Renter shall pay to the Owner the Rental Payment agreed upon for the term of the Agreement. The Renter shall pay to the Owner the Rental Payment agreed upon for the term of the Agreement.

III. Term and Termination

Section 3.01 Term and Termination. The term of this Agreement shall be for the term stated above, and shall be renewed for additional terms at the option of the Renter. The Renter may terminate this Agreement at any time by giving written notice to the Owner. The Renter may terminate this Agreement at any time by giving written notice to the Owner. The Renter may terminate this Agreement at any time by giving written notice to the Owner. The Renter may terminate this Agreement at any time by giving written notice to the Owner. The Renter may terminate this Agreement at any time by giving written notice to the Owner.
Section 5.01 End of Rental Term: Renter may, at his own expense, at any time during the term of this Agreement, purchase all or any part of the Equipment by paying Owner the fair market value of the Equipment as determined by Owner. Renter may renew this Agreement for a period of not less than three (3) months as a MONTHLY RENTAL PAYMENT to be determined in time of renewal of the Agreement. If Renter fails to renew this Agreement or to purchase the Equipment as determined by Owner, Owner may remove the Equipment from the Premises in accordance with Section 19.01 of this Agreement.

Section 5.02 Return of Renter's Deposit. At the time the equipment is returned, Renter shall return to Owner all items of equipment, including all accessories and parts, undamaged, in working order, and in the condition in which it was delivered. If the equipment is returned in poor condition, Renter shall pay Owner the cost of repair or replacement.

V. Insurance, Damage, Incurred Costs
5.03 Insurance. Owner shall maintain property insurance and liability insurance at its own expense with respect to the Equipment. Renter shall be solely responsible for selecting the insurer and obtaining all necessary permits and approvals as required. Owner shall maintain at all times throughout the term of this Agreement insurance covering the Equipment against all risks of direct loss by fire, theft, vandalism, and all other causes of loss.

6.04 Incurred Costs. Any cost incurred by Owner in connection with the Equipment, including but not limited to repair, replacement, replacement of lost or stolen items, and any other costs incurred by Owner in connection with the Equipment, shall be payable by Renter to Owner upon demand.

Section 6.01 General Terms
6.01 Definitions. The terms used in this Agreement shall have the meanings set forth in Section 2.01 of this Agreement.

Section 6.02 Interpretation. In the event of any conflict between the terms of this Agreement and any other agreement, the terms of this Agreement shall control.

Section 6.03 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, understandings, and agreements relating to the subject matter hereof.

Section 6.04 Amendment. This Agreement may be amended only by a written instrument signed by both parties.

Section 6.05 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any conflict of laws principles.

Section 6.06 Waiver. No waiver by Owner of any right under this Agreement shall be effective unless in writing and signed by Owner.

Section 6.07 Assignment. Renter shall not assign or sublease the Equipment without the prior written consent of Owner.

Section 6.08 Governing Language. This Agreement is written in English and shall be interpreted and enforced in accordance with the laws of the State of California.

Section 6.09 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
Shawnee County, Kansas

Berry Material Handling Division of Berry Companies, Inc.

Section 1. Definitions. Unless the context otherwise requires, the following terms shall have the meanings defined below:

Section 2. Material. The Material refer to all the materials listed in Exhibit A, B, C, D, and E attached hereto.


Section 4. Payment. The payment shall be made as set forth in Schedule A, B, C, D, and E attached hereto.

Section 5. Delivery. The delivery shall be made as set forth in Schedule A, B, C, D, and E attached hereto.

Section 6. Inspection. The inspection shall be made as set forth in Schedule A, B, C, D, and E attached hereto.

Section 7. Warranty. The warranty shall be as set forth in Schedule A, B, C, D, and E attached hereto.

Section 8. Termination. The termination shall be as set forth in Schedule A, B, C, D, and E attached hereto.


Section 10. Governing Law. The governing law shall be as set forth in Schedule A, B, C, D, and E attached hereto.

Section 11. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings between them.

Section 12. Amendments. This Agreement may be amended from time to time by mutual written agreement of the parties.

Section 13. Severability. If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement.

Section 14. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

Section 15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

Owner: __________________________
Signature: ________________________
Date: ____________________________

Berry Company: ______________________
Signature: ________________________
Date: ____________________________
EXHIBIT A

DESCRIPTION OF EQUIPMENT

RE: Rental Agreement dated as of February 20, 2017, between Berry Material Handling Division of Berry Companies, Inc. (Owner) and Shawnee County, Kansas (Renter)

Below is a detailed description of all the items of Equipment including quantity, model number and serial number where applicable:

Forklifts
### PAYMENT SCHEDULE

#### RE: Rental Agreement dated as of February 20, 2017, between Barry Material Handling Division of Barry Companies, Inc. (Owner) and Shawnee County, Kansas (Renter)

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EXHIBIT C - CONTINUED

PAYMENT SCHEDULE

RE: Rental Agreement dated as of February 20, 2017, between Barry Material Handling Division of Barry Companies, Inc. (Owner) and Shawnee County, Kansas (Renter)

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Shawnee County, Kansas

Signed

Printed Name and Title

*Assumes all Annual Payments due to date are paid

*Stipulated Loss Value is not Fair Market Value (FMV), and should not be interpreted as same. FMV, as referenced in 3.06, can only be obtained from Owner at end of term.
EXHIBIT C
CERTIFICATE OF ACCEPTANCE

RE: Rental Agreement dated as of February 20, 2017, between Barry Material Handling Division of Barry Companies, Inc. (Owner) and Shawnee County, Kansas (Renter)

I, the undersigned, hereby certify that I am a duly qualified representative of Renter and that I have been given the authority by the Governing Body of Renter to sign this Certificate of Acceptance with respect to the above referenced Agreement. I hereby certify that:

2. The Equipment described on Exhibit A has been delivered and installed in accordance with Renter’s specifications.
3. Renter has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
4. Renter has appropriated and/or taken other legal actions necessary to provide money sufficient to pay all Rental Payments required to be paid under the Agreement during the current Budget Year of Renter, and such money will be applied in payment of all Rental Payments due and payable during such current Budget Year.
5. Renter has obtained insurance coverage as required under the Agreement from an insurer qualified to do business in the State.
6. The governing body of Renter has approved the authorization, execution and delivery of this Agreement on its behalf by the authorized representative of Renter who signed the Agreement.
7. Please list the Source of Funds (Fund Item in Budget) for the rental payments that are due under Exhibit B of this Agreement.

Source of Funds: General Fund

If the above Source of Funds is solely a grant type fund, then the Renter, by signing below, hereby authorizes the General Fund of the Renter as a backup source of funds from which the Rental Payments can be made.

Shawnee County, Kansas

[Signature]

Primed Name and Title
EXHIBIT D
CERTIFICATE OF AUTHORIZATION

RE: Rental Agreement dated as of February 20, 2017, between Berry Material Handling Division of Berry Companies, Inc. (Owner) and Shawnee County, Kansas (Renter)

1. Determination of Need. The Governing Body of Renter, either through direct board action or indirectly through its officers, officials or other authorized representatives, has determined that a true and very real need exists for the acquisition of the Equipment described on Exhibit A of the Rental Agreement ("Agreement") dated as of February 20, 2017, between Shawnee County, Kansas (Renter) and Berry Material Handling Division of Berry Companies, Inc. (Owner).

2. Approval and Authorization. The Governing Body of Renter, either through direct board action or indirectly through its officers, officials or other authorized representatives has determined that it is in the best interest of the Renter to enter into a lease substantially in the form of the Agreement to finance the purchase of the Equipment described on Exhibit A of the Agreement. The Governing Body of Renter has duly authorized the individuals listed below to execute the Agreement and all documents related thereto on behalf of the Renter. Such authorization derives from either direct board action or indirectly through established policies and procedures or bylaws as allowed by law.

   Authorized Individuals:
   (Printed or Printed Name and Title of Individuals Authorized to Execute the Agreement)

3. Adoption. The signatures below from the designated individuals of the Governing Body of the Renter evidence the adoption of this Certificate of Authorization

   Signatures: ____________________________
   (Signature of Secretary, Board Chairman or other member of the Governing Body)

   Printed Name & Title: ____________________________
   (Printed Name and Title of individual who signed directly above)

   Attested By: ____________________________
   (Signature of additional person who can attests the passage of this resolution)

   Printed Name & Title: ____________________________
   (Printed Name and Title of individual who signed directly above)
NOTICE OF ASSIGNMENT

FEBRUARY 20, 2017

Berry Material Handling Division of Berry Companies, Inc. (Owner/Assignor) hereby gives notice of an Assignment between Owner/Assignor and KS StateBank (Assignee) of the Rental Agreement [Contract] between Owner/Assignor and Shawnee County, Kansas, dated as of February 20, 2017.

All Rental Payments coming due pursuant to the Contract shall be made to:

KS StateBank
1010 W. 2nd, P.O. Box 69
Manhattan, Kansas 66502-0069

Berry Material Handling Division of Berry Companies, Inc.
Owner/Assignor

Signature

Printed Name and Title

ACKNOWLEDGEMENT OF AND CONSENT TO ASSIGNMENT

Shawnee County, Kansas [Renter] as party to a Rental Agreement dated as of February 20, 2017 between Renter and Berry Material Handling Division of Berry Companies, Inc. (Owner), hereby acknowledges receipt of a Notice of Assignment dated February 20, 2017 whereby Owner gave notice of its assignment to KS StateBank of its right to receive all Rental Payments due from Renter under the Contract and hereby consents to that Assignment. Pursuant to the Notice of Assignment from Owner, Renter agrees to deliver all Rental Payments coming due under the Contract to:

KS StateBank
1010 W. 2nd, P.O. Box 69
Manhattan, Kansas 66502-0069

Shawnee County, Kansas

Signature

Printed Name and Title
INSURANCE REQUIREMENTS

Pursuant to Article V of the Rental Agreement, you have agreed to provide us evidence of insurance covering the Equipment.

A Certificate of Insurance listing the information stated below should be sent to us no later than the date on which the equipment is delivered.

Insured: Certificate Holder:
Shawnee County, Kansas KS State Bank
200 Southeast 7th Street 1010 Westloop, P.O. Box 69
Topeka, Kansas 66603 Manhattan, Kansas 66502-0069

1. Equipment Description
   • Forklifts
   • Please include all applicable VINs, serial numbers, etc.

2. Physical Damage
   • All risk coverage to guarantee proceeds of at least $36,897.00.

3. Liability
   • Minimum Combined Single Limit of $1,000,000.00 combined single-limit bodily injury and property damage.

4. Additional Insured and Loss Payee
   • KS StateBank AGJA (and/or Its Assigns) MUST be listed as additional insured and loss payee.

Please forward certificate as soon as possible to:
Fax: (316) 946-9527
or
Email: lauryn@berrymaterial.com

Please complete the information below and return this form along with the Agreement.

Shawnee County, Kansas

Insurance Company:

Agent's Name:

Telephone #: Fax #:

Address:

City, State Zip:

Email:
"PREFERRED"

As an additional payment option for Renters, we are now providing the option of ACH (Automatic Clearing House). By completing this form, Renter is authorizing Owner to withdraw said payment amount on said date.

DEBIT AUTHORIZATION

I hereby authorize KS StateBank Government Finance Department to initiate debit entries, and, if necessary, to reinstate returned entries up to two additional times, to the account indicated below at the financial institution named below and to debit the same to such account for:

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<th>Payment Amount</th>
<th>Frequency of Payments</th>
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I hereby authorize KS StateBank Government Finance Department to initiate debit entries, and, if necessary, to reinstate returned entries up to two additional times, to the account indicated below at the financial institution named below and to debit the same to such account for:

**Agreement Number:**

<table>
<thead>
<tr>
<th>Payment Amount</th>
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**Day of Month:**

<table>
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<th>20th</th>
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**Financial Institution Name**

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**Address**

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**Routing Number**

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**Type of Account:**

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This authority is to remain in full force and effect until KS StateBank receives written notification from any authorized signer of the account of its termination in such time and manner as to afford KS StateBank a reasonable opportunity to act on it.

**Renter Name on Agreement**

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**Signature**

<table>
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<th>Printed Name and Title</th>
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**Tax ID Number**

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**Date**

Please attach copy of a voided check to this form!

USA Patriot Act

USA Patriot Act requires identity verification for all new accounts. This means that we may require information from you to allow us to make a proper identification.
June 18, 2019

TO: Board of Commissioners
    Shawnee County

FROM: John E. Knight, Director
       Parks + Recreation

RE: KONA Ice of Lawrence & Topeka LLC - ICAS
    Park Services Division

Purpose: Board of Commissioners authorization and execution of the attached Independent Contractor Agreement for Services with KONA Ice of Lawrence & Topeka LLC for a 2019 Mobile Food Permit. The permit will allow vending of products in accordance with the Mobile Food Vendor Policy adopted in April 2016.

Justification: The opportunity for vendors in certain parks will enhance the visitor experience. There is no additional cost for such service and addresses the need for food or drink options not readily available at the concession stand.

JEK/blt
TL
Attachments
SHAWNEE COUNTY CONTRACT NO. C 242-2019

INDEPENDENT CONTRACTOR AGREEMENT FOR SERVICES

THIS AGREEMENT is between THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SHAWNEE, KANSAS (County) and Lawrence & Tapley LLC (Contractor).

1. SERVICES TO BE PERFORMED

Contractor agrees to perform the following services for County:

To provide food and beverage to the citizens of Shawnee County in our parks in accordance with the food truck permit.

This Agreement shall commence on __________ and shall end on December 31, 2019, unless this Agreement is terminated sooner or extended in accordance with its terms.

2. PAYMENT

In consideration of the services to be performed by Contractor, County agrees to pay Contractor as follows:

<table>
<thead>
<tr>
<th>Task</th>
<th>Duties</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>To provide food and beverage to the citizens of Shawnee County in our parks in accordance with the food truck permit.</td>
<td>No Compensation</td>
</tr>
</tbody>
</table>

Contractor shall be responsible for all expenses incurred while performing services under this Agreement. This includes equipment; supplies; telephone expenses; automobile and other travel expenses; meals and entertainment; insurance premiums; and all salary, expenses and other compensation paid to Contractor’s employees or contract personnel Contractor hires to complete the work under this Agreement.

3. INDEPENDENT CONTRACTOR STATUS AND CERTIFICATION

Contractor is an independent Contractor, not a County employee. Contractor's employees or contract personnel are not County employees. Contractor and County agree to the following rights consistent with an independent Contractor relationship:

a. Contractor has the right to perform services for others during the term of this Agreement.

b. Contractor has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
c. Contractor shall not be assigned a work location on County premises, and Contractor has the right to perform the services required by this Agreement at any place, location or time.

d. Contractor will furnish all equipment and materials used to provide the services required by this Agreement.

e. Contractor has the right to hire assistants as subcontractors, or to use Contractor's employees to provide the services required by this Agreement.

f. Contractor or Contractor's employees or contract personnel shall perform the services required by this Agreement and Contractor agrees to the faithful performance and delivery of described services in accordance with the time frames contained herein; County shall not hire, supervise or pay any assistants to help Contractor.

g. Neither Contractor nor Contractor's employees or contract personnel shall receive any training from County in the skills necessary to perform the services required by this Agreement.

h. County shall not require Contractor or Contractor's employees or contract personnel to devote full time to performing the services required by this Agreement.

Further, Contractor hereby certifies:

i. That Contractor is not an employee of County and thereby Contractor waives any and all claims to benefits otherwise provided to employees of the County, including, but not limited to: medical, dental, or other personal insurance, retirement benefits, unemployment benefits, and liability or worker's compensation insurance.

j. Contractor must provide Federal Tax or Social Security Number on required Form W-9.

k. That Contractor understands that he/she is solely responsible, individually for all taxes and social security payments applicable to money received for services herein provided. Contractor understands that an IRS Form 1099 will be filed by the County for all payments received.

4. **INDEMNIFICATION AND HOLD HARMLESS**

Contractor shall save, hold harmless, and indemnify County, its officers, agents and employees, from and against all claims, causes of action, liabilities, expenses and costs, including reasonable attorneys' fees, for injury of any person or damage to property arising out of, or connected with, work performed under this Agreement which is the result of any acts or omissions, whether negligent or otherwise, of Contractor, its officers, agents, subcontractors or employees.
5. **INSURANCE**

The County shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the County to establish a “self-insurance” fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

6. **OWNERSHIP OF PRODUCTS/DOCUMENTS**

Contractor hereby assigns to County all rights to all products, reports, documents, photographs, videos, data, and drawings produced by Contractor as a result of its services to County during the term of this Agreement.

7. **TERMINATION DUE TO LACK OF FUNDING APPROPRIATION.**

Shawnee County is subject to the Kansas Cash Basis Law, K.S.A. 10-1101 et seq. If, in the judgment of the Financial Administrator, Audit-Finance Office, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, County may terminate this agreement at the end of its current fiscal year. County agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any of Contractor’s equipment, leased or otherwise, provided to County under the contract. County will pay to the Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by County, title to and possession of any equipment purchased by the County under the contract, but not fully paid for, shall revert to Contractor at the end of County’s current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the County or the Contractor.

8. **ANTI-DISCRIMINATION CLAUSE.**

The Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act, (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) [ADA] and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission of access to or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase “equal opportunity employer”; (c) to comply with the reporting requirements set out in K.S.A. 44 1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract; (f) if the contracting agency determines that the Contractor has violated applicable provisions of ADA, that violation shall constitute a breach of contract; (g) if (e) or (f) occurs, the contract
may be cancelled, terminated or suspended in whole or in part by the County. Parties to this contract understand that subsections (b) through (e) of this paragraph number 5 are not applicable to a Contractor who employs fewer than four employees or whose contract with the County totals $5,000 or less during this fiscal year.

9. **ACCEPTANCE OF CONTRACT.**

This contract shall not be considered accepted, approved or otherwise effective until the required approvals and certifications have been given and this is signed by the Board of County Commissioners of the County of Shawnee, Kansas.

10. **ARBITRATION, DAMAGES, WARRANTIES.**

Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the County shall not agree to pay attorney fees and late payment charges; and no provisions will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

11. **REPRESENTATIVE’S AUTHORITY TO CONTRACT.**

By signing this document, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this document on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

12. **TERMINATION OF AGREEMENT**

This Agreement may be terminated by either party by giving the other party written notice of the intent to terminate. The notice must specify a date upon which the termination will be effective, which date may not be less than 7 calendar days from the date of mailing the notice. Only services satisfactorily performed up to the date of receipt of notice shall be compensated by County and such compensation shall be pursuant to the terms of this Agreement. Notice shall be deemed received 3 days after mailing in the United States mail, using first class mail, postage prepaid.

13. **MISCELLANEOUS PROVISIONS**

a. This Agreement shall be entered into in Shawnee County, Kansas, and shall be construed and interpreted according to the law of the State of Kansas.

b. All notices and other communications in connection with this Agreement shall be in writing and shall be considered given 3 days after mailing in the United States mail, using first class mail, postage prepaid, to the recipient's address as stated in this Agreement.

c. Contractor shall comply with all federal, state and local laws requiring business permits, certificates and licenses required to carry out the services to be performed under this Agreement.
d. Contractor may not assign any rights or obligations under this Agreement without County's prior written approval.

e. This Agreement constitutes the entire agreement between the parties and may only be modified or extended by a written amendment signed by the parties hereto.

f. The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void.

g. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than County and Contractor.

IN WITNESS WHEREOF, County and Contractor have executed this Agreement.

COUNTY
BOARD OF COUNTY COMMISSIONERS
SHAWNEE COUNTY, KANSAS

_________________________, Chair

ATTEST:

_________________________, Chair

Cynthia A. Beck, Shawnee County Clerk

CONTRACTOR

_________________________, Chair

Print Name: Marn Douglas

Address: 180 Aspen Ln, Lawrence KS 66044

Date: 6/1/19

Approved as to Legality and Form: Date 6/1/19

ASS'T. CO. COUNSELOR
INSURANCE IDENTIFICATION CARD

COMPANY NUMBER
44393

COMPANY
West American Insurance Company

POLICY NUMBER
BANS7687257

EFFECTIVE DATE
4/03/2019

EXPIRATION DATE
4/18/2020

YEAR
2019

MAKE/MODEL
GMC/CHEVY 3500

VEHICLE IDENTIFICATION NUMBER
1GBOGPFP4J1300662

AGENCY/COMPANY ISSUING CARD
Northern Kentucky Insurance
PO Box 357
Hebron, KY 41048

INSURED
Kona Ice of Lawrence-Topeka LLC
130 Aspen Ln
Lawrence, KS 66049-4100

SEE IMPORTANT NOTICE ON REVERSE SIDE

THIS CARD MUST BE KEPT IN THE INSURED VEHICLE AND PRESENTED UPON DEMAND

IN CASE OF ACCIDENT: Report all accidents to your Agent/Company as soon as possible. Obtain the following information:

1. Name and address of each driver, passenger and witness.
2. Name of insurance Company and policy number for each vehicle involved.
ATTENTION

The bottom portion of this document is your OFFICIAL AUTHORIZATION from Kansas Department of Agriculture. Your license MUST be displayed in a conspicuous location at your place of business.

KONA ICE OF LAWRENCE AND TOPEKA
(MU7030)
180 Aspen LN
Lawrence, KS 66049

Please Display License Below

The Kansas Department of Agriculture, Manhattan, Kansas certifies

KONA ICE OF LAWRENCE AND TOPEKA (MU7030)

Mobile Unit Number: 7030
License Number: 21060 - Food Establishment
6215 SW 24th Terr
Topeka, KS 66614

Owned by: KONA ICE OF LAWRENCE AND TOPEKA LLC
has met the requirements for
Licensing Under the Kansas Food, Drug and Cosmetic Act, KSA 65-619 et. seq.
and is hereby granted
Authority to operate as a Food Establishment

Under Business Registration Number: 21060

Size: Under 5,000 sq feet

Effective and Expiration Dates:
03-31-2019 - 03-31-2020

NOTICE: THIS LICENSE IS NOT TRANSFERABLE
The Kansas Department of Agriculture, Food Safety and Lodging, 1820 Research Park Drive, Manhattan, KS 66502 (785)564-6733 www.agriculture.ks.gov