

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

Public comment will be taken for each regular agenda item as each item is discussed. Individuals will be limited to one comment per agenda item. Individuals are asked to come to the microphone, sign in, and state their name. Speakers are asked to sign in so that the spelling of names is correct in the minutes of the meeting. Speakers should address all comments/questions to the Commission.

WEDNESDAY, AUGUST 14, 2019

5:30 p.m. BUSINESS MEETING

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;
- (b) Consider approval of a resolution authorizing the levy of an annual tax for the special building fund and specifying the purposes for such tax. (Cammy Owens);
- (c) Consider approval of a Cereal Malt Beverage License for White Tail Run Winery LLC located at 2327 N 400 Road, Edgerton, Kansas (Clerk's Office);
- (d) Consider approval to execute contract for the expansion of the Douglas County Correctional Facility (Jackie Waggoner);
- (e) Accept retroactive approval for the following Resolutions: Resolution 19-17 Disaster Resolution for August 1, 2019 flood event; Resolution 19-18 Disaster Termination Resolution for the April 28, 2019 flood; Resolution 19-19 Disaster Termination Resolution for the May 28, 2019 Tornado; and Resolution 19-20 Disaster Continuance Resolution for the August 1, 2019 flood. (Joe Hoelscher);
- (f) Consider approval of a County resolution that officially initiates the process to consider rescinding the "minimum maintenance" designation of a portion of N100 Road and direct Public Works staff to transmit the resolution to the Planning Department. (Kevin Sontag)
- (g) Consider adoption of the amendments proposed in Home Rule Resolution 19-8-1 for Chapter 13, 13-107.4.1 Construction Codes (Tina Rakes);
- (h) Authorize staff to purchase two SAN storage units with a three-year service agreement from CDWG for a price of \$81,990 utilizing funding in the Register of Deeds technology fund (Jim Lawson);
- (i) Consider approval of the minutes from June 5, June 19, June 26 and July 31, 2019; and
- (j) Accounts payable.

REGULAR AGENDA

- (2) Accept the 2018 Audit and Financial Statements (Sarah Plinsky)
- (3) Annual Compliance for the LDCFM Agency Accreditation (Shaun Coffey)-presentation.
- (4) Consider extending the Douglas County lease with the Lawrence-Douglas County Housing Authority to a 99-year lease as a HUD requirement to receive state/federal funding (Sarah Plinsky)
- (5) Discussion and direction from the County Commission on Certificate of Survey's outside the Urban Growth Area (Tonya Voigt)
- (6) Consider additional project costs for 1006 New Hampshire (Pam Weigand)
- (7) Discussion of hiring process for County Administrator position (no backup)
- (8) General Public Comment
General Public Comment will be at the end of each meeting with a limit of one comment per person and keep their comments brief. Individuals may not give unused time to other speakers. As a general practice, the Commission will not discuss/debate these items, nor will the Commission make decisions on items presented during this time, rather they will refer the items to staff for follow up, if necessary.
- (9) Committee Reports
- (10) Commissioner and/or Administrator Miscellaneous
- (11) Adjourn

WEDNESDAY, AUGUST 21, 2019

CUP-19-00282: Consider a Conditional Use Permit for the Hunter's Crossing Event Center, located on approximately 80 acres northeast of the intersection of E. 1500 and N. 900 Roads. Submitted by Eugene George (aka Walter E. George), property owner of record. Mary Miller is the Planner.

WEDNESDAY, AUGUST 28, 2019

- Proclamation for "First Responders Appreciation Month"
- Proclamation celebrating the 30 Year Anniversary of Habitat of Humanity (Stacie Schroeder)

WEDNESDAY, OCTOBER 2, 2019- cancelled

Note: *The Douglas County Commission meets regularly on Wednesdays at 5:30 p.m., and at 4:00 p.m. for Work Sessions as needed. Meetings are held at the Douglas County Courthouse (2nd Floor) at 1100 Massachusetts Street, Lawrence, KS 66044. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.*



DOUGLAS COUNTY ADMINISTRATIVE SERVICES

Division of Budget

1100 Massachusetts Street, Unit 206
Lawrence, KS 66044-3064
(785) 832-5287 Fax (785) 838-2480
cowens@douglascountyks.org

Memorandum

TO: Board of County Commissioners

FROM: Cammy Owens, Budget Manager

SUBJECT: Consider approval of a Resolution authorizing that Douglas County levy an annual tax for the Special Building Fund and specifying the purpose of such tax.

DATE: August 6, 2019

Douglas County is required to issue a new resolution for the levy of Special Building fund every 10 years per K.S.A. 19-15,116. This resolution renews the current Special Building Levy adopted by Douglas County Board of Commissioners in 1997 at the maximum allowed levy of 1 mill in compliance with Kansas Statute. If there is no valid protest petition by 10% of the electors the resolution will go into effect 31 days following publication in the official county newspaper for three consecutive weeks.

DOUGLAS COUNTY, KANSAS
RESOLUTION 19-__

**A RESOLUTION AUTHORIZING THE LEVY OF AN ANNUAL TAX
FOR THE SPECIAL BUILDING FUND AND SPECIFYING THE PURPOSES FOR SUCH
TAX.**

WHEREAS, K.S.A. 19-15,114 et seq., and amendments thereto, the Board of County Commissioners is authorized to alter, repair, reconstruct, remodel, furnish, equip, extend, add to, enlarge, or do any other work which will enforce, extend or restore the value or utility of a public building or buildings determined by the County Commissioners to be necessary to the county for any public county purpose; and

WHEREAS, K.S.A. 19-15,116 et seq., authorizes the Board to make an annual levy not to exceed one mill for a period of 10 years upon all taxable tangible property in the county for the purpose of creating a building fund to be used for building construction and improvement purposes; and

WHEREAS, in 1997 the Board adopted Resolution No. 97-43, authorizing an annual tax levy of .50 mills for a total of ten (10) years for a special building fund to pay the necessary expenses of office relocation, improvements, and repair to the Douglas County Courthouse and the Douglas County Judicial and Law Enforcement Center; and

WHEREAS, the Board has determined it is advisable to amend the purpose for the levy of an annual tax for the special building fund.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS:

Section 1. Special Building Fund Levy Authorized. The Board of County Commissioners is hereby authorized to make an annual tax levy not to exceed 1.0 mills for a period of not to exceed ten (10) years upon all taxable tangible property in the county for the special building fund. The proceeds of such tax levy shall be deposited in the special building fund. As provided in K.S.A. 19-15,116, all

interest earned on the investment of moneys deposited in the special building fund shall be credited to such fund.

Section 2. Purpose of Special Building Fund Levy. The purpose of the special building fund levy is to provide funds adequate to pay the costs of necessary improvements to any county owned building, including parking facilities serving such facilities. Such improvements shall include, but shall not be limited to, improvements to the building exteriors and interiors, the movement or installation of walls, furnishings, carpeting or communication or data processing equipment, and the enlargement or improvement of related parking facilities. The fund also may be used to pay the cost of any professional services necessary to plan or design such improvements.

Section 3. Effective Date. The resolution shall be published once each week for three consecutive weeks in the official county newspaper. This resolution shall take effect and be in force 31 days following the date of last publication unless a petition requesting an election upon the proposition and containing the signature of Douglas County electors equal in number to not less than 10% of the electors of the county who voted for the secretary of state at the last general election, is filed with the county clerk within 30 days following the last publication of the resolution.

Adopted this _____ day of _____, 2019.

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

Michelle Derusseau, Chair

Patrick Kelly, Commissioner

Attest:

Jamie Shew, County Clerk

Nancy Thellman, Commissioner

MEMO

TO: DOUGLAS COUNTY COMMISSION

FROM: JAMIE SHEW, COUNTY CLERK

DATE: August 9, 2019

SUBJECT: CEREAL MALT BEVERAGE REQUEST

Attached is a copy of an application(s) received in this office by **White Tail Run Winery LLC** for a cereal malt beverage license to sell at retail, for consumption on the premises, located at 2327 N. 400 Rd. Edgerton, KS

K.S.A. 41-2702 provides that the County Clerk shall issue a license to any applicant outside an incorporated city as long as the applicant is eligible.

1st Meeting

The County Clerk will request a Township notice from the County Commission to be issued to the Township Clerk. The Township Clerk has 10 days to review and submit any protest.

2nd Meeting

The County Clerk will request a Resolution, and License to be issued to the applicant.

RESOLUTION _____

WHEREAS, on the **14th Day August 2019**, the same being a regular session of the Board of County Commissioners of the County of Douglas, the application of the **White Tail Run Winery** for a cereal malt beverage license came up for considerations by the above board and

WHEREAS, the Board does find that said the **White Tail Run Winery** is qualified under the law to sell cereal malt beverages not for consumption on the premises located at **2327 N 400 Rd, Edgerton, Kansas**

WHEREAS, the Board further finds that due and legal notice has been given the Clinton Township Board and that ten days has expired from the giving of said notice and that no written objection has been filed by the Clinton Township Board protesting the granting of a cereal malt beverage license.

NOW THEREFORE, BE IT RESOLVED that the applicant, the **White Tail Run Winery** granted a license to sell cereal malt beverage for consumption on the premises located at **2327 N 400 Rd, Edgerton, Kansas**

BE IT FURTHER RESOLVED, that Jameson Shew, County Clerk of Douglas County, Kansas be directed to issue said license.

Chairman

Member

Member

ATTEST:

Jameson Shew, Douglas County Clerk

KEEP THIS LICENSE POSTED CONSPICUOUSLY AT ALL TIME

RETAIL

Fee \$125.00

NO.

DEALER'S 2019 LICENSE

TO ALL WHOM IT MAY CONCERN:

License is hereby granted to: WHITE TAIL RUN WINERY

TO SELL CEREAL MALT BEVERAGES AT RETAIL FOR CONSUMPTION ON PREMISES

(State if for consumption on the premises or for sale in original and unopened containers and not for consumption on premises)

2327 N 400 RD, EDGERTON, KS. Application therefore on file in the office of the County Clerk of Douglas County, having been approved by the governing body of said County, as provided by Laws of Kansas and the regulations of the board of County Commissioners.

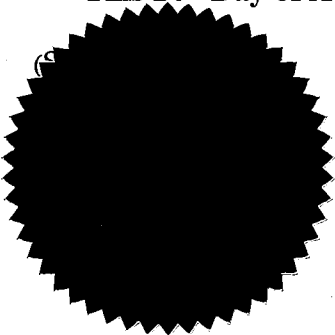
This License will expire 12:00 midnight December 31, 2019 unless sooner revoked, is not transferable, nor will any refund be allowed thereon.

Done by the Board of County Commissioners of Douglas County, Kansas

This 14th Day of August, 2019

Attest: _____
County Clerk

Chairman





DOUGLAS COUNTY ADMINISTRATIVE SERVICES

Division of Purchasing

1100 Massachusetts Street
Lawrence, KS 66044-3064
(785) 832-5286 Fax (785) 838-2480
www.douglascountyks.org

MEMO TO: The Board of County Commissioners
Sarah Plinsky, Interim County Administrator

FROM: Jackie Waggoner, Purchasing Director

SUBJECT: Execute Contract for Expansion of the Douglas County Correctional Facility

DATE: August 7, 2019

On June 12, 2019 the Board of County Commissioners awarded a contract to Turner Construction for Construction Manager at Risk services for construction phase for the expansion of the Correctional Facility and authorized the Interim County Administrator to finalize the contract.

Attached are the AIA documents reflecting pre-construction services at \$42,000, general conditions at a rate of 4.85%, and overhead and profit at 2.45%. This contract includes three exhibits in which two have not been defined: Exhibits A (GMP) & C (scope and timeline for the preconstruction phase) by design, will be determined at a later date, and exhibit B (General Conditions Matrix) is established and part of the contract. Once the exhibits are finalized staff will provide an update to the Board.

Sarah Plinsky will be available at the meeting to answer any questions you may have.

SUGGESTED MOTION: The Board of County Commissioners executes the contract with Turner Construction for Construction Manager at Risk services of the Expansion of the Douglas County Correctional Facility.

AIA[®] Document A133[™] – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the ____ day of _____ in the year 2019
(In words, indicate day, month and year.)

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

The Board of County Commissioners of Douglas County, Kansas
1100 Massachusetts Street
Lawrence, KS 66044

and the Construction Manager:
(Name, legal status and address)

Turner Construction Company
1220 Washington Street, Suite 100
Kansas City, MO 64105-1439

for the following Project:
(Name and address or location)

Douglas County Correctional Facility Expansion

The Architect:
(Name, legal status and address)

TREANORHL, INC.
1040 Vermont Street
Lawrence, KS 66044

The Owner's Designated Representative:
(Name, address and other information)

Sarah Plinsky, Interim County Administrator or Designee
Douglas County Courthouse
1100 Massachusetts, Unit 203
Lawrence, KS 66044
Telephone: 785-832-5329 or 785-691-9817
Email: splinsky@douglascountyks.org

The Construction Manager's Designated Representative:
(Name, address and other information)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AIA Document A201[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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User Notes: (3B9ADA56)

Dave Dudzik
Turner Construction Company
1220 Washington Street, Suite 100
Kansas City, MO 64105-1439
Telephone: 913-208-7221
Email: ddudzik@tcco.com

The Architect's Designated Representative:
(Name, address and other information)

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

(Paragraph Deleted)

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, Modifications issued after execution of this Agreement, written responses to formal requests for information, and each document's respective exhibits and attachments, all of which form the Contract Documents and are as fully a part of the Contract Documents as if attached to this Agreement or repeated herein. Approved Shop Drawings and submittals, requests for information, proposed change orders, the advertisement or invitation to bid or make a proposal, Instructions to Bidders or persons making proposals, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and the reports and drawings of subsurface and physical conditions are not Contract Documents. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. Electronic manifestations of documents shall not be Contract Documents, and shall be used at the risk of its user. The Contract Documents represent the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. In the event of a conflict between the terms and conditions contained within this Agreement with any terms and conditions within the General Conditions as amended, the term or condition that imposes the greater responsibility on Construction Manager or which more greatly limits Construction Manager's rights shall control.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the

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Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, as amended, which documents are incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree in writing, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. Any review of the Construction Manager's services and Work by the Owner or Architect shall not waive, release or relieve the Construction Manager of its obligation to properly perform its services and Work. The acceptance of any services or Work by the Owner or Architect shall not relieve Construction Manager of the responsibilities for compliance with the terms of this Agreement or subsequent correction of such errors or deficiencies unless, and only to the extent, Owner has knowingly waived such correction requirements in writing.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. In addition to the Preconstruction Phase services in section 2.1, the scope and timeline for the Preconstruction Phase services are outlined in Exhibit C, which shall be supplied, agreed upon, and incorporated herein by reference within a reasonable time of Construction Manager conferring with Architect.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; construction cost analysis to keep project on budget; availability of materials and labor, and reducing the impacts of any such shortages; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions and economies. Construction Manager shall be primarily responsible for coordinating the distribution and assembly of information needed to perform the Preconstruction Phase services and provide the Work, including but not limited to the collection of any information from the Owner or Architect. The Construction Manager shall assist in the Architect's investigation and assessment of existing facilities and the existing conditions at the site of the Project.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance in the form of a graphical representation of the activities and events that will occur in the Project. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities, and identify items that could affect the Project's timely completion. The Project schedule shall also include, but not be limited to, the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; certification requirements, including inspections and tours; the occupancy requirements of the Owner; and such other detail as reasonably requested by Owner or Architect. If the Owner or Architect has a reasonable objection to a Project schedule submitted by Construction Manager, the Project schedule shall be promptly revised by the Construction Manager in accordance with the recommendations of the Owner and Architect, and re-submitted for approval.

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§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration economies, cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's use. If the Architect, Owner or Construction Manager reasonably suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's use. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.5.3 Upon the request of Owner, Construction Manager will provide the supporting data for each prepared estimate.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project. Upon request of Owner, Construction Manager shall furnish to Owner for its information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from which proposals will be requested for each principal portion of the Work. The receipt of such a list shall not require Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and for the Owner's information, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom, as set forth in detail in Paragraphs 2.2.10 through 2.2.12 of this Agreement.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingencies (separately identifying contractor and owner contingencies), and the Construction Manager's Fee (identified by both subparts);
- .4 The Project schedule developed pursuant to Paragraph 2.1.3; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contractor contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order and an owner contingency for the Owner's exclusive use to cover costs as determined only with the express written permission of Owner. The contractor contingency shall not be used for costs described in Paragraph 6.8. Construction Manager shall keep Owner informed of the use and balance of each contingency and, upon request, why the expenditure from the contractor contingency was not part of its estimates.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall promptly notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.2.10 Construction Manager recognizes and acknowledges that the Guaranteed Maximum Price proposal may be submitted before all Construction Documents are completed by the Architect. In submitting the Guaranteed Maximum Price proposal, Construction Manager shall take into account the level of completeness of the Design Development Documents and Construction Documents and Construction Manager shall exercise its best skill and efforts to make: (i) appropriate judgments and inferences in connection with the requirements of the documents; and (ii) all inquiries of the Design Professional to clarify the documents as necessary to develop an accurate and binding Guaranteed Maximum Price proposal.

§ 2.2.11 If the Construction Documents were not designated as being ready for construction prior to Construction Manager's Guaranteed Maximum Price proposal and are further developed by the Architect to achieve a constructible and biddable set of Construction Documents ("Biddable Construction Documents"), a copy of the Biddable Construction Documents shall be furnished to the Construction Manager for its review. Construction Manager shall not be permitted to claim any adjustment to the executed Exhibit A in connection with the Biddable Construction Documents except for Scope Changes. A "Scope Change" is defined as Work described in the Biddable Construction Documents that is not reasonably inferable from either the Design Development Documents or any other previously furnished Contract Documents by a reasonably prudent and careful contractor and is: (i) materially inconsistent with the Design Development Documents and previously furnished Construction Documents; or (ii) a material change in quantity, quality, programmatic requirements or other substantial deviation in the Design Development Documents and previously furnished Construction Documents. Construction Manager acknowledges and agrees that the Biddable Construction Documents are not intended to change the scope, quality, quantity, function or design intent of information set forth in the Design Development Documents or previously furnished Construction Documents and not all differences between the Design Development Documents and or previously furnished Construction Documents and the Biddable Construction Documents, or information first appearing in the Biddable Construction Documents, constitute Scope Changes, but rather are scope detailing. After reviewing the Biddable Construction Documents provided by the Architect, the Construction Manager shall notify the Owner in writing of any item in the Biddable Construction Documents that, in Construction Manager's opinion, represents a Scope Change, setting forth in detail, with particularity, the reasons the Construction Manager contends that information or requirements of the Biddable Construction Documents represent a Scope Change (such a notice referred to as a "Scope Verification Request"). Failure of Construction Manager to provide a Scope Verification Request within thirty (30) calendar days after the date of receipt of the Biddable Construction Documents for such portions of the Work to be bid by Construction Manager shall mean that the Biddable Construction Documents are consistent with the Design Development Documents and previously furnished Construction Documents, no Scope Change exists, and the executed Exhibit A shall remain unchanged.

§ 2.2.12 If Construction Manager timely submits to the Owner a Scope Verification Request, Owner shall have the following options:

- .1 Within seven (7) calendar days after receipt of a Scope Verification Request, the Owner may direct the Architect to redesign that aspect of the Biddable Construction Documents to bring the alleged Scope Change into original scope compliance. The Construction Manager shall cooperate with the Owner and Architect during the redesign effort and shall make recommendations appropriate to correct such portions of the Biddable Construction Documents. The Architect shall then submit to the Construction Manager and the Owner the revised Construction Documents; or
- .2 If, upon review of a Scope Verification Request, the Owner believes that the portion of the Work described therein does not constitute a Scope Change, the Owner shall so advise the Construction Manager within fifteen (15) calendar days of receipt of such Scope Verification Request. The Owner and the Construction Manager will attempt to resolve their disagreement and identify elements of the Scope Verification Request that can be revised. If such disagreement is not resolved, the Work described in the Scope Verification Request shall be identified in a list (the "Disputed Work List") to be prepared and periodically updated by the Owner. Whenever possible, the Owner and the Construction Manager shall resolve items set forth in the Disputed Work List, confirming such resolution in a written memorandum signed by both parties. An appropriate Change Order, if necessary, will then be issued. All items remaining in the Disputed Work List shall be performed by the Construction Manager as required by the Contract Documents. Such disputes shall be resolved in accordance with Paragraph 9.1.

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§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2017, as amended, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's unqualified written acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's issuance of a Notice to Proceed, and the issuance of applicable permits.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under written subcontracts or by other appropriate written agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. Construction Manager shall comply with the requirements of K.S.A. § 19-216e in regard to the bids. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, (4) can be awarded that portion of the Work under K.S.A. § 19-216e and other applicable statutes, and (5) the Owner or Architect has no reasonable objection to the bidder, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior written consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2 and K.S.A. § 19-216e.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2017, as amended .

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2017, as amended, shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2017, as amended, shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program, developed with the assistance of Architect and Construction Manager, which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control, necessary for the Project, and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner to the extent a reasonably prudent construction manager would rely upon the accuracy of such information and services. Construction Manager shall be responsible for its own interpretations and implementation of the information and services and shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing known physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable and necessary for the Project, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths, provided that

Construction Manager shall verify the location of all utility services and lines and otherwise comply with the Kansas Underground Utility Damage Prevention Act. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are necessary for the Project, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control, necessary for the Project, and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, as amended, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, which may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide Basic Services as described in AIA Document B101™–2007, Standard Form of Agreement Between Owner and Architect, as amended. Upon request of the Construction Manager, the Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's proper performance of Preconstruction Phase services, the Owner shall pay the Construction Manager the stipulated sum of forty-two thousand dollars (\$42,000.00) ("Preconstruction Phase Fee"). Any and all salaries, expenses, costs, charges, fees, overhead, profit, and all other amounts incurred by Construction Manager related to its performance of Preconstruction Phase services are included in the Preconstruction Phase Fee; the Preconstruction Phase Fee is the maximum amount Owner will pay Construction Manager for Preconstruction Phase services. In addition to the Preconstruction Phase services in section 2.1, the scope and timeline for the Preconstruction Phase services are outlined in Exhibit C, which shall be supplied, agreed upon, and incorporated herein by reference within a reasonable time of Construction Manager conferring with Architect.

§ 4.2 Payments

§ 4.2.1 Construction Manager shall submit monthly invoices for Preconstruction Phase services rendered the previous month. Each invoice shall allocate the Preconstruction Phase Fee among various categories of the services in a format and allocation agreeable to Owner in a schedule of values ("Preconstruction Schedule of Values"). The Preconstruction Schedule of Values shall be used solely as a basis of the Owner's review of Construction Manager's invoices for Preconstruction Phase services. The amount of each monthly invoice shall represent the value of services actually and properly performed during the prior calendar month in accordance with the Preconstruction Schedule of Values, and shall be calculated as the percentage of each category of Preconstruction Phase services reflected in the Preconstruction Schedule of Values actually and properly performed during the prior calendar month. The monthly invoices shall be in a form and completed in the detail acceptable to the Owner, and such invoices shall be accompanied by such supporting data and/or work product as
(Paragraph Deleted)

may be required by the Owner.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice in the amount of the undisputed amounts in each timely and properly completed invoice. Undisputed amounts from timely and properly completed invoices unpaid after the Statutorily required time period shall bear interest at the legal rate prevailing in Kansas.

§ 4.2.3 "Disputes" shall exist as to the amounts due Construction Manager in an invoice only in the event that the invoice is in error, there is reasonable evidence that Construction Manager is in violation of a term(s) of the Contract Documents, and/or there are claims or the suggestion of claims on account of Construction Manager for the Work but only to the extent caused by Construction Manager and those for which it is responsible. (Individually and in combination referred to as "Cause of Dispute.") The amount of the dispute shall be one hundred and twenty-five percent (125%) of Owner's good faith estimate of the dollars believed to be necessary to protect Owner from economic harm resulting from the Cause of Dispute, and may be withheld from any invoice. In the event of a Cause of Dispute, Owner will provide written notice to Construction Manager of the reasons therefor and shall thereafter provide Construction Manager with a reasonable opportunity to cure. Within seven calendar days of the removal of the Cause of Dispute to the Owner's reasonable satisfaction, the Owner shall pay Construction Manager the money withheld as a result of the resolved Cause of Dispute.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(Paragraph Deleted)

If authorized by the Owner to proceed with construction under paragraph 2.3.1.2, the Construction Manager's Fee shall be 2.45% of the Cost of the Work for the Overhead and Profit Fee, plus a General Conditions Fee of 4.85% of the Cost of the Work. The Overhead and Profit Fee shall cover all home office and other overhead and all profit of Construction Manager. At the time of establishing the GMP, Construction Manager shall also establish and separately delineate an Overhead and Profit GMP. The General Conditions Fee shall cover all General Conditions of Construction Manager, including but not limited to what is identified as General Conditions in the General Conditions Matrix, which is incorporated herein as Exhibit B, and any expenses within corporate billing rates. At the time of establishing the GMP, Construction Manager shall also establish and separately delineate a General Conditions GMP.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

The fee percentages are fixed at 2.45% for the Construction Manager's Fee and 4.85% for General Conditions Fee. In the event that a Change in the Work delays the Substantial Completion date of the Project disproportionately to the amount of the Change, the General Conditions Fee for the Change may be equitably adjusted as mutually agreed upon between Owner and Contractor for that Change. In the course of mutually negotiating the adjustment on that Change, parties may agree that an equitable adjustment exceeds the 4.85% General Conditions Fee of the cost of the Change.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

The fee percentage shall apply to self-performed work if Construction Manager's bid has been selected pursuant to the statutory process after active and competitive bidding.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed percent (%) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.2.3 The difference, as of the date of final completion, between (i) the total aggregate sum of the Cost of the Work plus the Construction Manager's Fee (and each of its subparts) and (ii) the Guaranteed Maximum Price (such difference equals the "Savings") shall inure to the total benefit of the Owner.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2017, General Conditions of the Contract for Construction, as amended. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2017, General Conditions of the Contract for Construction, as amended .

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2017, as amended , and the term "costs" as used in Section 7.3.7 of AIA Document A201–2017, as amended , shall have the meanings assigned to them in AIA Document A201–2017, as amended , and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts shall not be awarded on the basis of cost plus a fee, unless the Owner provides its prior written approval.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2017, as amended, shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee (and its subparts) as defined in Section 5.1 of this Agreement. Consequently, the total amount earned by the Construction Manager as the Fee may increase or decrease, depending upon the nature of any changes in the Work, but the basis of the Construction Manager's Fee (and its subparts) shall always remain the percentages in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee (and its subparts) in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee (and its subparts) shall be equitably adjusted on the same

basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily and properly incurred by the Construction Manager pursuant to K.S.A. § 19-216e in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7 and to the extent they have been necessarily and properly incurred pursuant to K.S.A. § 19-216e.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.1.3 Costs, as defined in this Article 6, shall be actual costs paid by the Construction Manager, less all discounts, rebates, incentives, credits and salvages that shall be taken by or given to the Construction Manager. All payments made by the Owner, whether those payments are actually made before or after the execution of the Agreement, shall be included within the Guaranteed Maximum Price; provided, however, that in no event shall the Owner be required to reimburse the Construction Manager for any portion of the Cost of the Work incurred prior to the execution of this Agreement unless the Construction Manager has received the Owner's express written consent prior to incurring such costs.

§ 6.1.4 Notwithstanding the breakdown or categorization of any costs to be reimbursed in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing work expressly benefiting only the Project and to the extent not part of General Conditions. General Conditions personnel are identified in the

General Conditions Matrix, which is incorporated herein as Exhibit B, with the exception of supervisory "Quality Control" which shall be part of General Conditions. When non General Conditions personnel are charged to the Project at the corporate billing rate, their rate shall not be multiplied by the General Conditions Rate.

§ 6.2.3 [deleted]

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

These costs shall not be Cost of the Work to the extent already calculated into a charged corporate billing rate.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. As required under the alternative project delivery building construction procurement act, Construction Manager shall competitively bid the construction services and otherwise comply with all requirements of K.S.A. § 19-216e. In the event Construction Manager desires to self perform work, it shall take all efforts necessary to encourage, solicit and otherwise receive competitive bids for the same work from other contractors, subcontractors and/or suppliers pursuant to K.S.A. § 19-216e.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and preapproved storage, of materials and equipment incorporated or to be incorporated in the completed construction. Construction Manager shall order materials and equipment so as to most efficiently maximize value and minimize storage.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of necessary transportation, preapproved storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for necessary temporary facilities, machinery and equipment that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. Rental charges shall be consistent with those generally prevailing in the location of the Project. The total rental cost of any item may not exceed eighty percent (80%) of the fair market value of any comparable item as of the date such item is first put into service in connection with the Work. The Construction Manager shall pay any excess rental charges. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, land line telephone service at the site.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work when performing work expressly benefitting only the project and to the extent not part of General Conditions. General Conditions personnel identified in the General Conditions Matrix, which is incorporated herein as Exhibit B, with the exception of "Quality Control" which shall be part of General Conditions. When non General Conditions personnel are charged to the Project at the corporate billing rate, their rate shall not be multiplied by the General Conditions Rate.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.5.7 Excluded from Cost of the Work shall be the costs of trucks, phones, software or other expenses within employee billing rate calculations regardless if they are charged to the Project.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract and identified in Exhibit B as being a Cost of the Work.

§ 6.6.2 Sales taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.4.3 of AIA Document A201-2017, as amended, or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee (or its subparts) or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2017, as amended, or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 [deleted]

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

(Paragraphs Deleted)

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2017, as amended.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by fault or negligence or failure to fulfill a specific responsibility of the Construction Manager and has been preapproved in writing by Owner as a change order, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017, as amended, or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or other offices, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general conditions and expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the fault or negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract, including but not limited to the costs of correcting damaged, defective or non-conforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase; and
- .9 **There shall be no fee** (Overhead and Profit Fee or General Conditions Fee) charged on either the Overhead and Profit Fee or General Conditions Fee.

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§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Sections 6.10 and 6.3, the term "Related Party" shall mean a parent, subsidiary, affiliate or other entity related to or affiliated with or having common ownership or management with the Construction Manager or in which the Construction Manager has direct or indirect ownership or control; any entity in which any stockholder in, or management employee of, the Construction Manager has a direct or indirect interest in excess of ten percent in the aggregate; any entity owned in whole or in part by Construction Manager; any entity with more than a fifty percent (50%) interest in the Construction Manager; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "Related Party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a Related Party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the Related Party and the anticipated cost to be incurred, before any such transaction is solicited, bid pursuant to K.S.A. § 19-216e, consummated or otherwise incurred as a cost. If the Owner, after such notification, authorizes the proposed transaction to be solicited and bid pursuant to K.S.A. § 19-216e, and the work awarded to the Construction Manager pursuant to K.S.A. § 19-216e then the cost incurred shall be included as a cost to be reimbursed subject to the terms of this Agreement, and the Construction Manager shall procure the Work, equipment, goods or service from the Related Party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a Related Party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3, without recourse against Owner

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors or other representatives shall, during regular business hours and upon reasonable notice, be afforded immediate access to, and shall be permitted to inspect, audit and copy, the Construction Manager's records and accounts, including but not limited to complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of seven years after final payment, or for such longer period as may be required by law. Such right of access may be exercised with respect to records pertaining to changes, contract performance, Claims, or if this Agreement is terminated for default or convenience. Construction Manager shall include the provisions of this Section 6.11 in all its contracts and all tier subcontracts. If any review under this Section 6.11 reveals an overcharge upon final reconciliation of the GMP, Construction Manager shall pay the Owner upon demand an amount equal to one hundred twenty percent (120%) of such overcharge, as reimbursement for such overcharge and the administrative expenses incurred in determining the overcharge. The requirements of this Section 6.11 shall not apply to any portion of an overcharge that is the subject of a good faith dispute between the Owner and Construction Manager.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect and approved by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents, subject, however, to the other provisions of Article 7 and AIA Document A201-2017, as amended.

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§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the fifth day of a month, the Owner shall make payment of the undisputed amounts from timely and properly completed applications for payment to the Construction Manager not later than the fifth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of amounts due Construction Manager from Owner, except Retainage, shall be made within 30 days after Owner receives a timely, properly completed, undisputed request for payment according to terms of the Contract. If there are extenuating circumstances that would preclude approval of payment within 30 days, then payment shall be made within 45 days after Owner receives such payment request.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements have been made or intended to be made by the Construction Manager on account of the Cost of the Work equal or exceed the amount in the pending Application for Payment.

With each Application for Payment, the Construction Manager shall submit an updated Construction Schedule in a format agreed to by the Owner and Construction Manager.

§ 7.1.5 Each Application for Payment shall be based on the Cost of the Work incurred since the last application for payment plus the applicable Fee.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the allowable Cost of Work for the pending Application for Payment. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2017, as amended ;
- .2 Add
the Construction Manager's Fee (its subparts, as applicable);
- .3 Subtract retainage of Five percent (5.00 %);

(Paragraph Deleted)

- .4 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors or other representatives in such documentation; and
- .5 Subtract amounts, if any, for which the Owner has set off or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2017, as amended.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Subcontractor retention shall not be greater than the Construction Manager's retention.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Owner and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and

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shall not be deemed to represent that the Owner or Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Owner or Architect has made exhaustive or continuous on-site inspections; or that the Owner or Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors or other representatives acting in the sole interest of the Owner.

§ 7.1.11 "Disputes" shall exist as to the amounts due Construction Manager in an Application for Payment only in the event that the Application for Payment is in error, there is reasonable evidence that Construction Manager is in violation of a term(s) of the Contract Documents, and/or there are claims or the suggestion of claims on account of Construction Manager for the Work but only to the extent caused by Construction Manager and those for which it is responsible. (Individually and in combination referred to as "Cause of Dispute.") The amount of the dispute shall be one hundred and twenty-five percent (125%) of Owner's good faith estimate of the dollars believed to be necessary to protect Owner from economic harm resulting from the Cause of Dispute, and may be withheld from any Application for Payment. In the event of a Cause of Dispute, Owner will provide written notice to Construction Manager of the reasons therefor and shall thereafter provide Construction Manager with a reasonable opportunity to cure. Within seven calendar days of the removal of the Cause of Dispute to the Owner's reasonable satisfaction, the Owner shall pay Construction Manager the money withheld as a result of the resolved Cause of Dispute.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum less that portion of the retainage attributable to the Work on the Project still being performed, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2017, as amended, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 a final Certificate for Payment has been issued by the Architect; and
- .4 all requirements of Section 9.8 of AIA Document A201-2017, as amended, have been satisfied.

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

§ 7.2.2 The Owner's auditors or other representative will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors or other representatives report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2017, as amended. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2017, as amended. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors or other representative report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2017, as amended. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors or other representative becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for

Payment and agreed by Owner to be undisputed.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2017, as amended. *(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2017.)*

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
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ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2017, as amended. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2017, as amended, the method of binding dispute resolution shall be as follows:

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

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2017, as amended, for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2017, as amended.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1 or include any costs, profit or overhead for services that were not performed.

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§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee (its subparts, as applicable) computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will be responsible for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated and they arose after assignment. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination, but in no event shall such costs include any costs, profit or overhead for services that were not performed.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2017, as amended.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2017, as amended, shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement or include any costs, profit or overhead for services that were not performed.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2017, as amended, shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above or include any costs, profit or overhead for services that were not performed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017, as amended. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2017, as amended, except that the term "profit" shall be understood to mean the Overhead and Profit Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

§ 10.4 In no event shall any costs or fees incurred by Construction Manager in relation to the Construction Phase be paid to Construction Manager until Owner issues Construction Manager a Construction Phase notice to proceed. Until such time, all such costs and fees shall be borne entirely by Construction Manager and not paid by Owner, even if Owner derives a benefit therefrom. Said costs and fees shall become eligible for payment under the terms of

this Agreement only upon issuance of a Construction Phase notice to proceed. In the event Owner does not issue a Construction Phase notice to proceed for whatever reason, the Construction Manager will not receive any fees, expected profits or other compensation in relation to the Construction Phase.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2017, as amended .

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2017 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2017, as amended, shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2017, as amended, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

§ 11.5.1 INDEMNITY

§ 11.5.1.1 To the fullest extent permitted by Law, the Construction Manager shall hold harmless and indemnify the Owner and any of its officers, directors, employees, and their successors (collectively the "Indemnified Parties"), from and against liability, loss, costs, and expenses arising out of or resulting from the negligent performance of the Construction Manager's Services under this Agreement to the extent caused by the negligent act or omission (i) of the Construction Manager, or (ii) of the Construction Manager's subcontractors and/or suppliers, or (iv) the agents, servants, or employees of Construction Manager and any Construction Manager's subcontractor and/or supplier, to the extent such claim, damage, loss or expense is not caused by the negligence or fault of any of the Indemnified Parties. Nothing contained herein shall be construed to require Construction Manager to indemnify the Indemnified Parties from liability, losses, costs and expenses proximately caused by the Indemnified Parties, or each of them.

The above-said right of indemnity shall be in addition to other rights of indemnity that any of the Indemnified Parties may possess. The indemnification obligations of Construction Manager under this Agreement shall survive termination of this Agreement or final payment hereunder.

§ 11.5.1.2 In any and all claims against the Owner by any employee of Construction Manager or any of Construction Manager's subcontractors and/or suppliers, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable, the indemnity obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for Construction Manager or any of Construction Manager's subcontractors and/or suppliers under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

§11.5.2 KANSAS LEGAL REQUIREMENT

§11.5.2.1 If the successful firm is a corporation organized outside the State of Kansas, it will be necessary to qualify with the Secretary of State of Kansas to do business within the State (K.S.A. 17-7301 K.S.A. seq.). Nonresident individuals or partnerships and nonresident corporations not already registered with the Secretary of State are required to register with the Director of Revenue, to file a bond to assure payment of taxes, and to pay a fee of \$10 for each contract or subcontract with exceeds \$3,000 (K.S.A. 79-1008 to 79-1015).

§ 11.5.2.2 Nonresident contracts are required to appoint an agent for service of process who is a resident of the county in which the work is to be performed. It is unlawful for any payment to be made until the appointment of a local agent has been filed with the Clerk of the District Court (K.S.A. 16-113).

§ 11.5.2.3 Construction Manager shall not in any way, directly or indirectly, discriminate against any person because of age, race, color, handicap, sex, national origin, or religious creed.

§ 11.5.2.4 Consistent with K.S.A. 44-1030, the Construction Manager agrees as follows:

- .1 The Construction Manager shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, national origin or ancestry.
- .2 In all solicitations or advertisements for employees, the Construction Manager shall include the phrase "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (the "Commission").
- .3 If the Construction Manager fails to comply with the manner in which it reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Construction Manager shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the Owner.
- .4 If the Construction Manager is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Construction Manager shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the Owner, without recourse against Owner.
- .5 The Construction Manager shall include the provisions of Clauses (1) through (4) in every consulting agreement, subcontract or purchase order so that provisions will be binding upon such consultant, subcontractor or vendor.

§ 11.5.3. **INTERPRETATION.** In the event of a conflict between the terms and conditions contained within this Agreement with any terms and conditions within the General Conditions as amended, the term or condition that imposes the greater responsibility on Construction Manager or which more greatly limits Construction Manager's rights shall control.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended.
- .2 AIA Document A201–2017, General Conditions of the Contract for Construction, as amended
- .3

(Paragraph Deleted)

Other documents:

(List other documents, if any, forming part of the Agreement.)

Exhibit B: General Conditions Matrix – Douglas County Correctional Facility Expansion

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

OWNER *(Signature)*

Michelle Derousseau, Chair of the Board of County
Commissioners of Douglas County, Kansas

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Mark Iammarino,
Vice President & General Manager

(Printed name and title)

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Exhibit 'B'

General Conditions Matrix - Douglas County Correctional Facility Expansion

*The Fixed Rate of 4.85% for General Conditions is based upon the assumption that the GMP will fall within the \$20,000,000 - \$23,000,000 range as stated in the RFP shortlist memo. Should the GMP ultimately fall outside of this range, the General Conditions rate may vary (higher or lower) than 4.85%.

Description	In General Conditions 4.85%*	Cost of Work	Owner
Office Expense			
CM Field Office Trailer	x		
Office Supplies	x		
Field Office Equipment & Maintenance	x		
Electronic Equipment, Software & Maintenance	x		
Phones	x		
Courier, Postage & Expressage	x		
Printing Expenses	x		
Construction Photos	x		
Travel Expenses for Job Staff	x		
Temporary Toilets for CM Field Office/Staff	x		
Dumpsters and Trash Removal for CM Field Office/Staff	x		
"Ground Breaking" & Special Ceremony Expenses		x	
Temporary Utilities			
Temporary Heating/Cooling		x	
Temporary Water		x	
Temporary Electric Hook-up Charges for CM office trailer	x		
Temporary Electric		x	
Temporary Utilities Usage Charges			x
Connection to existing building utilities		x	
Testing, Inspection & Quality Control			
Testing Laboratory Services			x
Soils Testing & Inspection			x
Other 3rd Party Special Inspections			x
Taxes/Insurance/Fees			
Building Permits		x	
Special Permits, Licenses, Fees		x	
Easements			x
Plan Check Fees			x
Worker's Compensation Insurance		x	
General Liability Insurance		x	
Builder's Risk Insurance		x	
Performance & Payment Bonds		x	
Professional Liability Insurance (where applicable by spec)		x	
Construction Management Labor			
Project Executive	x		
Project Manager	x		
Superintendent	x		
Assistant Superintendent / Field Engineer	x		
Project Engineer	x		
QA/QC	x		
Procurement	x		
BIM Manager/Engineer	x		
Safety Manager (Field)	x		
Accounting / Cost	x		
Vehicles for Construction Management Staff	x		
Coordination with Owner's separate Contractors & Consultants	x		

General Conditions Matrix - Douglas County Correctional Facility Expansion

**The Fixed Rate of 4.85% for General Conditions is based upon the assumption that the GMP will fall within the \$20,000,000 - \$23,000,000 range as stated in the RFP shortlist memo. Should the GMP ultimately fall outside of this range, the General Conditions rate may vary (higher or lower) than 4.85%.*

Description		In General Conditions 4.85%*	Cost of Work	Owner
Field Operations				
	Tools & Supplies		x	
	Rentals & Equipment		x	
	Temp Storage		x	
	Temp Roads/Entrances/Crane Pads		x	
	Temporary Enclosures		x	
	Snow Removal/Dewatering		x	
	Crane/Hoisting		x	
	Construction Cleaning		x	
	Dumpsters		x	
	Final Cleaning		x	
	Safety Railing and Barriers		x	
	Barricades/Site Fence/Traffic Control		x	
	Construction Signage		x	
	Surveying		x	
Permanent Construction				
	Trade Contracts		x	
	Self-Perform Labor & Materials		x	
	Materials Incorporated into the Work		x	
	Commissioning			x
	Owner Training		x	
	Design			x

Additions and Deletions Report for

AIA® Document A133™ – 2009

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:06:32 ET on 08/07/2019.

PAGE 1

AGREEMENT made as of the ____ day of _____ in the year 2019

...

The Board of County Commissioners of Douglas County, Kansas
1100 Massachusetts Street
Lawrence, KS 66044

...

Turner Construction Company
1220 Washington Street, Suite 100
Kansas City, MO 64105-1439

...

Douglas County Correctional Facility Expansion

...

TREANORHL, INC.
1040 Vermont Street
Lawrence, KS 66044

...

Sarah Plinsky, Interim County Administrator or Designee
Douglas County Courthouse
1100 Massachusetts, Unit 203
Lawrence, KS 66044
Telephone: 785-832-5329 or 785-691-9817
Email: splinsky@douglascountyks.org

PAGE 2

Dave Dudzik
Turner Construction Company
1220 Washington Street, Suite 100
Kansas City, MO 64105-1439
Telephone: 913-208-7221
Email: ddudzik@tcco.com

PAGE 3

EXHIBIT A – GUARANTEED MAXIMUM PRICE AMENDMENT

...

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, ~~and~~ Modifications issued after execution of this Agreement, written responses to formal requests for information, and each document's respective exhibits and attachments, all of which form the Contract Documents and are as fully a part of the Contract Documents as if attached to this Agreement or repeated herein. Approved Shop Drawings and submittals, requests for information, proposed change orders, the advertisement or invitation to bid or make a proposal, Instructions to Bidders or persons making proposals, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and the reports and drawings of subsurface and physical conditions are not Contract Documents. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. ~~The Contract represents Electronic manifestations of documents shall not be Contract Documents, and shall be used at the risk of its user. The Contract Documents represent~~ the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. In the event of a conflict between the terms and conditions contained within this Agreement with any terms and conditions within the General Conditions as amended, the term or condition that imposes the greater responsibility on Construction Manager or which more greatly limits Construction Manager's rights shall control.

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For the Preconstruction Phase, AIA Document A201™-2007, A201™-2017, General Conditions of the Contract for Construction, as amended, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is A201-2017, as amended, which documents are incorporated herein by reference. The term "Contractor" as used in A201-2007 "Contractor" as used in A201-2017 shall mean the Construction Manager.

...

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may ~~agree, agree in writing,~~ in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. Any review of the Construction Manager's services and Work by the Owner or Architect shall not waive, release or relieve the Construction Manager of its obligation to properly perform its services and Work. The acceptance of any services or Work by the Owner or Architect shall not relieve Construction Manager of the responsibilities for compliance with the terms of this Agreement or subsequent correction of such errors or deficiencies unless, and only to the extent, Owner has knowingly waived such correction requirements in writing.

...

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. -In addition to the Preconstruction Phase services in section 2.1, the scope and timeline for the Preconstruction Phase services are outlined in Exhibit C, which shall be supplied, agreed upon, and incorporated herein by reference within a reasonable time of Construction Manager conferring with Architect.

...

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on ~~proposed~~ site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; ~~availability of materials and labor; construction cost analysis to keep project on budget; availability of materials and labor, and reducing the impacts of any such shortages;~~ time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost ~~reductions~~ reductions and economies. Construction Manager shall be primarily responsible for coordinating the distribution and assembly of information needed to perform the Preconstruction Phase services and provide the Work, including but not limited to the collection of any information from the Owner or Architect. The Construction Manager shall assist in the Architect's investigation and assessment of existing facilities and the existing conditions at the site of the Project.

...

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's ~~acceptance~~. acceptance in the form of a graphical representation of the activities and events that will occur in the Project. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's ~~responsibilities~~ responsibilities, and identify items that could affect the Project's timely completion. ~~The updated Project schedule shall include Project schedule shall also include, but not be limited to, the following:~~ submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; certification requirements, including inspections and the occupancy requirements of the Owner. ~~tours; the occupancy requirements of the Owner; and such other detail as reasonably requested by Owner or Architect. If the Owner or Architect has a reasonable objection to a Project schedule submitted by Construction Manager, the Project schedule shall be promptly revised by the Construction Manager in accordance with the recommendations of the Owner and Architect, and re-submitted for approval.~~

PAGE 5

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration economies, cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

...

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's ~~approval~~. If the Architect or Construction Manager use. If the Architect, Owner or Construction Manager reasonably suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

...

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's ~~approval-use~~. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

...

§ 2.1.5.3 Upon the request of Owner, Construction Manager will provide the supporting data for each prepared

...

§-estimate.

...

§ 2.1.6 Subcontractors and Suppliers

...

The Construction Manager shall develop bidders' interest in the Project. Upon request of Owner, Construction Manager shall furnish to Owner for its information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from which proposals will be requested for each principal portion of the Work. The receipt of such a list shall not require Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers.

...

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and ~~the Owner's acceptance,~~ for the Owner's information, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

PAGE 6

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, ~~including contingencies described in Section 2.2.4, Work~~ and the Construction Manager's Fee.

...

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable ~~therefrom. Such further development does not~~

include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order therefrom, as set forth in detail in Paragraphs 2.2.10 through 2.2.12 of this Agreement.

...

- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, ~~contingency, and the Construction Manager's Fee;~~ contingencies (separately identifying contractor and owner contingencies), and the Construction Manager's Fee (identified by both subparts);

...

- .4 ~~The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;~~ Project schedule developed pursuant to Paragraph 2.1.3; and

...

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include ~~its a contractor~~ contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. ~~Order and an owner~~ contingency for the Owner's exclusive use to cover costs as determined only with the express written permission of Owner. The contractor contingency shall not be used for costs described in Paragraph 6.8. Construction Manager shall keep Owner informed of the use and balance of each contingency and, upon request, why the expenditure from the contractor contingency was not part of its estimates.

...

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price ~~proposal, its basis, or both proposal.~~

...

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the ~~agreed-upon~~ agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall promptly notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

PAGE 7

§ 2.2.10 Construction Manager recognizes and acknowledges that the Guaranteed Maximum Price proposal may be submitted before all Construction Documents are completed by the Architect. In submitting the Guaranteed Maximum Price proposal, Construction Manager shall take into account the level of completeness of the Design Development Documents and Construction Documents and Construction Manager shall exercise its best skill and efforts to make: (i) appropriate judgments and inferences in connection with the requirements of the documents; and (ii) all inquiries of the Design Professional to clarify the documents as necessary to develop an accurate and binding Guaranteed Maximum Price proposal.

...

§ 2.2.11 If the Construction Documents were not designated as being ready for construction prior to Construction Manager's Guaranteed Maximum Price proposal and are further developed by the Architect to achieve a

constructible and biddable set of Construction Documents ("Biddable Construction Documents"), a copy of the Biddable Construction Documents shall be furnished to the Construction Manager for its review. Construction Manager shall not be permitted to claim any adjustment to the executed Exhibit A in connection with the Biddable Construction Documents except for Scope Changes. A "Scope Change" is defined as Work described in the Biddable Construction Documents that is not reasonably inferable from either the Design Development Documents or any other previously furnished Contract Documents by a reasonably prudent and careful contractor and is: (i) materially inconsistent with the Design Development Documents and previously furnished Construction Documents; or (ii) a material change in quantity, quality, programmatic requirements or other substantial deviation in the Design Development Documents and previously furnished Construction Documents. Construction Manager acknowledges and agrees that the Biddable Construction Documents are not intended to change the scope, quality, quantity, function or design intent of information set forth in the Design Development Documents or previously furnished Construction Documents and not all differences between the Design Development Documents and or previously furnished Construction Documents and the Biddable Construction Documents, or information first appearing in the Biddable Construction Documents, constitute Scope Changes, but rather are scope detailing. After reviewing the Biddable Construction Documents provided by the Architect, the Construction Manager shall notify the Owner in writing of any item in the Biddable Construction Documents that, in Construction Manager's opinion, represents a Scope Change, setting forth in detail, with particularity, the reasons the Construction Manager contends that information or requirements of the Biddable Construction Documents represent a Scope Change (such a notice referred to as a "Scope Verification Request"). Failure of Construction Manager to provide a Scope Verification Request within thirty (30) calendar days after the date of receipt of the Biddable Construction Documents for such portions of the Work to be bid by Construction Manager shall mean that the Biddable Construction Documents are consistent with the Design Development Documents and previously furnished Construction Documents, no Scope Change exists, and the executed Exhibit A shall remain unchanged.

...

§ 2.2.12 If Construction Manager timely submits to the Owner a Scope Verification Request, Owner shall have the following options:

...

.1 Within seven (7) calendar days after receipt of a Scope Verification Request, the Owner may direct the Architect to redesign that aspect of the Biddable Construction Documents to bring the alleged Scope Change into original scope compliance. The Construction Manager shall cooperate with the Owner and Architect during the redesign effort and shall make recommendations appropriate to correct such portions of the Biddable Construction Documents. The Architect shall then submit to the Construction Manager and the Owner the revised Construction Documents; or

...

.2 If, upon review of a Scope Verification Request, the Owner believes that the portion of the Work described therein does not constitute a Scope Change, the Owner shall so advise the Construction Manager within fifteen (15) calendar days of receipt of such Scope Verification Request. The Owner and the Construction Manager will attempt to resolve their disagreement and identify elements of the Scope Verification Request that can be revised. If such disagreement is not resolved, the Work described in the Scope Verification Request shall be identified in a list (the "Disputed Work List") to be prepared and periodically updated by the Owner. Whenever possible, the Owner and the Construction Manager shall resolve items set forth in the Disputed Work List, confirming such resolution in a written memorandum signed by both parties. An appropriate Change Order, if necessary, will then be issued. All items remaining in the Disputed Work List shall be performed by the Construction Manager as required by the Contract Documents. Such disputes shall be resolved in accordance with Paragraph 9.1.

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§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, ~~A201-2017, as amended~~, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

...

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's unqualified written acceptance of the Construction Manager's Guaranteed Maximum Price ~~proposal or proposal~~, the Owner's issuance of a Notice to Proceed, ~~whichever occurs earlier and the issuance of applicable permits.~~

...

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under written subcontracts or by other appropriate written agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. Construction Manager shall comply with the requirements of K.S.A. § 19-216e in regard to the bids. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

...

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, ~~and~~ (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, (4) can be awarded that portion of the Work under K.S.A. § 19-216e and other applicable statutes, and (5) the Owner or Architect has no reasonable objection to the bidder, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

...

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior written consent of the Owner. If the Subcontract is awarded on a cost-plus a cost-plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

...

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "~~related party~~" "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section ~~6.10-2.6.10.2~~ and K.S.A. § 19-216e.

...

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of ~~A201-2007, A201-2017, as amended~~.

...

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

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Section 3.12.10 of A201-2007-A201-2017, as amended, shall apply to both the Preconstruction and Construction Phases.

...

Section 10.3 of A201-2007-A201-2017, as amended, shall apply to both the Preconstruction and Construction Phases.

...

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written ~~program-program~~, developed with the assistance of Architect and Construction Manager, which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, ~~systems~~, systems sustainability and site requirements.

...

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's ~~control-control~~, necessary for the Project, and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner ~~but to the extent a reasonably prudent construction manager would rely upon the accuracy of such information and services~~. Construction Manager shall be responsible for its own interpretations and implementation of the information and services and shall exercise proper precautions relating to the safe performance of the Work.

PAGE 10

§ 3.1.4.2 The Owner shall furnish surveys describing known physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as ~~applicable~~, applicable and necessary for the Project, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and ~~depths~~, depths, provided that Construction Manager shall verify the location of all utility services and lines and otherwise comply with the Kansas Underground Utility Damage Prevention Act. All the information on the survey shall be referenced to a Project benchmark.

...

§ 3.1.4.3 The Owner, when such services are ~~requested~~, necessary for the Project, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

...

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's ~~control~~ control, necessary for the Project, and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

...

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, A201-2017, as amended, the Architect does not have such authority. The term "~~Owner~~" "Owner" means the Owner or the Owner's authorized representative.

...

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, ~~that which~~ may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

...

The Owner shall retain an Architect to provide ~~services, duties and responsibilities~~ Basic Services as described in AIA Document ~~B133™-2014, B101™-2007~~, Standard Form of Agreement Between Owner and Architect, ~~Construction Manager as Constructor Edition. The as amended.~~ Upon request of the Construction Manager, the Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

...

§ 4.1.1 For the Construction Manager's proper performance of Preconstruction Phase services, the Owner shall ~~compensate the Construction Manager as follows:~~ pay the Construction Manager

...

§ 4.1.2 ~~For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:~~ the stipulated sum of forty-two thousand dollars (\$42,000.00) ("Preconstruction Phase Fee"). Any and all salaries, expenses, costs, charges, fees, overhead, profit, and all other amounts incurred by Construction Manager related to its performance of Preconstruction Phase services are included in the Preconstruction Phase Fee; the Preconstruction Phase Fee is the maximum amount Owner will pay Construction Manager for Preconstruction Phase services. In addition to the Preconstruction Phase services in section 2.1, the scope and

...

~~(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)~~ timeline for the Preconstruction Phase services are outlined in Exhibit C, which shall be supplied, agreed upon, and incorporated herein by reference within a reasonable time of Construction Manager conferring with Architect.

...

§ 4.2 Payments

...

~~§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within (—) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.~~ 4.2.1 Construction Manager shall submit monthly invoices for Preconstruction Phase services rendered the previous month. Each invoice shall allocate the Preconstruction Phase Fee among various categories of the services in a format and allocation agreeable to Owner in a schedule of values ("Preconstruction Schedule of Values"). The Preconstruction Schedule of Values shall be used solely as a basis of the Owner's review of Construction Manager's invoices for Preconstruction Phase services. The amount of each monthly invoice shall represent the value of services actually and properly performed during the prior calendar month in accordance with the Preconstruction Schedule of Values, and shall be

...

~~§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions calculated as the percentage of each category of Preconstruction Phase services reflected in the Preconstruction Schedule of Values actually and properly performed during the prior calendar month. The monthly invoices shall be in a form and completed in the detail acceptable to the Owner, and such invoices shall be accompanied by such supporting data and/or work product as~~

...

§ 4.2 Payments

PAGE 11

~~§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. may be required by the Owner.~~

...

~~§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid (—) days after the invoice date shall bear interest at the rate entered below, invoice in the amount of the undisputed amounts in each timely and properly completed invoice. Undisputed amounts from timely and properly completed invoices unpaid after the Statutorily required time period shall bear interest at the legal rate prevailing in Kansas.~~

...

~~or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~ § 4.2.3 "Disputes" shall exist as to the amounts due Construction Manager in an invoice only in the event that the invoice is in error, there is reasonable evidence that Construction Manager is in violation of a term(s) of the Contract Documents, and/or there are claims or the suggestion of claims on account of Construction Manager for the Work but only to the extent caused by Construction Manager and those for which it is responsible. (Individually and in combination referred to as "Cause of Dispute.") The amount of the dispute shall be one hundred and twenty-five percent (125%) of Owner's good faith estimate of the dollars believed to be necessary to protect Owner from economic harm resulting from the Cause of Dispute, and may be withheld from any invoice. In the event of a Cause of Dispute, Owner will provide written notice to Construction Manager of the reasons therefor and shall thereafter provide Construction Manager with a reasonable opportunity to cure. Within seven calendar days of the removal of the Cause of Dispute to the Owner's reasonable satisfaction, the Owner shall pay Construction

...

~~(Insert rate of monthly or annual interest agreed upon.)~~ Manager the money withheld as a result of the resolved Cause of

...

Dispute.

...

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)~~

...

If authorized by the Owner to proceed with construction under paragraph 2.3.1.2, the Construction Manager's Fee shall be 2.45% of the Cost of the Work for the Overhead and Profit Fee, plus a General Conditions Fee of 4.85% of the Cost of the Work. The Overhead and Profit Fee shall cover all home office and other overhead and all profit of Construction Manager. At the time of establishing the GMP, Construction Manager shall also establish and separately delineate an Overhead and Profit GMP. The General Conditions Fee shall cover all General Conditions of Construction Manager, including but not limited to what is identified as General Conditions in the General Conditions Matrix, which is incorporated herein as Exhibit B, and any expenses within corporate billing rates. At the time of establishing the GMP, Construction Manager shall also establish and separately delineate a General Conditions GMP.

...

The fee percentages are fixed at 2.45% for the Construction Manager's Fee and 4.85% for General Conditions Fee. In the event that a Change in the Work delays the Substantial Completion date of the Project disproportionately to the amount of the Change, the General Conditions Fee for the Change may be equitably adjusted as mutually agreed upon between Owner and Contractor for that Change. In the course of mutually negotiating the adjustment on that Change, parties may agree that an equitable adjustment exceeds the 4.85% General Conditions Fee of the cost of the Change.

...

The fee percentage shall apply to self-performed work if Construction Manager's bid has been selected pursuant to the statutory process after active and competitive bidding.

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§ 5.2.3 The difference, as of the date of final completion, between (i) the total aggregate sum of the Cost of the Work plus the Construction Manager's Fee (and each of its subparts) and (ii) the Guaranteed Maximum Price (such difference equals the "Savings") shall inure to the total benefit of the Owner.

...

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, A201-2017, General Conditions of the Contract for Construction. The Construction Manager shall Construction, as amended. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

...

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document ~~A201-2007~~, A201-2017, General Conditions of the Contract for ~~Construction~~, Construction, as amended.

...

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms ~~"cost" and "fee"~~ "cost" and "fee" as used in Section 7.3.3.3 of AIA Document ~~A201-2007~~ and the term "costs" A201-2017, as amended, and the term "costs" as used in Section 7.3.7 of AIA Document ~~A201-2007~~ A201-2017, as amended, shall have the meanings assigned to them in AIA Document ~~A201-2007~~ A201-2017, as amended, and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts ~~awarded with the Owner's prior consent shall not be awarded on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts fee, unless the~~ Owner provides its prior written approval.

...

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms ~~"cost" and "costs"~~ "cost" and "costs" as used in the above-referenced provisions of AIA Document ~~A201-2007~~ A201-2017, as amended, shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term ~~"fee"~~ "fee" shall mean the Construction Manager's Fee (and its subparts) as defined in Section 5.1 of this Agreement. Consequently, the total amount earned by the Construction Manager as the Fee may increase or decrease, depending upon the nature of any changes in the Work, but the basis of the Construction Manager's Fee (and its subparts) shall always remain the percentages in Section 5.1 of this Agreement.

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§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee (and its subparts) in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee (and its subparts) shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

...

§ 6.1.1 The term Cost of the Work shall mean costs necessarily and properly incurred by the Construction Manager pursuant to K.S.A. § 19-216e in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through ~~6.7~~ 6.7 and to the extent they have been necessarily and properly incurred pursuant to K.S.A. § 19-216e.

...

§ 6.1.3 Costs, as defined in this Article 6, shall be actual costs paid by the Construction Manager, less all discounts, rebates, incentives, credits and salvages that shall be taken by or given to the Construction Manager. All payments made by the Owner, whether those payments are actually made before or after the execution of the Agreement, shall be included within the Guaranteed Maximum Price; provided, however, that in no event shall the Owner be required to reimburse the Construction Manager for any portion of the Cost of the Work incurred prior to the execution of this Agreement unless the Construction Manager has received the Owner's express written consent prior to incurring such costs.

...

§ 6.1.4 Notwithstanding the breakdown or categorization of any costs to be reimbursed in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

...

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval performing work expressly benefitting only the Project and to the extent not part of General Conditions. General Conditions personnel are identified in the

...

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.) General Conditions Matrix, which is incorporated herein as Exhibit B, with the exception of supervisory "Quality Control" which shall be part of General Conditions. When non General Conditions personnel are charged to the Project at the corporate billing rate, their rate shall not be multiplied by the General Conditions Rate.

...

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. [deleted]

...

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

...

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval. These costs shall not be Cost of the Work to the extent already calculated into a charged corporate billing rate.

...

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. As required under the alternative project delivery building construction procurement act, Construction Manager shall competitively bid the construction services and otherwise comply with all requirements of K.S.A. § 19-216e. In the event Construction Manager desires to self perform work, it shall take all efforts necessary to encourage, solicit and otherwise receive competitive bids for the same work from other contractors, subcontractors and/or suppliers pursuant to K.S.A. § 19-216e.

...

§ 6.4.1 Costs, including transportation and preapproved storage, of materials and equipment incorporated or to be incorporated in the completed construction. Construction Manager shall order materials and equipment so as to most efficiently maximize value and minimize storage.

§ 6.5.1 Costs of necessary transportation, preapproved storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

...

§ 6.5.2 Rental charges for ~~temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers~~ necessary temporary facilities, machinery and equipment that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. Rental charges shall be consistent with those generally prevailing in the location of the Project. The total rental cost of any ~~Construction Manager-owned item may not exceed the purchase price of any comparable item.~~ item may not exceed eighty percent (80%) of the fair market value of any comparable item as of the date such item is first put into service in connection with the Work. The Construction Manager shall pay any excess rental charges. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

...

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, ~~telephone service at the site and reasonable petty cash expenses of the site office~~ land line telephone service at the site.

...

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the ~~Work.~~ Work when performing work expressly benefitting only the project and to the extent not part of General Conditions. General Conditions personnel identified in the General Conditions Matrix, which is incorporated herein as Exhibit B, with the exception of "Quality Control" which shall be part of General Conditions. When non General Conditions personnel are charged to the Project at the corporate billing rate, their rate shall not be multiplied by the General Conditions Rate.

...

§ 6.5.7 Excluded from Cost of the Work shall be the costs of trucks, phones, software or other expenses within employee billing rate calculations regardless if they are charged to the Project.

...

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this ~~Contract.~~ Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Contract and identified in Exhibit B as being a Cost of the Work.

...

§ 6.6.2 ~~Sales, use or similar~~ Sales taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

...

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section ~~13.5.3 of AIA Document A201-2007~~ 13.4.3

of AIA Document A201–2017, as amended, or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

PAGE 15

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee (or its subparts) or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007-A201–2017, as amended, or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

...

§ 6.6.6 ~~Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval-[deleted]~~

...

§ 6.6.8 ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

...

§ 6.6.9 ~~Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.~~

...

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007-A201–2017, as amended.

...

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by fault or negligence or failure to fulfill a specific responsibility of the Construction Manager and has been preapproved in writing by Owner as a change order, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

...

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007-A201–2017, as amended, or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

...

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or ~~offices other than the site office, other offices,~~ except as specifically provided in Section 6.2, or as may be provided in Article 11;

...

- .3 Overhead and general conditions and expenses, except as may be expressly included in Sections 6.1 to 6.7;

...

- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the fault or negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the ~~Contract;~~ Contract, including but not limited to the costs of correcting damaged, defective or non-conforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work;

...

- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;~~and~~

...

- .8 Costs for services incurred during the Preconstruction ~~Phase~~ Phase; and

...

- .9 There shall be no fee (Overhead and Profit Fee or General Conditions Fee) charged on either the Overhead and Profit Fee or General Conditions Fee.

PAGE 16

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) ~~before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds~~ Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

...

§ 6.10.1 For purposes of ~~Section 6.10, the term "related party"~~ Sections 6.10 and 6.3, the term "Related Party" shall mean a parent, subsidiary, affiliate or other entity related to or affiliated with or having common ownership or management with the Construction Manager; Manager or in which the Construction Manager has direct or indirect ownership or control; any entity in which any stockholder in, or management employee of, the Construction Manager ~~owns any~~ has a direct or indirect interest in excess of ten percent in the aggregate; any entity owned in whole or in part by Construction Manager; any entity with more than a fifty percent (50%) interest in the Construction Manager; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term ~~"related party"~~ "Related Party" includes any member of the immediate family of any person identified above.

...

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a ~~related party,~~ Related Party, the Construction Manager shall notify the Owner of the specific nature of the contemplated

transaction, including the identity of the ~~related party~~ Related Party and the anticipated cost to be incurred, before any such transaction is ~~consummated or cost incurred~~ solicited, bid pursuant to K.S.A. § 19-216e, consummated or otherwise incurred as a cost. If the Owner, after such notification, authorizes the proposed ~~transaction~~ transaction to be solicited and bid pursuant to K.S.A. § 19-216e, and the work awarded to the Construction Manager pursuant to K.S.A. § 19-216e then the cost incurred shall be included as a cost to be ~~reimbursed~~ reimbursed subject to the terms of this Agreement, and the Construction Manager shall procure the Work, equipment, goods or service from the ~~related party~~ Related Party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a ~~related party~~ Related Party according to the terms of Sections 2.3.2.1, 2.3.2.2 and ~~2.3.2.3~~ 2.3.2.3, without recourse against Owner

...

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors or other representatives shall, during regular business hours and upon reasonable notice, be afforded immediate access to, and shall be permitted to inspect, audit and copy, the Construction Manager's records and accounts, including but not limited to complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ~~three~~ seven years after final payment, or for such longer period as may be required by law. Such right of access may be exercised with respect to records pertaining to changes, contract performance, Claims, or if this Agreement is terminated for default or convenience. Construction Manager shall include the provisions of this Section 6.11 in all its contracts and all tier subcontracts. If any review under this Section 6.11 reveals an overcharge upon final reconciliation of the GMP, Construction Manager shall pay the Owner upon demand an amount equal to one hundred twenty percent (120%) of such overcharge, as reimbursement for such overcharge and the administrative expenses incurred in determining the overcharge. The requirements of this Section 6.11 shall not apply to any portion of an overcharge that is the subject of a good faith dispute between the Owner and Construction Manager.

...

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the ~~Architect~~ Architect and approved by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract ~~Documents~~ Documents, subject, however, to the other provisions of Article 7 and AIA Document A201-2017, as amended.

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§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, ~~or as follows:~~ month.

...

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the fifth day of a month, the Owner shall make payment of the ~~certified amount~~ undisputed amounts from timely and properly completed applications for payment to the Construction Manager not later than the fifth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment ~~shall be made by the Owner not later than () days after the Architect receives the Application for Payment of amounts~~ due Construction Manager from Owner, except Retainage, shall be made within 30 days after Owner receives a timely, properly completed, undisputed request for payment according to terms of the Contract. If there are extenuating circumstances that would preclude approval of payment within 30 days, then payment shall be made within 45 days after Owner receives such payment request.

...

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already have been made or intended to be made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment. the amount in the pending Application for Payment. With each Application for Payment, the Construction Manager shall submit an updated Construction Schedule in a format agreed to by the Owner and Construction Manager.

...

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment. Cost of the Work incurred since the last application for payment plus the applicable Fee.

...

- ~~1~~ Take ~~that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values; the allowable Cost of Work for the pending Application for Payment.~~ Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007; A201-2017, as amended ;

...

- ~~2~~ Add ~~that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;~~

...

- ~~3~~ Add the Construction Manager's Fee, less retainage of ~~percent (%).~~ The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion; the Construction Manager's Fee (its subparts, as applicable);

...

- ~~4~~ ~~3~~ Subtract retainage of Five percent (~~%~~) from that portion of the Work that the Construction Manager self performs; 5.00 %);

...

- ~~5~~ Subtract the aggregate of previous payments made by the Owner;

...

~~6~~—4 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors or other representatives in such documentation; and

...

~~7~~—5 Subtract amounts, if any, for which the Owner has set off or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201—~~2007~~A201–2017, as amended.

...

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. -Subcontractor retention shall not be greater than the Construction Manager's retention.

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§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Owner and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Owner or Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Owner or Architect has made exhaustive or continuous on-site inspections; or that the Owner or Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors or other representatives acting in the sole interest of the Owner.

...

§ 7.1.11 "Disputes" shall exist as to the amounts due Construction Manager in an Application for Payment only in the event that the Application for Payment is in error, there is reasonable evidence that Construction Manager is in violation of a term(s) of the Contract Documents, and/or there are claims or the suggestion of claims on account of Construction Manager for the Work but only to the extent caused by Construction Manager and those for which it is responsible. (Individually and in combination referred to as "Cause of Dispute.") The amount of the dispute shall be one hundred and twenty-five percent (125%) of Owner's good faith estimate of the dollars believed to be necessary to protect Owner from economic harm resulting from the Cause of Dispute, and may be withheld from any Application for Payment. In the event of a Cause of Dispute, Owner will provide written notice to Construction Manager of the reasons therefor and shall thereafter provide Construction Manager with a reasonable opportunity to cure. Within seven calendar days of the removal of the Cause of Dispute to the Owner's reasonable satisfaction, the Owner shall pay Construction Manager the money withheld as a result of the resolved Cause of

...

§-Dispute.

...

§ 7.2 Final Payment

...

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract ~~Sum, Sum less that portion of the~~ retainage attributable to the Work on the Project still being performed, shall be made by the Owner to the Construction Manager when

...

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document ~~A201-2007~~, A201-2017, as amended, and to satisfy other requirements, if any, which extend beyond final payment;

...

- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;~~and~~

...

- .3 a final Certificate for Payment has been issued by the ~~Architect~~, Architect; and

...

- .4 all requirements of Section 9.8 of AIA Document A201-2017, as amended, have been satisfied.

...

§ 7.2.2 The Owner's auditors or other representative will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors or other representatives report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document ~~A201-2007~~, A201-2017, as amended. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document ~~A201-2007~~, A201-2017, as amended. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

...

§ 7.2.3 If the Owner's auditors or other representative report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of ~~A201-2007~~, A201-2017, as amended. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors or other representative becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for ~~Payment~~.

PAGE 19

§ 7.2.4 ~~If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager. Payment and agreed by Owner to be undisputed.~~

...

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document ~~A201-2007~~, A201-2017, as amended.

...

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document ~~A201-2007~~, A201-2017.)

...

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of ~~A201-2007~~, A201-2017, as amended. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

...

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document ~~A201-2007~~, A201-2017, as amended, the method of binding dispute resolution shall be as follows:

...

☐ Arbitration pursuant to Section 15.4 of AIA Document ~~A201-2007~~A201-2017

...

☒ Litigation in a court of competent jurisdiction

...

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document ~~A201-2007~~, A201-2017, as amended, for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

...

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of ~~A201-2007~~, A201-2017, as amended.

...

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section ~~4-1-4.1~~ or include any costs, profit or overhead for services that were not performed.

PAGE 20

- .2 Add the Construction Manager's Fee (its subparts, as applicable) computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

...

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will ~~reimburse or indemnify the Construction Manager~~ be responsible for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been ~~terminated~~ terminated and they arose after assignment. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such ~~termination~~ termination, but in no event shall such costs include any costs, profit or overhead for services that were not performed.

...

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document ~~A201-2007~~ A201-2017, as amended.

...

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of ~~A201-2007~~ A201-2017, as amended, shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this ~~Agreement~~ Agreement or include any costs, profit or overhead for services that were not performed.

...

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of ~~A201-2007~~ A201-2017, as amended, shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, ~~except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed above~~ or include any costs, profit or overhead for services that were not performed.

...

The Work may be suspended by the Owner as provided in Article 14 of AIA Document ~~A201-2007~~ A201-2017, as amended. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document ~~A201-2007~~ A201-2017, as amended, except that the term "~~profit~~" "profit" shall be understood to mean the ~~Construction Manager's Overhead and Profit Fee~~ as described in Sections 5.1 and 5.3.5 of this Agreement.

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§ 10.4 In no event shall any costs or fees incurred by Construction Manager in relation to the Construction Phase be paid to Construction Manager until Owner issues Construction Manager a Construction Phase notice to proceed. Until such time, all such costs and fees shall be borne entirely by Construction Manager and not paid by Owner, even if Owner derives a benefit therefrom. Said costs and fees shall become eligible for payment under the terms of this Agreement only upon issuance of a Construction Phase notice to proceed. In the event Owner does not issue

a Construction Phase notice to proceed for whatever reason, the Construction Manager will not receive any fees, expected profits or other compensation in relation to the Construction

...

ARTICLE Phase.

...

ARTICLE 11 MISCELLANEOUS PROVISIONS

...

§ 11.1 Terms in this Agreement shall have the same meaning as those in ~~A201-2007~~ A201-2017, as amended.

...

Section 1.5 of ~~A201-2007~~ A201-2017 shall apply to both the Preconstruction and Construction Phases.

...

Section 13.1 of ~~A201-2007~~ A201-2017, as amended, shall apply to both the Preconstruction and Construction Phases.

...

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of ~~A201-2007~~, A201-2017, as amended, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

...

§ 11.5.1 INDEMNITY

§ 11.5.1.1 To the fullest extent permitted by Law, the Construction Manager shall hold harmless and indemnify the Owner and any of its officers, directors, employees, and their successors (collectively the "Indemnified Parties"), from and against liability, loss, costs, and expenses arising out of or resulting from the negligent performance of the Construction Manager's Services under this Agreement to the extent caused by the negligent act or omission (i) of the Construction Manager, or (ii) of the Construction Manager's subcontractors and/or suppliers, or (iv) the agents, servants, or employees of Construction Manager and any Construction Manager's subcontractor and/or supplier, to the extent such claim, damage, loss or expense is not caused by the negligence or fault of any of the Indemnified Parties. Nothing contained herein shall be construed to require Construction Manager to indemnify the Indemnified Parties from liability, losses, costs and expenses proximately caused by the Indemnified Parties, or each of them. The above-said right of indemnity shall be in addition to other rights of indemnity that any of the Indemnified Parties may possess. The indemnification obligations of Construction Manager under this Agreement shall survive termination of this Agreement or final payment hereunder.

§ 11.5.1.2 In any and all claims against the Owner by any employee of Construction Manager or any of Construction Manager's subcontractors and/or suppliers, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable, the indemnity obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for Construction Manager or any of Construction

Manager's subcontractors and/or suppliers under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

§11.5.2 KANSAS LEGAL REQUIREMENT

§11.5.2.1 If the successful firm is a corporation organized outside the State of Kansas, it will be necessary to qualify with the Secretary of State of Kansas to do business within the State (K.S.A. 17-7301 K.S.A. seq.). Nonresident individuals or partnerships and nonresident corporations not already registered with the Secretary of State are required to register with the Director of Revenue, to file a bond to assure payment of taxes, and to pay a fee of \$10 for each contract or subcontract with exceeds \$3,000 (K.S.A. 79-1008 to 79-1015).

§ 11.5.2.2 Nonresident contracts are required to appoint an agent for service of process who is a resident of the county in which the work is to be performed. It is unlawful for any payment to be made until the appointment of a local agent has been filed with the Clerk of the District Court (K.S.A. 16-113).

§ 11.5.2.3 Construction Manager shall not in any way, directly or indirectly, discriminate against any person because of age, race, color, handicap, sex, national origin, or religious creed.

§ 11.5.2.4 Consistent with K.S.A. 44-1030, the Construction Manager agrees as follows:

- .1 The Construction Manager shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, national origin or ancestry.
- .2 In all solicitations or advertisements for employees, the Construction Manager shall include the phrase "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (the "Commission").
- .3 If the Construction Manager fails to comply with the manner in which it reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Construction Manager shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the Owner.
- .4 If the Construction Manager is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Construction Manager shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the Owner, without recourse against Owner.
- .5 The Construction Manager shall include the provisions of Clauses (1) through (4) in every consulting agreement, subcontract or purchase order so that provisions will be binding upon such consultant, subcontractor or vendor.

§ 11.5.3. INTERPRETATION. In the event of a conflict between the terms and conditions contained within this Agreement with any terms and conditions within the General Conditions as amended, the term or condition that imposes the greater responsibility on Construction Manager or which more greatly limits Construction Manager's rights shall control.

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- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended.

...

- .2 AIA Document A201–2007, A201–2017, General Conditions of the Contract for Construction, as amended

...

- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

...

~~4~~ AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

...

~~5~~ Other documents:

...

Exhibit B: General Conditions Matrix – Douglas County Correctional Facility Expansion

PAGE 23

Sarah Plinsky,
Interim County Administrator or Designee-

Mark Iammarino,
Vice President & General Manager -

Certification of Document's Authenticity

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(Signed)

Counsel for Douglas County

(Title)

8-7-19

(Dated)



AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Douglas County Correctional Facility Expansion

THE OWNER:

(Name, legal status and address)

The Board of County Commissioners of Douglas County, Kansas
1100 Massachusetts Street
Lawrence, KS 66044

THE ARCHITECT:

(Name, legal status and address)

TREANORHL, INC.
1040 Vermont Street
Lawrence, KS 66044

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, Modifications issued after execution of the Contract, written responses to formal requests for information, and each document's respective exhibits and attachments, all of which form the Contract Documents, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid or make a proposal, Instructions to Bidders or persons making proposals, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, approved Shop Drawings and submittals, requests for information, proposed change orders, the reports and drawings of subsurface and physical conditions, or portions of Addenda relating to bidding or proposal requirements. Electronic manifestations of documents shall not be Contract Documents, and shall be used at the risk of its user.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be obligated to Owner for and entitled to performance and enforcement of obligations under the Contract related to performance of the Architect's duties. In the event of a conflict or inconsistencies among terms and conditions contained within the Contract Documents, the term or condition that imposes the greater responsibility on Contractor or which more greatly limits Contractor's rights shall control, as determined by Owner.

§ 1.1.3 The Work

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

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies among parts of the Contract Documents, or among the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement, as determined by Owner. The terms and conditions of this Section 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

.1 Whenever a product is specified in accordance with a federal specification, an ASTM Standard, and American National Standards Institute Specification, or other association standard, the Contractor shall present a certificate from the manufacturer when requested by the Architect or Owner or required in the Specifications, certifying that the product complies with the particular standard or specification. When requested by the Architect, Owner or as specified, support test data shall be submitted to substantiate compliance.

.2 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Modification in the Work. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

.3 No provision of any such reference document or standard shall be effective to change the responsibilities of Owner, Architect or other person involved in the Project from those set forth in the Contract Documents, nor to assign to any of them any responsibility, duty or authority for safety precautions or procedures or to supervise or direct the performance of the Work.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of any reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner.

§ 1.5.3 Prior to execution of the Contract, the Contractor and each Subcontractor evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the safety of then Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor or supplier to have complied with the requirements of this Section 1.5.3.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will endeavor to use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data, but agree that electronic manifestations of documents shall not be Contract Documents, and shall be used at the risk of its user.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

(Paragraph Deleted)

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§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1 due to reasonable and timely requests, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written reasonable request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide reasonable evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is properly stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others, but only if they need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits, fees and performance obligations that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Architect is the person or entity is identified in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 [deleted]

§ 2.3.4 The Owner shall furnish surveys describing known physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for reasonably identified information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults, fails or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default, failure or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6 Extent of Owner's Rights

§ 2.6.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted (i) in the Contract Documents, (ii) at law or (iii) in equity.

§ 2.6.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the site, Work or Project, notwithstanding any of the rights and authority granted the Owner in the Contract Documents. As reasonable and appropriate for the circumstances, Construction Manager will timely notify the Sheriff Designated Representatives of activities anticipated to have a possible impact on the operations of the existing facility (including but not limited to security and detention of inmates within the existing facility) and present a plan for addressing such impacts for Owner's approval but such approval shall be limited to Owner's operations of the existing facility.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor and its Subcontractors and suppliers shall be lawfully licensed, if and as required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. All of Contractor's work shall conform to the Contract Documents. No change therefrom shall be undertaken without the prior review by the Architect and approval by the Owner. Contractor shall be responsible for details of the Work necessary to carry out the intent of the drawings and specifications, or which are customarily performed. When more detailed information is required for performance of the Work or when an interpretation of the Contract Documents is requested, the Contractor shall submit a written request to the Architect and Owner, and the Architect shall furnish such information or interpretation in the form of an architect's supplemental instruction or other written or drawn form or drawing. Where only part of the Work is indicated, similar parts shall be considered repetitive. Where any detail is shown and components thereof are fully described, similar details not fully described shall be considered to incorporate the fully described details and components. In the case of inconsistency between drawings and specifications or within either documents not clarified by addendum, the better quality or greater quantity shall be provided in accordance with the Architect's interpretation at no extra cost to the Owner.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by (in)activities or duties of the Owner or Architect in the administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 Contractor shall staff the Project with a competent superintendent and project manager who shall not be changed without the Owner's consent, which will not be unreasonably withheld.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, correlated personal observations with requirements of the Contract Documents, and is satisfied as to the matters under Section 1.5.3.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

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§ 3.3.4 Contractor shall be fully responsible for the layout of the Work and shall ensure that the Work is in the proper location as required by the Contract Documents. Contractor shall establish and maintain alignment and grades, including the setting of stakes, ranges, grid lines and other appurtenance facilities. Before starting construction, Contractor shall ensure that monuments or markers which delineate the site boundaries are placed in the proper position, and that all portions of the work are wholly within limits of Owner's ownership, leasehold, easement or right-of-way interest in the property. Contractor shall be responsible for the accurate replacement of any boundary markers which are disturbed, removed or destroyed during the performance of the Work.

§ 3.3.5 The Contractor shall be responsible for the shoring required to protect the Work or adjacent property and shall pay for any damage caused by failure to shore or by improper shoring or by failure to give proper notice. Shoring shall be removed only after completion of permanent supports.

§ 3.4 Labor and Materials

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

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provisions apply:

.1 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the Contract Time and the construction schedule in the event the substitution is acceptable; and (v) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

.2 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit the designated space; (iv) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (v) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interest, in terms of cost, time or other considerations.

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

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance. Should the Work be delayed due to a labor disturbance beyond the reasonable control of the Contractor and arising off the Project, the

Contractor shall be entitled to an equitable schedule extension. Costs associated with such delay will be considered Cost of the Work, within the GMP but not subject to any part of the Construction Manager's Fee.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.5 Warranty

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

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor agrees to assign the warranties to the Owner at the time in accordance with Section 9.8.4 and further agrees to perform the Work in such manner so as to preserve any and all such warranties.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 The Contractor shall secure and pay for all building permits necessary for Contractor to carry out the Work. The Contractor shall secure and pay for all other applicable permits, licenses and performance obligations necessary for the Contractor to execute and complete the Work. All connection charges or inspection fees as may be imposed by any public authority or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project in connection with the Work. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary backup materials, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or in documents presented by the Owner as unconditional representations of actual conditions or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ten (10) working days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions do not justify an equitable adjustment to the terms of the Contract, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect in writing while continuing to perform other portions of the Work. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the affected operations. The Contractor shall continue to suspend such affected operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent and Project Manager

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work, and a competent project manager and necessary assistants who are not required to be on site. The superintendent and project manager shall represent the Contractor, and communications given to the superintendent or project manager shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent and project manager in writing. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or project manager or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent or project manager to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent or project manager without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect that fulfill the requirements of the Contract Documents.

§ 3.10.4 The construction schedule shall be in such detail reasonably acceptable to the Owner and Architect and shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). If the form of the schedule is not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Architect or Owner and resubmitted for such acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner and Architect of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to as "progress reports"). In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Modification. Acceptance, approval or review by the Owner or Architect under this Article shall not accelerate the Contract Time, any Milestone Date or the Work or alter, adopt or otherwise approve the construction or submittal schedules, but rather is limited to the form of the schedules.

§ 3.10.5 In the event the Owner or Architect reasonably determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents as a result of Contractor negligence, the Owner and Architect shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's or Architect's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner or Architect under or pursuant to this Section 3.10.5.

.2 The Owner or Architect may exercise the rights furnished it under or pursuant to this Section 3.10.5 as frequently as the Owner or Architect deems necessary to help ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents..3

Action or inaction by Owner or Architect under this Article shall not relieve or alter Contractor's responsibilities under the Contract Documents, including but not limited to any schedules.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by or on behalf of the Contractor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and help establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents but are the Contractor's representations as to how it will perform its work. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's

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responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional and who shall comply with reasonable requirements of the Owner regarding qualifications and insurance. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor and any entity for which the Contractor is responsible shall not erect any advertising on the Project site without the prior written consent of the Owner other than advertising as required by statute.

§ 3.13.3 Protection of construction materials and equipment and any Owner furnished materials and equipment to be incorporated in the Work stored at the Project site from weather, flood, environmental conditions, theft, damage, Subcontractors and all other adversity is solely the responsibility of the Contractor.

§ 3.13.4 Without prior written approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Owner. The Contractor shall comply with all rules promulgated by the Owner in connection with the use and occupancy of the Project site as established in the GMP Amendment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work, to make its parts fit together properly, or to properly fit with or separate from adjacent property. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise expressly required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction or property of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them ("Indemnitee") from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 The Contractor's defense and indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority.

§ 3.18.4 If one or more of the Indemnitees demand performance by the Contractor of obligations under this Section 3.18 or other provisions of the Contract Documents and if Contractor refuses to assume or perform, or delays in assuming or performing Contractor's obligations, Contractor shall pay each Indemnitee who has made such demand its respective attorneys' fees, costs, and other expenses incurred in enforcing this provision. The defense and indemnity required herein shall, however, be a binding obligation upon Contractor whether or not an Indemnitee has made such demand. Even if a defense is successful to a claim or demand for which Contractor is obligated to indemnify the Indemnitees from under this Section, Contractor shall remain liable for all costs of defense. The indemnity obligations of Contractor under this Section 3.18 shall survive termination of this Agreement or final payment thereunder.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor may communicate directly without Architect and shall include the Architect in all communications identified or believed to be material to the Architect's services or professional responsibilities, but it remains the sole duty of Architect to enquire and investigate in regard to communications and other information necessary for the performance of its services and professional responsibilities. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner or its written designee. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts apparently due the Contractor and will issue Certificates for Payment in such amounts. Any review, certification or approval of an Application for Payment by Architect or other third party (by Certificate for Payment or otherwise) is not a declaration that such Application for Payment or the sums within are undisputed.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable after consultation with Owner, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval

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

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree in writing, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site.

§ 4.2.11 The Architect will interpret and provide opinions on matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and the related opinions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and giving opinions thereon, the Architect will endeavor to secure faithful performance by both Owner and Contractor and will not show partiality to either.

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 At the time of GMP submission, the Contractor shall furnish the Owner and the Architect, in writing, with (i) the name, trade, and subcontract amount for each Subcontractor, and (ii) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. Contractor remains solely responsible for the actions and inactions of each Subcontractor.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All subcontracts shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract. In no event shall such designation give Subcontractor a direct claim for payment against Owner.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities, damage to the Work, discrepancies or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Section 7.3 and Subparagraph 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Contract Time and the construction schedule.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3 and 7.3.8, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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- .1 Costs of labor, including applicable payroll taxes, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Reasonable rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Contractor shall not request payment for Work completed under the Construction Change Directive in Applications for Payment until final determination of the total cost. If a reasonable time has expired without a final determination, Contractor may request payment for such completed Work and the Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified, and such sum shall be included in the next Application for Payment. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Time, the Architect shall determine the method and the adjustment on the basis of reasonable durations and impacts. In such case, the Contractor shall keep and present, in such form as the Architect may prescribe, an impact schedule with appropriate supporting data.

§ 7.3.12 If Contractor does not present an itemized accounting, impact schedule or appropriate supporting data to the satisfaction of Architect with twenty-one (21) days of the issuance of the Construction Change Directive, Architect shall decide the issues based on its professional judgment and experience, and Contractor waives the right to submit such information and agrees to the Architect's decision.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall promptly notify the Architect in writing and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order

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for a minor change without prior written notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, or could not have been reasonably anticipated, by the Contractor, (2) was not avoidable and (3) is of a duration not less than one (1) day.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Subparagraph 8.3.1, shall be the sole remedy of the Contractor for any delay at any time in the commencement or progress of the Work, including but not limited to any (1) delay in the commencement, prosecution or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity or acceleration, or (4) other similar claims, (collectively referred to in this Subparagraph 8.3.3 as "Delays"), whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with written notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration.

§ 8.3.4 If the Contractor submits a schedule or progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect or Owner. A failure to object shall not be deemed consent to the allocations or the values contained therein.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, releases and waivers of liens from Subcontractors and suppliers, and other information under Section 9.3.1.3, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a duly executed Contractor's lien and/or payment bond claim waiver to the extent of payments received and duly executed and acknowledged sworn statements showing all Subcontractors and suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and suppliers; (ii) duly executed waivers of mechanics' and suppliers' liens and/or payment bond claims from all Subcontractors to the extent of payments received and, when appropriate, from suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts due for work completed during the period of time covered in any previous Application for Payment to the extent of payments received; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. The Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed Twenty Thousand Dollars (\$20,000.00) at any time without written approval of the Owner.
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in

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form and substance to the Owner and the Owner's Lender, including without limitation, recorded financing statements, UCC filings, and UCC searches.

.3 With each Application for Payment, Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.

.4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.

.5 Representatives of the Owner shall have the right to make inspections of the storage areas at any time.

.6 Such materials shall be (i) protected from diversion, destruction, theft and damage to the satisfaction of the Owner; (ii) specifically marked for use on the Project; and (iii) segregated from other materials at the storage facility.

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

§ 9.3.3.1 The Contractor further expressly undertakes to defend the Owner, Owner's title insurer and/or Owner's lender, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Owner, Owner's title insurer and/or Owner's lender as a result of claims made against payment bonds and/or liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, or any portion of the property of any of them (bond and lien claims referred to collectively as "liens" in this Subparagraph 9.3.3). The Contractor hereby agrees to defend, indemnify and hold the Owner, Owner's title insurer and/or Owner's lender harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings;

§ 9.3.3.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor has caused the lien to be released from the site of the Project and/or the applicable bond; and

§ 9.3.3.3 Notwithstanding the foregoing, Owner reserves the right to settle any disputed payment bond claim or mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner, upon demand, for any payments so made.

§ 9.3.4 Notwithstanding any provision to the contrary, the following terms apply to all Work, Applications for Payments and payments.

§ 9.3.4.1 Payments are due and payable within the times stated in the Contract Documents after presentation of an Application for Payment in the amount of the undisputed amounts in each timely and properly completed Application for Payment. Undisputed amounts from timely and properly completed Applications for Payment unpaid after the statutorily required time period shall bear interest at the legal rate prevailing in Kansas. Any review, certification or approval of an Application for Payment by Architect or other third party (by Certificate for Payment or otherwise) is not a declaration that such Application for Payment or the sums within are undisputed.

§ 9.3.4.2 "Disputes" shall exist as to the amounts due Contractor in an Application for Payment only in the event that the Application for Payment is in error, there is reasonable evidence that Contractor is in violation of a term(s) of the Contract Documents, and/or there are claims or the suggestion of claims on account of Contractor for the Work but only to the extent caused by Contractor and those for which it is responsible. (Individually and in combination referred to as "Cause of Dispute.") The amount of the dispute shall be one hundred and twenty-five percent (125%) of Owner's good faith estimate of the dollars believed to be necessary to protect Owner from loss related to the Cause of Dispute, and may be withheld from any Application for Payment or payment. In the event of a Cause of Dispute, Owner will provide written notice to Contractor of the reasons therefor and shall thereafter provide Contractor with a reasonable opportunity to cure. Within seven calendar days of the resolution of the Cause of Dispute to the Owner's reasonable satisfaction, the Owner shall pay Contractor the money withheld as a result of the resolved Cause of Dispute.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is apparently due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum, or (5) concluded that the application or amounts thereunder are undisputed. Any review, certification or approval of an Application for Payment by Architect or other third party (by Certificate for Payment or otherwise) is not a declaration that such Application for Payment or the sums within are undisputed.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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

§ 9.5.2 When Contractor disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, it may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment of all undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Notwithstanding anything in this Subparagraph 9.6.2 to the contrary, the Owner may elect, in the Owner's sole discretion and upon written notice to Contractor, to make any payment requested by the Contractor on behalf of a Subcontractor of any tier jointly payable to the Contractor and such subcontractor. The Contractor and such Subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (i) contract between the Owner and a Subcontractor of any tier, (ii) obligations from the Owner to such Subcontractor, or (iii) rights in such Subcontractor against the Owner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor. Contractor shall not condition payment to a Subcontractor or supplier contingent upon receipt of payment from Owner, except to the extent that nonpayment is made expressly and solely as a result of the performance of such Subcontractor or supplier.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law, and nothing within this Section shall be deemed to create a fiduciary relationship between a Subcontractor or supplier and Owner or a right to payment from the Owner directly to a Subcontractor or supplier. The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the undisputed amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, or there is cause with non-certification under Section 9.5.1, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all required certificates of occupancy and any other permits, approvals, licenses, certifications, authorizations, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project and whose procurement is the responsibility of the Contractor or arising from its Work. Should Substantial Completion and/or Certificate of Occupancy be delayed due to no fault of the Contractor, and the Work has been carried out in accordance with the Contract Documents, such delay shall not serve as a reason to withhold final payment.

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

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete under this Section 9.8. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof satisfies Substantial Completion, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have

accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Issuance of the Final Certificate is not a representation that the application is undisputed.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (7) as-built drawings, (8) a complete list of Subcontractors and principal vendors on the Project, including addresses and telephone numbers, (9) an indexed, loose leaf binder of complete installation, operation and maintenance manuals, including all manufacturers' literature, of equipment and materials used in the Work, (10) an indexed, loose leaf binder, of all inspection reports, permits, and temporary and final certificates of occupancy and licenses necessary for the occupancy of the Project, and, (11) any and all other items required pursuant to the Contract Documents. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to

certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 No payment, whether partial or final, or approval or certification of any payment, or partial or entire use or occupancy of the Work or the Project, by Owner or Architect shall constitute a waiver of Claims by the Owner. A nonexhaustive list of claims that remain include, but are not limited to:

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

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a release and waiver of claims by that payee against Owner and/or Architect relating to the Work and for every act or alleged neglect of Owner and/or Architect related to the Work or Contract Documents.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract, including but not limited to the Work. Unsafe practices are not permitted.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

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

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including barriers, posting danger signs and other protection and warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damages to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition in writing.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. The Work in the affected area shall be resumed immediately following the occurrence of any one of the following events: (i) the Owner causes remedial work to be performed that results in the absence of materials or substances such as asbestos or polychlorinated biphenyl (PCB); or (ii) the Owner and the Contractor, by written agreement decide to resume performance of the Work; or (iii) the Work may safely and lawfully proceed, as evidenced by a written report to both the Owner and the Contractor, which is prepared by a reputable environmental engineer. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor, Subcontractor or supplier, or any entity for which any of them is responsible, brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the

Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents and in compliance with all applicable requirements for such Work, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

11.1 CONTRACTOR'S INSURANCE

11.1.1 Contractor shall secure from the Date of Commencement as established in the GMP Amendment and maintain for such periods of time as set forth below, insurance of such types and in such amounts specified below, to protect Contractor, Owner and others against all hazards or risks of loss described below.

11.2 COMMERCIAL GENERAL LIABILITY

11.2.1 Contractor shall secure and maintain from the date of the Agreement and for a period of at least three (3) years from the date of Final Completion of the entire Work commercial general liability insurance ("CGL") with a combined single limit of not less than Three Million Dollars (\$3,000,000) per occurrence. If such CGL insurance contains a general aggregate limit, it shall separately apply to this Project. Such CGL insurance shall be on an occurrence basis.

11.2.2 The CGL insurance required herein shall be written on a comprehensive form and shall cover claims and liability in connection with or resulting from the Contractor's operations and activities under the Contract, for personal injuries, occupational sickness, disease, death or damage to tangible property of others arising out of any operations or activities of the Contractor, its agents, or any Subcontractors of any tier or by anyone directly or indirectly employed by either of them.

11.2.3 The CGL insurance required herein shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) coverages. There shall be no endorsement or modification of the CGL policy limiting the scope of coverage for liability arising from blasting, explosion, collapse, or underground property damage.

11.2.4 Owner and Lender shall be endorsed as "additional insureds" under the CGL policy to the fullest extent permitted by law. The CGL policy shall also contain a "Separation of Insureds" provision. If Contractor's CGL policy does not contain a "Separation of Insureds" provision, Contractor's CGL policy shall be endorsed to provide cross-liability coverage.

11.2.5 Contractor waives all rights against Owner, Lender and their consultants, agents, officers, representatives and employees for recovery of damages to the extent those damages are covered by the CGL policy required hereunder.

11.3 AUTOMOBILE LIABILITY

11.3.1 Contractor shall secure and maintain from the date of the Agreement and for a period of at least three (3) years from the date of Final Completion of the entire Work, insurance, to be on comprehensive form, which shall protect Contractor against any and all claims for all injuries and all damage to property arising from the use of automobiles, trucks and motorized vehicles, in connection with the performance of Work under this Contract, and shall cover the operation on or off the site of the Work of all motor vehicles licensed for highway use whether they are owned, non-owned or hired. Such insurance shall include contractual liability coverage and shall provide coverage on the basis of the date of any accident. The liability limits under such policy shall not be less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage per accident. Owner and Lender shall be endorsed as an "additional insured".

11.3.2 Contractor waives all rights against Owner, Lender and their consultants, agents, officers, directors and employees for recovery of damages to the extent such damages are covered by the automobile liability insurance required hereunder.

11.4 WORKERS' COMPENSATION INSURANCE

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(Paragraph Deleted)

11.4.1 Contractor shall purchase and maintain workers' compensation insurance and employers' liability insurance which shall protect Contractor from claims for injury, sickness, disease or death of Contractor's employees or statutory employees. The insurance policies required hereunder shall include an "all states" or "other states" endorsement. In case any Work is sublet, Contractor shall require any Subcontractor of any tier to provide the insurance coverages required under this Section 11.4.

11.4.2 Contractor's workers' compensation insurance coverage shall be in compliance with all applicable Laws, including the statutes of the state where the Project is located. Contractor's employers' liability coverage limits shall not be less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease.

11.4.3 Contractor waives all rights against Owner, Lender and their consultants, agents, officers and directors and employees for recovery of damages to the extent these damages are covered by the workers' compensation and/or employers' liability insurance required hereunder.

11.5 GENERAL REQUIREMENTS FOR LIABILITY INSURANCE COVERAGES

11.5.1 All insurance coverages procured by Contractor shall be provided by agencies and insurance companies acceptable to and approved by Owner. All insurance coverages shall be provided by insurance companies that are duly licensed to conduct business in the state where the Project is

located as an admitted carrier. The form and content of all insurance coverages provided by Contractor are subject to the approval of Owner. All required coverages shall be obtained and paid for by Contractor. Any approval of the form, content or insurance company by Owner shall not relieve the Contractor from the obligation to provide the coverages required herein.

11.5.2 All insurance coverage procured by the Contractor shall be provided by insurance companies having policyholder ratings no lower than "A" and financial ratings not lower than "X" in the Best's Insurance Guide, latest edition in effect as of the date of the Agreement, and subsequently in effect at the time of renewal of any policies required by the Contract Documents. Insurance procured by Contractor covering the additional insureds shall be primary insurance and any insurance maintained by Owner shall be excess insurance.

11.5.3 All insurance required hereunder shall provide that the insurer's cost of providing the insureds a defense and appeal, including attorneys' fees, shall be supplementary and shall not be included as part of the policy limits. Contractor shall cause its insurance carriers to waive all rights of subrogation against Architect, Owner and their officers, employees and agents to the fullest extent permitted by law.

11.5.4 The Contractor shall furnish Owner with certificates, policies or binders which indicate the Contractor and Owner are covered by the required insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates, policies or binders shall be submitted to Owner within ten (10) days from the date of the execution of the Agreement. All certificates, policies and binders shall be executed by a duly authorized agent of each of the applicable insurance carriers and shall contain the statement that: "The insurance covered by this certificate will not be canceled or altered except after thirty (30) days' written notice has been received by Owner." All certificates, policies and binders shall be in a form acceptable to Owner. Contractor shall provide certified copies of all insurance policies required above within ten (10) days of Owner's written request for said copies.

11.5.5 With respect to all insurance coverages required to remain in force and affect after final payment, Contractor shall provide Owner additional certificates, policies and binders evidencing continuation of such insurance coverages along with Contractor's application for final payment and shall provide certificates, policies and binders thereafter as requested by Owner. 11.5.6 The maintenance in full current force and effect of such forms and amounts of insurance and bonds required by the Contract Documents shall be a condition precedent to Contractor's exercise or enforcement of any rights under the Contract Documents.

11.5.7 Failure of Owner to demand certificates, policies and binders evidencing insurance coverages required by the Contract Documents, approval by Owner of such certificates, policies and binders or failure of Owner to identify a deficiency from evidence that is provided by Contractor shall not be construed as a waiver of Contractor's obligations to maintain the insurance required by the Contract Documents.

11.5.8 Owner shall have the right to terminate the Contract if Contractor fails to maintain the insurance required by the Contract Documents.

11.5.9 If Contractor fails to maintain the insurance required by the Contract Document, Owner shall have the right, but not the obligation, to purchase said insurance at Contractor's expense. If Owner is damaged by Contractor's failure to maintain the insurance required by the Contract Documents, Contractor shall bear all reasonable costs properly attributable to such failure.

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- 11.5.10 By requiring the insurance set forth herein and in the Contract Documents, Owner does not represent or warrant that coverage and limits will necessarily be adequate to protect Contractor, and such coverages and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- 11.5.11 If Contractor's liability policies do not contain a standard separation of insureds provision, such policies shall be endorsed to provide cross-liability coverage.
- 11.5.12 If a part of the Work hereunder is to be sublet, the Contractor shall: (1) require each Subcontractor to secure insurance which will protect said Subcontractor and supplier against all applicable hazards or risks of loss designated in accordance with Article 11 hereunder; and (2) require each Subcontractor or supplier to assist in every manner possible in the reporting and investigation of any accident, and upon request, to cooperate with any insurance carrier in the handling of any claim by securing and giving evidence and obtaining the attendance of witnesses as required by any claim or suit.

11.6 BUILDER'S RISK INSURANCE

- 11.6.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the state where the Project is located, as an admitted carrier, builder's risk insurance on the entire Work. Such insurance shall be written on a completed value form and in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work. The insurance shall apply on a replacement cost basis.
- 11.6.2 The insurance as required in Section 11.6.1 shall name as insureds, Owner, Contractor and all Subcontractors of any tier. The insurance policy shall contain a provision that the insurance will not be canceled, allowed to expire or materially changed until at least thirty (30) days prior written notice has been given to Owner.
- 11.6.3 The insurance as required in Section 11.6.1 shall cover the entire Work. Insured property shall include portions of the Work located away from the site but intended for use at the site, and shall also cover portions of the Work in transit. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the site. In the event of a claim, the policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance or regulation.
- 11.6.4 The insurance required by this Section 11.6 shall be on an all risk form and shall be written to cover all risks of physical loss or damage to the insured party except those perils customarily excluded, provided however, the policy shall insure, without limitation, at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, lightening, earthquake, flood, frost, water damage, windstorm and freezing.
- 11.6.5 If there are any deductibles applicable to the insurance required by this Section 11.6, Contractor shall pay any part of any loss not covered because of the operation of such deductibles.
- 11.6.6 The insurance as required in this Section 11.6 shall be maintained in effect until the earliest of the following dates:
- 11.6.6.1 the date which all persons and organization who are insureds under the policy agree in writing that it shall be terminated;
- 11.6.6.2 the date on which final payment of this Contract has been made by Owner to Contractor; or
- 11.6.6.3 the date on which the insurable interests in the property of all insureds other than Owner have ceased.**
- 11.6.7 Owner and Contractor waive all rights against (1) each other and any of their Subcontractors of any tier, agents and employees, each of the other, (2) Architect and Architect's consultants, and (3) separate contractors described in Article 6, if any, and any of their subcontractors of any tier, suppliers, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.6 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. Owner or Contractor, as appropriate, shall require of Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors of any tier, suppliers, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise, to the fullest extent permitted by law. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, was at fault or was negligent in causing the loss and whether or not the person or entity had an interest in the property damaged.
- 11.6.8 The Contractor shall pay Subcontractors of any tier their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors of any tier to make payments to their Sub-subcontractors in similar manner.

11.6.9 Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.7 Performance and payment bonds

11.7.1 The Contractor shall furnish a Performance Bond and Labor and Material Payment Bond, in form and substance satisfactory to the Owner and, without limitation, complying with the following specific requirements:

- .1 Bonds shall be executed by a responsible surety licensed in Kansas, with a Best's rating of no less than A/X11, and shall remain in effect for a period of not less than two (2) years following the date of Substantial Completion or the time required to

resolve any items of

the incomplete Work and the payment of any disputed amounts, whichever time period is longer.

- .2 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.

.3 The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power.

- .4 Every Bond under this Section 11.7.1 must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:

- .1 The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.

- .2 The surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.

- .5 Each Bond under this Section 11.7.1 shall contain a dual obligee rider listing any Lender as an obligee.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction (including all costs of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work), shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. Contractor, Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties

established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor an express written acceptance of such condition. If the Contractor fails to correct nonconforming Work promptly after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents or any unknown, unconfirmed, nonconforming Work, even if a manifestation of same was identified by Owner within the one-year time period. Establishment of the one-year period for correction of Work as described in Section 12.2 relates only to the specific, limited obligation of the Contractor to promptly correct the Work Owner knows and confirms to be nonconforming, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations, nor shall serve to waive claims for issues related to the condition even if such condition was accepted in writing.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable and the nonconforming aspect of the Work at issue shall be expressly identified and represented as being accepted in its nonconforming state in writing. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing construction financing or credit enhancement for the Project. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect and Owner of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor. Contractor shall also be responsible for paying the costs of testing ordered by Architect or Owner because of a belief of the existence of defective Work as a result of prior defective Work of Contractor.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due and liquidated at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Payments and amounts due and unpaid by Contractor to Owner under the Contract Documents shall bear interest from the date payment is due at the rate of one and one-half percent (1.5%) per month.

§ 13.6 GENERAL

§ 13.6.1 The terms of this Contract and all representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Work and shall remain in effect so long as Owner is entitled to protection of its rights under

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applicable law.

§ 13.6.2 Reviews, certifications, approvals or other alleged oversight by Owner or its representatives of the Contractor's performance of Work or obligations under the Contract Documents, including but not limited to as related to submittals, schedules, Applications for Payment, performance of Work or safety, shall not be deemed the approval, acceptance or condoning of same nor the waiver, alteration or abandonment of the requirements of the Contract Documents or Project. Equally, no action or inaction of Owner or its representatives shall be deemed to waive, alter or abandon the requirements of the Contract Documents or Project.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, supplier, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

(Paragraphs Deleted)

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, and direct costs incurred by reason of such termination. Anticipated lost profits, overhead, income, opportunities or other consequential damages are not recoverable.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. In the event termination under Section 14.2 is later determined to have been improper, termination shall be deemed to have been made under Section 14.4.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time directly caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract or portions thereof for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 Upon such termination the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including without limitation, anticipated profits or overhead. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The term "Claim" does not include Owner's allegations of nonconforming Work. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents or otherwise make adjustments (including but not limited to set-off) to Applications for Payment.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given within ten days of the execution of the portion of the Work that is the subject of the Claim. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time as averaged over five years, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished (not to exceed 14 days from the date of response), or (3) advise the Initial Decision Maker that no supporting data will be furnished. If a meaningful response is not received within the ten days the party shall waive any right to furnish information. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. Mediation and dispute resolution in regard to any initial decision shall be *de novo*.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered in accordance with the American Arbitration Association's Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose

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presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

§ 15.5 Attorneys' Fees and other Costs

§ 15.5.1 In the event of any litigation or arbitration arising out of this Contract, the prevailing party shall be entitled to receive from the losing party an amount equal to the prevailing party's costs incurred in regard to the dispute, including, without limitation, the prevailing party's attorney's fees, costs and disbursements.

Additions and Deletions Report for **AIA® Document A201™ – 2017**

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

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PAGE 1

Douglas County Correctional Facility Expansion
The Board of County Commissioners of Douglas County, Kansas
1100 Massachusetts Street
Lawrence, KS 66044

...

(Name, legal status and address)

...

TREANORHL, INC.
1040 Vermont Street
Lawrence, KS 66044

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the ~~Contract~~. Contract, written responses to formal requests for information, and each document's respective exhibits and attachments, all of which form the Contract Documents, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, ~~Instructions to Bidders~~, bid or make a proposal, Instructions to Bidders or persons making proposals, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, approved Shop Drawings and submittals, requests for information, proposed change orders, the reports and drawings of subsurface and physical conditions, or portions of Addenda relating to bidding or proposal requirements. Electronic manifestations of documents shall not be Contract Documents, and shall be used at the risk of its user.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the

Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and ~~the Architect or the Architect's consultants~~, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be obligated to Owner for and entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties related to performance of the Architect's duties. In the event of a conflict or inconsistencies among terms and conditions contained within the Contract Documents, the term or condition that imposes the greater responsibility on Contractor or which more greatly limits Contractor's rights shall control, as determined by Owner.

...

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

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§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies among parts of the Contract Documents, or among the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement, as determined by Owner. The terms and conditions of this Section 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7.

...

.1 Whenever a product is specified in accordance with a federal specification, an ASTM Standard, and American National Standards Institute Specification, or other association standard, the Contractor shall present a certificate from the manufacturer when requested by the Architect or Owner or required in the Specifications, certifying that the product complies with the particular standard or specification. When requested by the Architect, Owner or as specified, support test data shall be submitted to substantiate compliance.

...

.2 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Modification in the Work. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

...

.3 No provision of any such reference document or standard shall be effective to change the responsibilities of Owner, Architect or other person involved in the Project from those set forth in the Contract Documents, nor to assign to any of them any responsibility, duty or authority for safety precautions or procedures or to supervise or direct the performance of the Work.

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§ 1.5.1 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other~~

~~reserved rights in their Instruments of Service, including copyrights.~~ The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of ~~the Architect's or Architect's consultants'~~ any reserved rights.

...

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the ~~Owner, Architect, Owner.~~

...

§ 1.5.3 Prior to execution of the Contract, the Contractor and each Subcontractor evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools and equipment, and the Architect's consultants, (v) other similar issues. The Owner assumes no responsibility or liability for the safety of then Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor or supplier to have complied with the requirements of this Section 1.5.3.

...

The parties ~~shall~~ may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will endeavor to use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital ~~data, data,~~ but agree that electronic manifestations of documents shall not be Contract Documents, and shall be used at the risk of its user.

...

§ 2.1.2 ~~The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

PAGE 13

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section ~~2.2.1, 2.2.1~~ due to reasonable and timely requests, the Contract Time shall be extended appropriately.

...

§ 2.2.2 Following commencement of the Work and upon written reasonable request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's

ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide ~~such~~ reasonable evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is properly stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

...

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and ~~others who others,~~ but only if they need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

...

§ 2.3.1 Except for ~~permits and fees~~ permits, fees and performance obligations that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

...

§ 2.3.2 ~~The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect~~ Architect is the person or entity is identified in the Agreement and is referred to throughout the Contract Documents as if singular in number.

...

§ 2.3.3 ~~If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.~~ [deleted]

...

§ 2.3.4 The Owner shall furnish surveys describing known physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

...

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for ~~such~~ reasonably identified information or services.

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If the Contractor ~~defaults~~ defaults, fails or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue

correction of such ~~default~~ default, failure or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

...

§ 2.6 Extent of Owner's Rights

...

§ 2.6.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted (i) in the Contract Documents, (ii) at law or (iii) in equity.

...

§ 2.6.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the site, Work or Project, notwithstanding any of the rights and authority granted the Owner in the Contract Documents. As reasonable and appropriate for the circumstances, Construction Manager will timely notify the Sheriff Designated Representatives of activities anticipated to have a possible impact on the operations of the existing facility (including but not limited to security and detention of inmates within the existing facility) and present a plan for addressing such impacts for Owner's approval but such approval shall be limited to Owner's operations of the existing facility.

...

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor and its Subcontractors and suppliers shall be lawfully licensed, if and as required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

...

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. All of Contractor's work shall conform to the Contract Documents. No change therefrom shall be undertaken without the prior review by the Architect and approval by the Owner. Contractor shall be responsible for details of the Work necessary to carry out the intent of the drawings and specifications, or which are customarily performed. When more detailed information is required for performance of the Work or when an interpretation of the Contract Documents is requested, the Contractor shall submit a written request to the Architect and Owner, and the Architect shall furnish such information or interpretation in the form of an architect's supplemental instruction or other written or drawn form or drawing. Where only part of the Work is indicated, similar parts shall be considered repetitive. Where any detail is shown and components thereof are fully described, similar details not fully described shall be considered to incorporate the fully described details and components. In the case of inconsistency between drawings and specifications or within either documents not clarified by addendum, the better quality or greater quantity shall be provided in accordance with the Architect's interpretation at no extra cost to the Owner.

PAGE 15

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by ~~activities (in)activities~~ or duties of the Owner or Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

...

§ 3.1.4 Contractor shall staff the Project with a competent superintendent and project manager who shall not be changed without the Owner's consent, which will not be unreasonably withheld.

...

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, ~~and~~ correlated personal observations with requirements of the Contract Documents. Documents, and is satisfied as to the matters under Section 1.5.3.

...

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

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§ 3.3.4 Contractor shall be fully responsible for the layout of the Work and shall ensure that the Work is in the proper location as required by the Contract Documents. Contractor shall establish and maintain alignment and grades, including the setting of stakes, ranges, grid lines and other appurtenance facilities. Before starting construction, Contractor shall ensure that monuments or markers which delineate the site boundaries are placed in the proper position, and that all portions of the work are wholly within limits of Owner's ownership, leasehold, easement or right-of-way interest in the property. Contractor shall be responsible for the accurate replacement of any boundary markers which are disturbed, removed or destroyed during the performance of the Work.

...

§ 3.3.5 The Contractor shall be responsible for the shoring required to protect the Work or adjacent property and shall pay for any damage caused by failure to shore or by improper shoring or by failure to give proper notice. Shoring shall be removed only after completion of permanent supports.

...

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provisions apply:

...

.1 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a

complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the Contract Time and the construction schedule in the event the substitution is acceptable; and (v) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

...

.2 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit the designated space; (iv) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (v) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interest, in terms of cost, time or other

...

§-considerations.

...

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

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§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance. Should the Work be delayed due to a labor disturbance beyond the reasonable control of the Contractor and arising off the Project, the Contractor shall be entitled to a an equitable schedule extension. Costs associated with such delay will be considered Cost of the Work, within the GMP but not subject to any part of the Construction Manager's Fee.

...

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.

...

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such

labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

...

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor agrees to assign the warranties to the Owner at the time in accordance with Section 9.8.4 and further agrees to perform the Work in such manner so as to preserve any and all such warranties.

...

§ 3.7.1 ~~Unless otherwise provided in the Contract Documents, the~~ The Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. all building permits necessary for Contractor to carry out the Work. The Contractor shall secure and pay for all other applicable permits, licenses and performance obligations necessary for the Contractor to execute and complete the Work. All connection charges or inspection fees as may be imposed by any public authority or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

...

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project in connection with the Work. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary backup materials, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

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If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or in documents presented by the Owner as unconditional representations of actual conditions or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~14~~ ten (10) working days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. ~~If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, do not justify an equitable adjustment to the terms of the Contract,~~ the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

...

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and ~~Architect.~~ Architect in writing while continuing to perform other portions of the Work. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the affected operations. The Contractor

shall continue to suspend such affected operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

...

§ 3.9 Superintendent and Project Manager

...

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent Work, and a competent project manager and necessary assistants who are not required to be on site. The superintendent and project manager shall represent the Contractor, and communications given to the superintendent or project manager shall be as binding as if given to the Contractor.

...

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed ~~superintendent~~. superintendent and project manager in writing. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or project manager or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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§ 3.9.3 The Contractor shall not employ a proposed superintendent or project manager to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent or project manager without the Owner's consent, which shall not unreasonably be withheld or delayed.

...

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and ~~Architect~~. Architect that fulfill the requirements of the Contract Documents.

...

§ 3.10.4 The construction schedule shall be in such detail reasonably acceptable to the Owner and Architect and shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). If the form of the schedule is not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Architect or Owner and resubmitted for such acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner and Architect of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to as "progress reports"). In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Modification. Acceptance, approval or review by the Owner or Architect under this Article shall not accelerate the Contract Time, any Milestone Date or the Work or alter, adopt or otherwise approve the construction or submittal schedules, but rather is limited to the form of the schedules.

...

§ 3.10.5 In the event the Owner or Architect reasonably determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents as a result of Contractor negligence, the Owner and Architect shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's or Architect's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

...

.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner or Architect under or pursuant to this Section 3.10.5.

...

.2 The Owner or Architect may exercise the rights furnished it under or pursuant to this Section 3.10.5 as frequently as the Owner or Architect deems necessary to help ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents..3 Action or inaction by Owner or Architect under this Article shall not relieve or alter Contractor's responsibilities under the Contract Documents, including but not limited to any schedules.

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§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor or on behalf of the Contractor to illustrate some portion of the Work.

...

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and help establish standards by which the Work will be judged.

...

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Documents but are the Contractor's representations as to how it will perform its work. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

...

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

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§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are ~~specifically~~ required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such ~~professional~~ professional and who shall comply with reasonable requirements of the Owner regarding qualifications and insurance. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

...

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

...

§ 3.13.2 The Contractor and any entity for which the Contractor is responsible shall not erect any advertising on the Project site without the prior written consent of the Owner other than advertising as required by statute.

...

§ 3.13.3 Protection of construction materials and equipment and any Owner furnished materials and equipment to be incorporated in the Work stored at the Project site from weather, flood, environmental conditions, theft, damage, Subcontractors and all other adversity is solely the responsibility of the Contractor.

...

§ 3.13.4 Without prior written approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Owner. The Contractor shall comply with all rules promulgated by the Owner in connection with the use and occupancy of the Project site as established in the GMP Amendment.

...

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the ~~Work or Work~~ to make its parts fit together ~~properly~~ properly, or to properly fit with or separate from adjacent property. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise expressly required by the Contract Documents.

...

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction or property of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them ("Indemnitee") from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

...

§ 3.18.3 The Contractor's defense and indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority.

...

§ 3.18.4 If one or more of the Indemnitees demand performance by the Contractor of obligations under this Section 3.18 or other provisions of the Contract Documents and if Contractor refuses to assume or perform, or delays in assuming or performing Contractor's obligations, Contractor shall pay each Indemnitee who has made such demand its respective attorneys' fees, costs, and other expenses incurred in enforcing this provision. The defense and indemnity required herein shall, however, be a binding obligation upon Contractor whether or not an Indemnitee has made such demand. Even if a defense is successful to a claim or demand for which Contractor is obligated to indemnify the Indemnitees from under this Section, Contractor shall remain liable for all costs of defense. The indemnity obligations of Contractor under this Section 3.18 shall survive termination of this Agreement or final payment thereunder.

...

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the ~~Owner, Contractor, Owner~~ and Architect. Consent shall not be unreasonably withheld.

The Owner and Contractor may communicate directly without Architect and shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project, identified or believed to be material to the Architect's services or professional responsibilities, but it remains the sole duty of Architect to enquire and investigate in regard to communications and other information necessary for the performance of its services and professional responsibilities. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the ~~Owner, Owner~~ or its written designee. The Contract Documents may specify other communication protocols.

...

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts apparently due the Contractor and will issue Certificates for Payment in such amounts. Any review, certification or approval of an Application for Payment by Architect or other third party (by Certificate for Payment or otherwise) is not a declaration that such Application for Payment or the sums within are undisputed.

...

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or ~~advisable~~, advisable after consultation with Owner, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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§ 4.2.10 If the Owner and Architect ~~agree~~, agree in writing, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. ~~The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.~~

...

§ 4.2.11 The Architect will interpret and ~~decide~~ provide opinions on matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

...

§ 4.2.12 Interpretations and ~~decisions~~ the related opinions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and ~~decisions~~, giving opinions thereon, the Architect will endeavor to secure faithful performance by both Owner and Contractor and ~~Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.~~ will not show partiality to either.

...

§ 5.2.1 ~~Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including~~ At the time of GMP submission, the Contractor shall furnish the Owner and the Architect, in writing, with (i) the name, trade, and subcontract amount for each Subcontractor, and (ii) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design—design) and, where applicable, the name of the installing Subcontractor. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. Contractor remains solely responsible for the actions and inactions of each Subcontractor.

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§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract

Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

...

§ 5.3.2 All subcontracts shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract. In no event shall such designation give Subcontractor a direct claim for payment against Owner.

...

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

PAGE 26

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

...

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of ~~apparent~~ discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of ~~apparent~~ discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not ~~apparent~~ reasonably discoverable.

...

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed ~~activities~~ activities, damage to the Work, discrepancies or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

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§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Section 7.3 and Subparagraph 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of

alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

...

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Contract Time and the construction schedule.

...

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section ~~7.3.3.3~~, 7.3.3.3 and 7.3.8, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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- .1 Costs of labor, including applicable payroll taxes, ~~fringe benefits required by agreement or custom~~, workers' compensation insurance, and other employee costs approved by the Architect;

...

- .3 ~~Rental~~ Reasonable rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

...

~~§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may Contractor shall not request payment for Work completed under the Construction Change Directive in Applications for Payment. The Payment until final determination of the total cost. If a reasonable time has expired without a final determination, Contractor may request payment for such completed Work and the Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified—justified, and such sum shall be included in the next Application for Payment. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.~~

...

§ 7.3.11 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Time, the Architect shall determine the method and the adjustment on the basis of reasonable durations and impacts. In such case, the Contractor shall keep and present, in such form as the Architect may prescribe, an impact schedule with appropriate supporting data.

...

§ 7.3.12 If Contractor does not present an itemized accounting, impact schedule or appropriate supporting data to the satisfaction of Architect with twenty-one (21) days of the issuance of the Construction Change Directive, Architect shall decide the issues based on its professional judgment and experience, and Contractor waives the right

to submit such information and agrees to the Architect's decision.

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The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall promptly notify the Architect in writing and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior written notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, or could not have been reasonably anticipated, by the Contractor, (2) was not avoidable and (3) is of a duration not less than one (1) day.

...

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay.~~ Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Subparagraph 8.3.1, shall be the sole remedy of the Contractor for any delay at any time in the commencement or progress of the Work, including but not limited to any (1) delay in the commencement, prosecution or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity or acceleration, or (4) other similar claims, (collectively referred to in this Subparagraph 8.3.3 as "Delays"), whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with written notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration.

...

~~by either party under other provisions of the Contract Documents.~~ **§ 8.3.4** If the Contractor submits a schedule or progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. ~~This schedule, unless objected to by the Architect, shall be used~~

as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. Architect or Owner. A failure to object shall not be deemed consent to the allocations or the values contained therein.

...

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, ~~and~~ releases and waivers of liens from Subcontractors and suppliers, and other information under Section 9.3.1.3, and shall reflect retainage if provided for in the Contract Documents.

...

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a duly executed Contractor's lien and/or payment bond claim waiver to the extent of payments received and duly executed and acknowledged sworn statements showing all Subcontractors and suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and suppliers; (ii) duly executed waivers of mechanics' and suppliers' liens and/or payment bond claims from all Subcontractors to the extent of payments received and, when appropriate, from suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts due for work completed during the period of time covered in any previous Application for Payment to the extent of payments received; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

...

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. The Contractor shall also comply with the following specific requirements:

...

.1 The aggregate cost of materials stored off site shall not exceed Twenty Thousand Dollars (\$20,000.00) at any time without written approval of the Owner.

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.2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Lender, including without limitation, recorded financing statements, UCC filings, and UCC searches.

...

.3 With each Application for Payment, Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The

Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.

...

.4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.

...

.5 Representatives of the Owner shall have the right to make inspections of the storage areas at any time.

...

.6 Such materials shall be (i) protected from diversion, destruction, theft and damage to the satisfaction of the Owner; (ii) specifically marked for use on the Project; and (iii) segregated from other materials at the storage facility.

...

§ 9.3.3.1 The Contractor further expressly undertakes to defend the Owner, Owner's title insurer and/or Owner's lender, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Owner, Owner's title insurer and/or Owner's lender as a result of claims made against payment bonds and/or liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, or any portion of the property of any of them (bond and lien claims referred to collectively as "liens" in this Subparagraph 9.3.3). The Contractor hereby agrees to defend, indemnify and hold the Owner, Owner's title insurer and/or Owner's lender harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings;

...

§ 9.3.3.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor has caused the lien to be released from the site of the Project and/or the applicable bond; and

...

§ 9.3.3.3 Notwithstanding the foregoing, Owner reserves the right to settle any disputed payment bond claim or mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner, upon demand, for any payments so made.

...

§ 9.3.4 Notwithstanding any provision to the contrary, the following terms apply to all Work, Applications for Payments and payments.

...

§ 9.3.4.1 Payments are due and payable within the times stated in the Contract Documents after presentation of an Application for Payment in the amount of the undisputed amounts in each timely and properly completed Application for Payment. Undisputed amounts from timely and properly completed Applications for Payment unpaid after the statutorily required time period shall bear interest at the legal rate prevailing in Kansas. Any review, certification or approval of an Application for Payment by Architect or other third party (by Certificate for Payment or otherwise) is not a declaration that such Application for Payment or the sums within are undisputed.

...

§ 9.3.4.2 “Disputes” shall exist as to the amounts due Contractor in an Application for Payment only in the event that the Application for Payment is in error, there is reasonable evidence that Contractor is in violation of a term(s) of the Contract Documents, and/or there are claims or the suggestion of claims on account of Contractor for the Work but only to the extent caused by Contractor and those for which it is responsible. (Individually and in combination referred to as “Cause of Dispute.”) The amount of the dispute shall be one hundred and twenty-five percent (125%) of Owner’s good faith estimate of the dollars believed to be necessary to protect Owner from loss related to the Cause of Dispute, and may be withheld from any Application for Payment or payment. In the event of a Cause of Dispute, Owner will provide written notice to Contractor of the reasons therefor and shall thereafter provide Contractor with a reasonable opportunity to cure. Within seven calendar days of the resolution of the Cause of Dispute to the Owner’s reasonable satisfaction, the Owner shall pay Contractor the money withheld as a result of the resolved Cause of Dispute.

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§ 9.4.1 The Architect will, within seven days after receipt of the Contractor’s Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is ~~properly~~ apparently due, and notify the Contractor and Owner of the Architect’s reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect’s reason for withholding certification in whole as provided in Section 9.5.1.

...

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect’s evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect’s knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor’s right to payment; ~~or~~ (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract ~~Sum~~. Sum, or (5) concluded that the application or amounts thereunder are undisputed. Any review, certification or approval of an Application for Payment by Architect or other third party (by Certificate for Payment or otherwise) is not a declaration that such Application for Payment or the sums within are undisputed.

...

§ 9.5.2 When ~~either party~~ Contractor disputes the Architect’s decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, ~~that party~~ it may submit a Claim in accordance with Article 15.

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§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment of all undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

...

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Notwithstanding anything in this Subparagraph 9.6.2 to the contrary, the Owner may elect, in the Owner's sole discretion and upon written notice to Contractor, to make any payment requested by the Contractor on behalf of a Subcontractor of any tier jointly payable to the Contractor and such subcontractor. The Contractor and such Subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (i) contract between the Owner and a Subcontractor of any tier, (ii) obligations from the Owner to such Subcontractor, or (iii) rights in such Subcontractor against the Owner.

...

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor. Contractor shall not condition payment to a Subcontractor or supplier contingent upon receipt of payment from Owner, except to the extent that nonpayment is made expressly and solely as a result of the performance of such Subcontractor or supplier.

...

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law. law, and nothing within this Section shall be deemed to create a fiduciary relationship between a Subcontractor or supplier and Owner or a right to payment from the Owner directly to a Subcontractor or supplier. The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

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§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the undisputed amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

...

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, or there is cause with non-certification under Section 9.5.1, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all required certificates of occupancy and any other permits, approvals, licenses, certifications, authorizations, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project and whose procurement is the responsibility of the Contractor or arising from its Work. Should Substantial Completion and/or Certificate of Occupancy be delayed due to no fault of the Contractor, and the Work has been carried out in accordance with the Contract Documents, such delay shall not serve as a reason to withhold final payment.

...

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially ~~complete~~ complete under this Section 9.8. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, ~~which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use,~~ the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

...

§ 9.8.4 When the Work or designated portion thereof ~~is substantially complete,~~ satisfies Substantial Completion, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents ~~and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable.~~ Documents. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Issuance of the Final Certificate is not a representation that the application is undisputed.

...

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, ~~and~~ (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the ~~Owner.~~ Owner, (7) as-built drawings, (8) a complete list of Subcontractors and principal vendors on the

Project, including addresses and telephone numbers, (9) an indexed, loose leaf binder of complete installation, operation and maintenance manuals, including all manufacturers' literature, of equipment and materials used in the Work, (10) an indexed, loose leaf binder, of all inspection reports, permits, and temporary and final certificates of occupancy and licenses necessary for the occupancy of the Project, and, (11) any and all other items required pursuant to the Contract Documents. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

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§ 9.10.4 ~~The making of final payment~~ No payment, whether partial or final, or approval or certification of any payment, or partial or entire use or occupancy of the Work or the Project, by Owner or Architect shall constitute a waiver of Claims by the Owner except those arising from Owner. A nonexhaustive list of claims that remain include, but are not limited to:

...

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a release and waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment against Owner and/or Architect relating to the Work and for every act or alleged neglect of Owner and/or Architect related to the Work or Contract Documents.

...

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the ~~Contract~~ Contract, including but not limited to the Work. Unsafe practices are not permitted.

...

- .1 employees on the Work and other persons who may be affected ~~thereby~~; thereby, including but not limited to tenants, visitors, and employees of Owner;

...

- .3 other property at the site or adjacent thereto, such as vehicles, trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

...

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including barriers, posting danger signs and other protection and warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damages to such property or improvements shall be promptly repaired by the Contractor.

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§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the ~~condition~~ condition in writing.

...

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. ~~When the material or substance has been rendered harmless, The~~ Work in the affected area shall ~~resume upon written agreement of the Owner and Contractor.~~ be resumed immediately following the occurrence of any one of the following events: (i) the Owner causes remedial work to be performed that results in the absence of materials or substances such as asbestos or polychlorinated biphenyl (PCB); or (ii) the Owner and the Contractor, by written agreement decide to resume performance of the Work; or (iii) the Work may safely and lawfully proceed, as evidenced by a written report to both the Owner and the Contractor, which is prepared by a reputable environmental engineer. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

...

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the ~~Contractor~~ Contractor, Subcontractor or supplier, or any entity for which any of them is responsible, brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, ~~Documents and in compliance with all applicable requirements for such Work,~~ the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

...

~~§ 11.1 Contractor's Insurance and Bonds~~ 11.1 CONTRACTOR'S INSURANCE

...

~~§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The~~ 11.1.1 Contractor shall secure from the Date of Commencement as established in the GMP Amendment and maintain for such periods of time as set forth below, insurance of such types and in such amounts specified below, to protect Contractor, Owner and others against all hazards or risks of loss described below.

...

11.2 COMMERCIAL GENERAL LIABILITY

...

~~Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.~~ 11.2.1 Contractor shall secure and maintain from the date of the Agreement and for a period of at least three (3) years from the date of Final Completion of the entire Work commercial general liability insurance ("CGL") with a combined single limit of not less than Three Million Dollars (\$3,000,000) per occurrence. If such CGL insurance contains a general aggregate limit, it shall separately apply to this Project. Such CGL insurance shall be on an occurrence basis.

...

~~§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents.~~ 11.2.2 The CGL insurance required herein shall be written on a comprehensive form and shall cover claims and liability in connection with or resulting from the Contractor's operations and activities under the Contract, for personal injuries, occupational sickness, disease, death or damage to tangible property of others arising out of any operations or activities of the Contractor, its agents, or any Subcontractors of any tier or by anyone directly or indirectly employed by either of them.

...

~~The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.~~ 11.2.3 The CGL insurance required herein shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) coverages. There shall be no endorsement or modification of the CGL policy limiting the

...

~~§ 11.1.3 Upon the request of any person or entity appearing to scope of coverage for liability arising from blasting, explosion, collapse, or underground property damage.~~

...

~~be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy.~~ 11.2.4 Owner and Lender shall be endorsed as "additional insureds" under the CGL policy to the fullest extent permitted by law. The CGL policy shall also contain a "Separation of Insureds" provision. If Contractor's CGL policy does not contain a "Separation of Insureds" provision, Contractor's CGL policy shall be endorsed to provide cross-liability coverage.

...

~~to be furnished.~~ 11.2.5 Contractor waives all rights against Owner, Lender and their consultants, agents, officers, representatives and employees for recovery of damages to the extent those damages are covered by the CGL policy required hereunder.

...

11.3 AUTOMOBILE LIABILITY

...

~~§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.~~ Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the 11.3.1 Contractor shall secure and maintain from the date of the Agreement and for a period of at least three (3) years from the date of Final Completion of the entire Work, insurance, to be on comprehensive form, which shall protect Contractor against any and all claims for all injuries and all damage to property arising from the use of automobiles, trucks and motorized vehicles, in connection with the performance of Work under this Contract, and shall cover the operation on or off the site of the Work of all motor vehicles licensed for highway use whether they are owned, non-owned or hired. Such insurance shall include contractual liability coverage and shall provide coverage on the basis of the date of any accident. The liability limits under such policy shall not be less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage per accident. Owner and Lender shall be endorsed as an "additional insured".

...

~~Contractor of any contractual obligation to provide any required coverage.~~ 11.3.2 Contractor waives all rights against Owner, Lender and their consultants, agents, officers, directors and employees for recovery of damages to the extent such damages are covered by the automobile liability insurance required hereunder.

...

11.4 WORKERS' COMPENSATION INSURANCE

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§ 11.2 Owner's Insurance

...

~~§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described~~ 11.4.1 Contractor shall purchase and maintain workers' compensation insurance and employers' liability insurance which shall protect Contractor from claims for injury, sickness, disease or death of Contractor's employees or statutory employees. The insurance policies required hereunder shall include an "all states" or "other states" endorsement. In case any Work is sublet, Contractor shall require any Subcontractor of any tier to provide the insurance coverages required under this Section 11.4.

...

~~in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase~~ 11.4.2 Contractor's workers' compensation insurance coverage shall be in compliance with all applicable Laws, including the statutes of the state where the Project is located. Contractor's employers' liability coverage limits shall not be less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease.

...

~~and maintain the required~~ 11.4.3 Contractor waives all rights against Owner, Lender and their consultants, agents, officers and directors and employees for recovery of damages to the extent these damages are covered by the workers' compensation and/or employers' liability insurance required hereunder.

...

11.5 GENERAL REQUIREMENTS FOR LIABILITY INSURANCE COVERAGES

...

~~insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~ 11.5.1 All insurance coverages procured by Contractor shall be provided by agencies and insurance companies acceptable to and approved by Owner. All insurance coverages shall be provided by insurance companies that are duly licensed to conduct business in the state where the Project is

...

~~§ 11.2.2 Failure to Purchase Required Property Insurance.~~ If the Owner fails to purchase and maintain the required property insurance, with all of located as an admitted carrier. The form and content of all insurance coverages provided by Contractor are subject to the approval of Owner. All required coverages shall be obtained and paid for by Contractor. Any approval of the form, content or insurance company by Owner shall not relieve the Contractor from the obligation to provide the coverages required herein.

...

~~the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain~~ 11.5.2 All insurance coverage procured by the Contractor shall be provided by insurance companies having policyholder ratings no lower than "A" and financial ratings not lower than "X" in the Best's Insurance Guide, latest edition in effect as of the date of the Agreement, and subsequently in effect at the time of renewal of any policies required by the Contract Documents. Insurance procured by Contractor covering the additional insureds shall be primary insurance and any insurance maintained by Owner shall be excess insurance.

...

~~insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to~~ 11.5.3 All insurance required hereunder shall provide that the insurer's cost of providing the insureds a defense and appeal, including attorneys' fees, shall be supplementary and shall not be included as part of the policy limits. Contractor shall cause its insurance carriers to waive all rights of subrogation against Architect, Owner and their officers, employees and agents to the fullest extent permitted by law.

...

~~the Owner would have been covered by the insurance to have been procured~~ 11.5.4 The Contractor shall furnish Owner with certificates, policies or binders which indicate the Contractor and Owner are covered by the required insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates, policies or binders shall be submitted to Owner within ten (10) days from the date of the execution of the Agreement. All certificates, policies and binders shall be executed by a duly authorized agent of each of the applicable insurance carriers and shall contain the statement that: "The insurance covered by this certificate will not be canceled or altered except after thirty (30) days' written notice has been received by Owner." All certificates, policies and binders shall be in a form acceptable to Owner. Contractor shall provide certified copies of all insurance policies required above within ten (10) days of Owner's written request for said copies.

...

~~by the Owner. The cost of the insurance shall be charged to the~~ 11.5.5 With respect to all insurance coverages required to remain in force and affect after final payment, Contractor shall provide Owner additional certificates, policies and binders evidencing continuation of such insurance coverages along with Contractor's application for final payment and shall provide certificates, policies and binders thereafter as requested by Owner. 11.5.6 The maintenance in full current force and effect of such forms and amounts of insurance and bonds required by the Contract Documents shall be a condition precedent to Contractor's exercise or enforcement of any rights under the Contract Documents.

...

~~Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the~~ 11.5.7 Failure of Owner to demand certificates, policies and binders evidencing insurance coverages required by the Contract Documents, approval by Owner of such certificates, policies and binders or failure of Owner to identify a deficiency from evidence that is provided by Contractor shall not be construed as a waiver of Contractor's obligations to maintain the insurance required by the Contract Documents.

...

11.5.8 Owner shall have the right to terminate the Contract if Contractor fails to maintain the insurance required by the Contract Documents.

...

~~to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~ 11.5.9 If Contractor fails to maintain the insurance required by the Contract Document, Owner shall have the right, but not the obligation, to purchase said insurance at Contractor's expense. If Owner is damaged by Contractor's failure to maintain the insurance required by the Contract Documents, Contractor shall bear all reasonable costs properly attributable to such failure.

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11.5.10 By requiring the insurance set forth herein and in the Contract Documents, Owner does not represent or warrant that coverage and limits will necessarily be adequate to protect Contractor, and such coverages and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

...

~~§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.~~ Within three (3) business days 11.5.11 If Contractor's liability policies do not contain a standard separation of insureds provision, such policies shall be endorsed to provide cross-liability coverage.

...

~~of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by~~ 11.5.12 If a part of the Work hereunder is to be sublet, the Contractor shall: (1) require each Subcontractor to secure insurance which will protect said Subcontractor and supplier against all applicable hazards or risks of loss designated in accordance with Article 11 hereunder; and (2) require each Subcontractor or supplier to assist in every manner possible in the reporting and investigation of any accident, and upon request, to cooperate with any insurance carrier in the handling of any claim by securing and giving evidence and obtaining the attendance of witnesses as required by any claim or suit.

...

11.6 BUILDER'S RISK INSURANCE

...

~~the Contract Documents, the Owner~~ 11.6.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the state where the Project is located, as an admitted carrier, builder's risk insurance on the entire Work. Such insurance shall be written on a completed value form and in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work. The insurance shall apply on a replacement cost basis.

...

~~shall provide notice to~~ 11.6.2 The insurance as required in Section 11.6.1 shall name as insureds, Owner, Contractor and all Subcontractors of any tier. The insurance policy shall contain a provision that the insurance will not be canceled, allowed to expire or materially changed until at least thirty (30) days prior written notice has been given to Owner.

...

~~the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time~~ 11.6.3 The insurance as required in Section 11.6.1 shall cover the entire Work. Insured property shall include portions of the Work located away from the site but intended for use at the site, and shall also cover portions of the Work in transit. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the site. In the event of a claim, the policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance or regulation.

...

~~and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors~~ 11.6.4 The insurance required by this Section 11.6 shall be on an all risk form and shall be written to cover all risks of physical loss or damage to the insured party except those perils customarily excluded, provided however, the policy shall insure, without limitation, at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, lightening, earthquake, flood, frost, water damage, windstorm and freezing.

...

~~to the extent any loss to the Owner would have been covered by the~~ 11.6.5 If there are any deductibles applicable to the insurance required by this Section 11.6, Contractor shall pay any part of any loss not covered because of the operation of such deductibles.

...

~~insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage,~~ 11.6.6 The insurance as required in this Section 11.6 shall be maintained in effect until the earliest of the following dates:

...

~~the cost of the insurance shall be charged to~~ 11.6.6.1 the date which all persons and organization who are insureds under the policy agree in writing that it shall be terminated;

...

the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance. 11.6.6.2 the date on which final payment of this Contract has been made by Owner to Contractor; or

...

§ 11.3.3 Waivers of Subrogation 11.6.6.3 the date on which the insurable interests in the property of all insureds other than Owner have ceased.

...

§ 11.3.4 The 11.6.7 Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, Subcontractors of any tier, agents and employees, each of the other, (2) Architect and Architect's consultants, and (3) separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents, subcontractors of any tier, suppliers, agents and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.6 or other property insurance applicable to the Project, Work, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This of Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors of any tier, suppliers, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise, to the fullest extent permitted by law. A waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) was at fault or was negligent in causing the loss and whether or not the person or entity had an insurable interest in the damaged property, interest in the property damaged.

...

11.6.8 The Contractor shall pay Subcontractors of any tier their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors of any tier to make payments to their Sub-subcontractors in similar manner.

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§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property. 11.6.9 Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

...

11.7 Performance and payment bonds

...

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance 11.7.1 The Contractor shall furnish a Performance Bond and Labor and Material Payment Bond, in

...

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes form and substance satisfactory to the Owner and, without limitation, complying with the following specific requirements:

...

of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused. 1 Bonds shall be executed by a responsible surety licensed in Kansas, with a Best's rating of no less than A/X11, and shall remain in effect for a period of not less than two (2) years following the date of Substantial Completion or the time required to

...

§ 11.5 Adjustment and Settlement of Insured Loss resolve any items of

...

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. the incomplete Work and the payment of any disputed amounts, whichever time period is longer.

...

The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner. 2 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.

...

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of. 3 The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power.

...

the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement. 4 Every Bond under this Section 11.7.1 must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:

...

and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not

terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of. 1 The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.

...

~~the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~ 2 The surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.

...

.5 Each Bond under this Section 11.7.1 shall contain a dual obligee rider listing any Lender as an obligee.

...

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

...

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of ~~correction, correction~~ (including all costs of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work), shall be at the Contractor's expense.

...

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. Contractor, Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

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§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor

shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. ~~The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ an express written acceptance of such condition. If the Contractor fails to correct nonconforming Work ~~within a reasonable time during that period~~ promptly after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

...

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

...

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. ~~Documents or any unknown, unconfirmed, nonconforming Work, even if a manifestation of same was identified by Owner within the one-year time period. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work.~~ 12.2 relates only to the specific, limited obligation of the Contractor to promptly correct the Work Owner knows and confirms to be nonconforming, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's ~~obligations other than specifically to correct the Work.~~ obligations, nor shall serve to waive claims for issues related to the condition even if such condition was accepted in writing.

...

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. equitable and the nonconforming aspect of the Work at issue shall be expressly identified and represented as being accepted in its nonconforming state in writing. Such adjustment shall be effected whether or not final payment has been made.

...

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~

...

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender ~~providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents.~~ or other entity providing construction financing or credit enhancement for the Project. The Contractor shall execute all consents reasonably required to facilitate the assignment.

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§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect and Owner timely notice of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not

become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

...

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect and Owner of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

...

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor. Contractor shall also be responsible for paying the costs of testing ordered by Architect or Owner because of a belief of the existence of defective Work as a result of prior defective Work of Contractor.

...

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due and liquidated at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Payments and amounts due and unpaid by Contractor to Owner under the Contract Documents shall bear interest from the date payment is due at the rate of one and one-half percent (1.5%) per month.

...

§ 13.6 GENERAL

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§ 13.6.1 The terms of this Contract and all representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Work and shall remain in effect so long as Owner is entitled to protection of its rights under applicable law.

...

§ 13.6.2 Reviews, certifications, approvals or other alleged oversight by Owner or its representatives of the Contractor's performance of Work or obligations under the Contract Documents, including but not limited to as related to submittals, schedules, Applications for Payment, performance of Work or safety, shall not be deemed the approval, acceptance or condoning of same nor the waiver, alteration or abandonment of the requirements of the Contract Documents or Project. Equally, no action or inaction of Owner or its representatives shall be deemed to waive, alter or abandon the requirements of the Contract Documents or Project.

...

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, supplier, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

...

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or

...

- ~~.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~

...

- ~~.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

...

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, ~~as well as reasonable overhead and profit on Work not executed, and and direct costs incurred by reason of such termination. Anticipated lost profits, overhead, income, opportunities or other consequential damages are not recoverable.~~

...

- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or ~~suppliers~~; Suppliers;

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§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. In the event termination under Section 14.2 is later determined to have been improper, termination shall be deemed to have been made under Section 14.4.

...

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time directly caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

...

§ 14.4.1 The Owner may, at any time, terminate the Contract or portions thereof for the Owner's convenience and without cause.

...

§ 14.4.3 ~~In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement. Upon such termination the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including without limitation, anticipated profits or overhead. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii)~~

claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

...

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The term "Claim" does not include Owner's allegations of nonconforming Work. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract ~~Documents~~. Documents or otherwise make adjustments (including but not limited to set-off) to Applications for Payment.

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§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

...

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

...

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be ~~given~~ given within ten days of the execution of the portion of the Work that is the subject of the Claim. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

...

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of ~~time~~ time as averaged over five years, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

...

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract ~~Documents~~. Documents

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...

...

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting

data will be ~~furnished~~, furnished (not to exceed 14 days from the date of response), or (3) advise the Initial Decision Maker that no supporting data will be furnished. If a meaningful response is not received within the ten days the party shall waive any right to furnish information. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

...

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. Mediation and dispute resolution in regard to any initial decision shall be *de novo*.

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§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be ~~administered by the American Arbitration Association in accordance with its~~ in accordance with the American Arbitration Association's Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

...

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be ~~administered by the American Arbitration Association in accordance with its~~ in accordance with the American Arbitration Association's Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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§ 15.5 Attorneys' Fees and other Costs

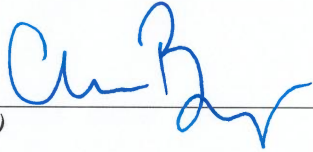
...

§ 15.5.1 In the event of any litigation or arbitration arising out of this Contract, the prevailing party shall be entitled to receive from the losing party an amount equal to the prevailing party's costs incurred in regard to the dispute, including, without limitation, the prevailing party's attorney's fees, costs and disbursements.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Christopher Burger, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:07:18 ET on 08/07/2019 under Order No. 6186295136 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Douglas County Counsel

(Title)

8-7-19

(Dated)

DISASTER RESOLUTION

WHEREAS, on the 1st day of August, 2019 , the Board of County Commissioners of Douglas County, Kansas finds that flooding conditions have caused, or imminently threatened to cause widespread or severe damage, injury or loss of life or property in disastrous proportion in Douglas County, Kansas; and

WHEREAS, such conditions have created obstructions which endanger the public health, safety and welfare of persons and property within the borders of Douglas County, Kansas.

NOW, THEREFORE BE IT RESOLVED, by the Board of County Commissioners of Douglas County, Kansas:

That the Board of County Commissioners of Douglas County, Kansas under and by virtue of the authority vested in the Chairman by K.S.A. 48-932, and amendments thereto, does hereby declare that a state of local disaster emergency exists.

That the area within the borders of Douglas County, Kansas covered by this declaration of a local disaster emergency shall be the following area of Douglas County:

That this declaration of a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the County Clerk.

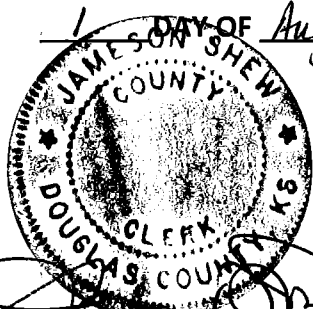
That this declaration of a local disaster emergency shall activate the response and recovery aspects of all local disaster plans which are applicable to Douglas County, Kansas and shall initiate the rendering of aid and assistance there under.

That any rights or powers lawfully exercised or any actions taken pursuant to local disaster emergency plans shall continue and have full force and effect as authorized by law unless modified or terminated in the manner prescribed by law.

That this state of local disaster emergency shall not be continued for a period in excess of seven (7) days or renewed, except with the consent of the Board of County Commissioners of Douglas County, Kansas.

RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS THIS

1 DAY OF August, 2019.



ATTEST


Chairman

Commissioner

Commissioner

DISASTER TERMINATION RESOLUTION 19-18

WHEREAS, on the 5th day of August, 2019, the Board of County Commissioners of Douglas County, Kansas declared there was a state of local disaster emergency in Douglas County, Kansas resulting in widespread or severe damage, injury or loss of life or property in disastrous proportion in Douglas County, Kansas; and

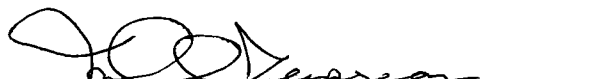
WHEREAS, it is now deemed that the situation resulting from said conditions of extreme peril are not beyond the control of the ordinary and normal services, personnel, equipment, and facilities of Douglas County government.

NOW, THEREFORE BE IT RESOLVED, by the Chairman of the Board of County Commissioners of Douglas County, Kansas:

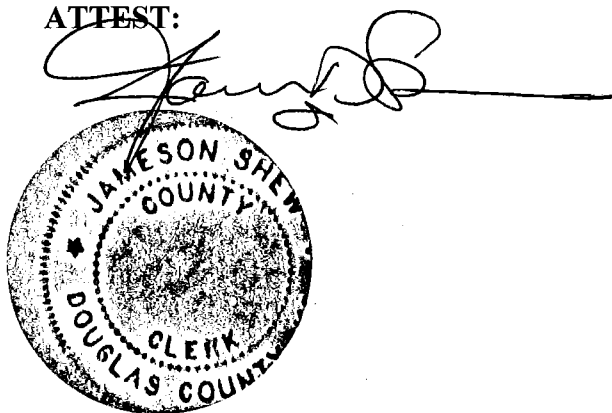
That the state of local disaster emergency in Douglas County, Kansas declared on the 28th day of April, 2019, be hereby terminated.

That this Resolution terminating the state of local disaster emergency in Douglas County, Kansas shall be given prompt and general publicity and shall be filed promptly with the County Clerk.

RESOLVED BY THE CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS THIS 5th **DAY OF** August, 2019.


Michelle Derousseau, Commission Chair

ATTEST:



DISASTER TERMINATION RESOLUTION 19-19

WHEREAS, on the 5th day of August, 2019, the Board of County Commissioners of Douglas County, Kansas declared there was a state of local disaster emergency in Douglas County, Kansas resulting in widespread or severe damage, injury or loss of life or property in disastrous proportion in Douglas County, Kansas; and

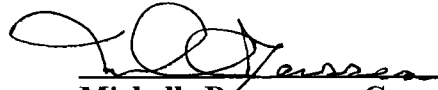
WHEREAS, it is now deemed that the situation resulting from said conditions of extreme peril are not beyond the control of the ordinary and normal services, personnel, equipment, and facilities of Douglas County government.

NOW, THEREFORE BE IT RESOLVED, by the Chairman of the Board of County Commissioners of Douglas County, Kansas:

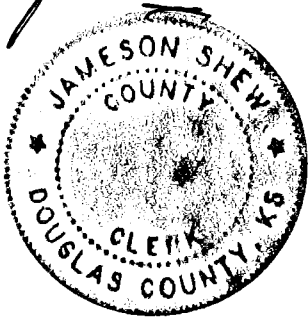
That the state of local disaster emergency in Douglas County, Kansas declared on the 28th day of May, 2019, be hereby terminated

That this Resolution terminating the state of local disaster emergency in Douglas County, Kansas shall be given prompt and general publicity and shall be filed promptly with the County Clerk.

RESOLVED BY THE CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS THIS 5th **DAY OF** August, 2019.


Michelle Derusseau, Commission Chair

ATTEST:



DISASTER CONTINUANCE RESOLUTION 19-20

WHEREAS, on the 5th day of August, 2019, the Board of County Commissioners of Douglas County, Kansas declared there was a state of local disaster emergency in Douglas County, Kansas resulting in widespread or severe damage, injury or loss of life or property in disastrous proportion in Douglas County, Kansas; and

WHEREAS, such conditions remain to create obstructions which endanger the public health, safety and welfare of persons and property within the borders of Douglas County, Kansas.

NOW, THEREFORE BE IT RESOLVED, by the Board of County Commissioners of Douglas County, Kansas:

That the state of local disaster emergency in Douglas County, Kansas declared on the 1st day of August, 2019, shall continue and remain in effect until such time that it is terminated.

That the response and recovery aspects of all local disaster plans which are applicable to Douglas County, Kansas and shall initiate the rendering of aid and assistance there under.

That any rights or powers lawfully exercised or any actions taken pursuant to local disaster emergency plans shall continue and have full force and effect as authorized by law unless modified or terminated in the manner prescribed by law.

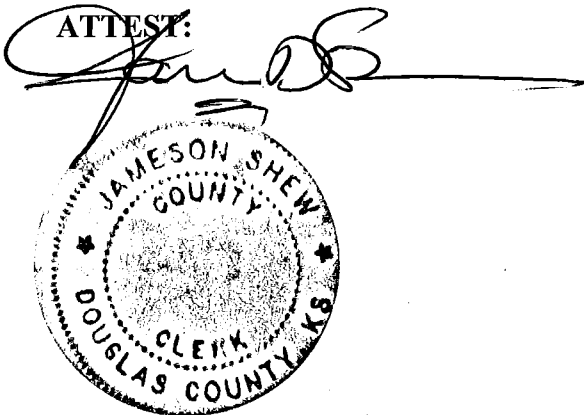
RESOLVED BY THE BOARD OF COUNTY COMMISSISONERS OF DOUGLAS COUNTY, KANSAS THIS 5th **DAY OF** August, 2019.


Michelle Derusseau, Chairman

Patrick Kelly, Vice Chair

Nancy Thellman, Member

ATTEST:





DOUGLAS COUNTY PUBLIC WORKS

3755 E. 25th Street
Lawrence, KS 66046
(785) 832-5293 Fax (785) 842-1201
dgcpubw@douglascountyks.org
www.douglascountyks.org

Keith A. Browning, P.E.
Director of Public Works/County Engineer

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer
Kevin R. Sontag, P.S., County Surveyor

Date : August 8, 2019

Re : Continuing the process of rescinding the "minimum maintenance" designation on
N 100 Road from 660E to 700E in Marion Township

The Board of Highway Commissioners of Marion Township has requested Douglas County rescind the "Minimum Maintenance" designation currently in effect for a portion of N 100 Road between 660E and 700E. Per the standard process, Marion Township held a public hearing to accept comments regarding a required recommendation to be made to the Board of County Commissioners on the matter. The recommendation from the Marion Township Board is to rescind the designation of "minimum maintenance" for N 100 Road.

At the Board of County Commissioners meeting on July 10, 2019, the Commissioners received the recommendation from Marion Township and directed Public Works to proceed with the standard process to rescind the designation.

The next step in the process requires officially initiating the process to consider rescinding the "minimum maintenance" designation and asking for a recommendation from the Planning Commission on the matter. The conclusion of the process requires a hearing to accept public comment and, if appropriate, enactment of a resolution removing the "minimum maintenance" designation.

ACTION REQUIRED: If appropriate, approve the attached resolution that officially initiates the process to consider rescinding the "minimum maintenance" designation and asks for a recommendation from the Planning Commission. Direct Public Works to transmit the resolution to the Planning Department.

Attachments:

- Traffic count study
- General location map
- Ownership map
- Resolution

DOUGLAS COUNTY PUBLIC WORKS
Traffic Study Information
3755 E. 25th Street
Lawrence, Ks. 66046

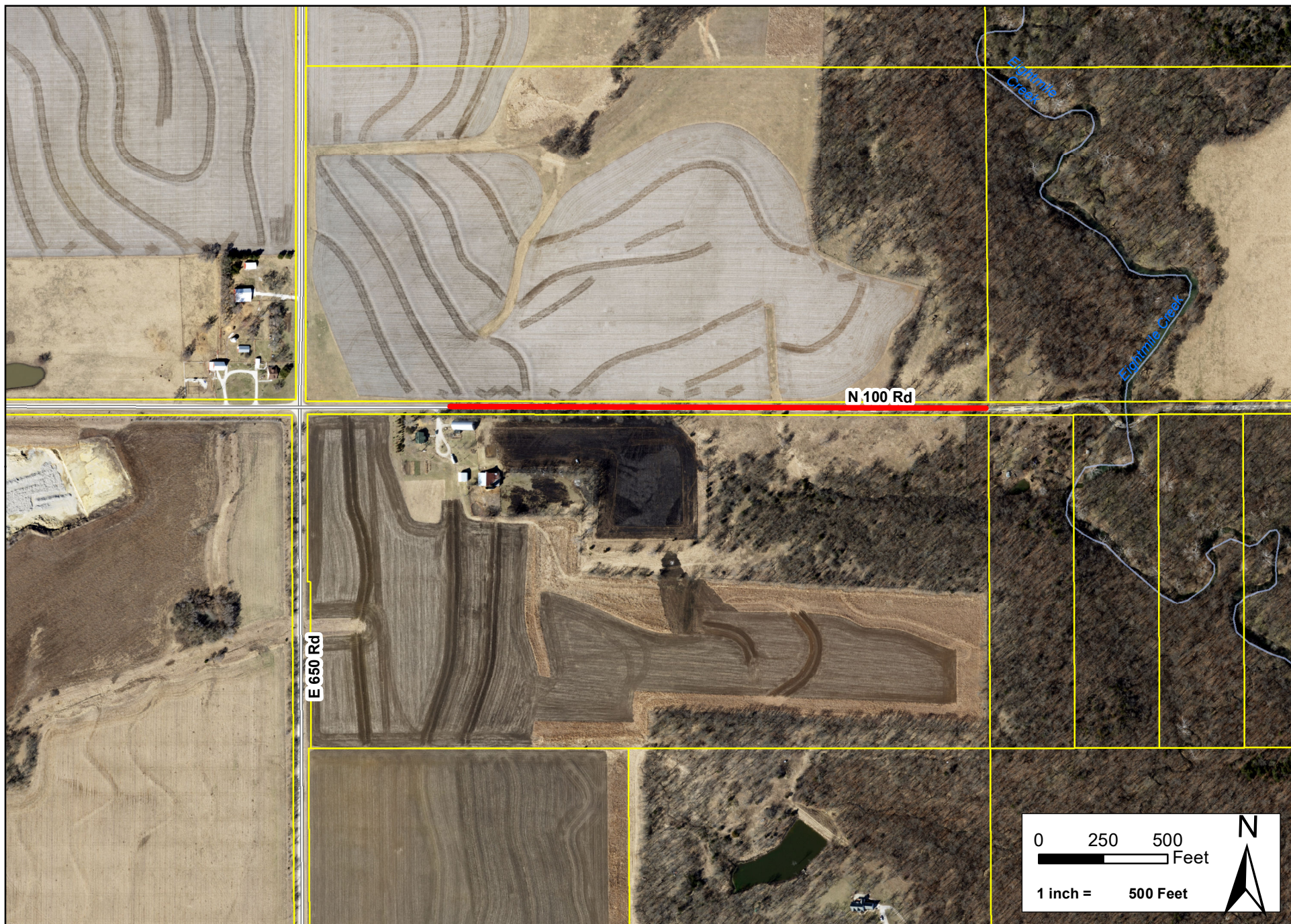
Site Code: N100E660
Station ID:
Min Maint Road Reversal

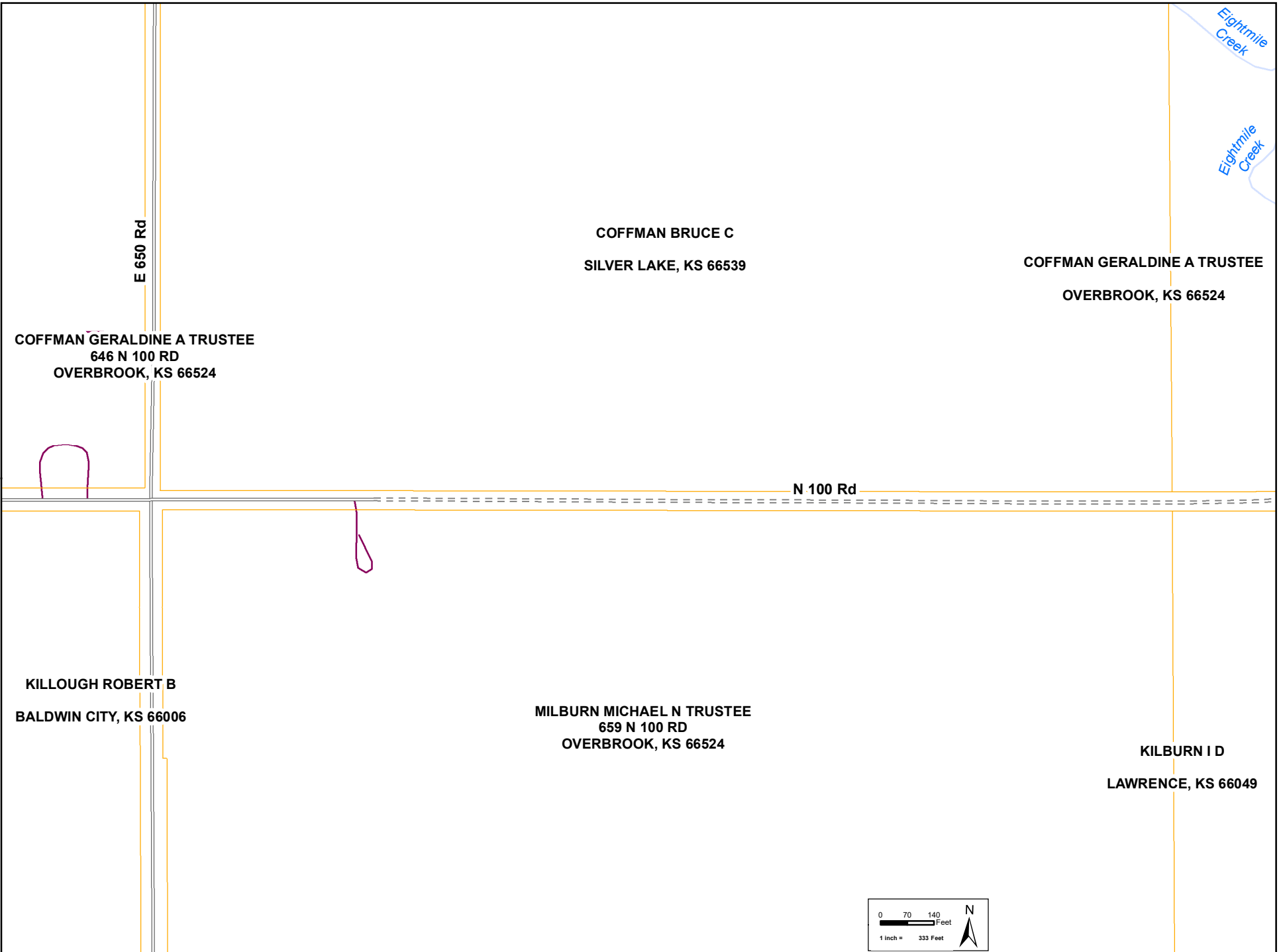
Latitude: 0' 0.0000 Undefined

Start Time	29-Jul-19		Tue		Wed		Thu		Fri		Sat		Sun		Week Average	
	WESTBO	EASTBO	WESTB	EASTBO	WESTB	EASTBO	WESTB	EASTBO	WESTB	EASTBO	WESTB	EASTBO	WESTB	EASTBO	WESTB	EASTBO
12:00 AM	*	*	*	*	0	0	0	0	0	0	0	0	*	*	0	0
01:00	*	*	*	*	0	0	0	0	0	0	0	0	*	*	0	0
02:00	*	*	*	*	0	0	0	0	0	0	0	0	*	*	0	0
03:00	*	*	*	*	0	0	0	0	0	0	0	0	*	*	0	0
04:00	*	*	*	*	0	0	0	0	0	0	0	0	*	*	0	0
05:00	*	*	*	*	0	0	0	0	0	0	0	0	*	*	0	0
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09:00	*	*	*	*	0	0	0	0	0	0	0	0	*	*	0	0
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02:00	*	*	2	0	0	0	0	0	0	0	*	*	*	*	0	0
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05:00	*	*	0	0	0	0	0	0	0	0	*	*	*	*	0	0
06:00	*	*	0	0	0	1	0	0	0	0	*	*	*	*	0	0
07:00	*	*	0	0	1	0	0	0	0	0	*	*	*	*	0	0
08:00	*	*	0	0	0	0	0	0	0	0	*	*	*	*	0	0
09:00	*	*	0	0	0	0	0	0	0	0	*	*	*	*	0	0
10:00	*	*	0	0	0	0	0	0	0	0	*	*	*	*	0	0
11:00	*	*	0	0	2	2	0	0	0	0	*	*	*	*	0	0
Lane	0	0	2	0	3	3	3	3	1	1	0	0	0	0	0	0
Day	0		2		6		6		2		0		0		0	
AM Peak	-	-	-	-	-	-	07:00	07:00	-	-	-	-	-	-	-	-
Vol.	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-
PM Peak	-	-	14:00	-	23:00	23:00	13:00	13:00	15:00	15:00	-	-	-	-	-	-
Vol.	-	-	2	-	2	2	1	1	1	1	-	-	-	-	-	-

Comb. Total	0	2	6	6	2	0	0	0
ADT	ADT 4	AADT 4						

Minimum Maintenance Reversal being requested: N 100 Road from 660E to 700E





COFFMAN GERALDINE A TRUSTEE
646 N 100 RD
OVERBROOK, KS 66524

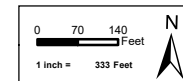
COFFMAN BRUCE C
SILVER LAKE, KS 66539

COFFMAN GERALDINE A TRUSTEE
OVERBROOK, KS 66524

KILLOUGH ROBERT B
BALDWIN CITY, KS 66006

MILBURN MICHAEL N TRUSTEE
659 N 100 RD
OVERBROOK, KS 66524

KILBURN I D
LAWRENCE, KS 66049



RESOLUTION NO. _____

A RESOLUTION INITIATING THE PROCESS TO CONSIDER RESCINDING THE "MINIMUM MAINTENANCE" DESIGNATION FOR A PORTION OF N100 ROAD AND REQUESTING A RECOMMENDATION FROM THE PLANNING COMMISSION

WHEREAS, The Board of County Commissioners, pursuant to KSA 68-5,102 and HR-92-10-2, may rescind a "minimum maintenance" designation of a road; and,

WHEREAS, The Board of County Commissioners has received a request from the Marion Township Board to rescind the "minimum maintenance" designation of a portion of N100 Road (Permanent Road Record No. 394) from 660E to 700E, the centerline of which is more particularly described as follows:

Commencing at the northwest corner of the Northeast Quarter of Section 14, Township 15 South, Range 18 East of the 6th P.M., Douglas County, Kansas; thence east 8.44 chains (557 feet) to the point of beginning; thence east 31.56 chains (2083 feet), more or less, to the northeast corner of said Northeast Quarter and the point of termination.

WHEREAS, pursuant to HR-92-10-2, the process to rescind a "minimum maintenance" designation is the same as that used to establish a "minimum maintenance" designation;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, the process to consider rescinding the "minimum maintenance" designation for the above described road be initiated; and,

BE IT FURTHER RESOLVED that the Planning Commission provide a recommendation to the Board of County Commissioners concerning such.

SIGNED, this _____ day of _____, 2019.

BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS

Michelle Derusseau, Chair

ATTEST:

Patrick Kelly, Vice Chair

Jamie Shew, County Clerk

Nancy Thellman, Member



DOUGLAS COUNTY ADMINISTRATOR

1100 Massachusetts Street
Lawrence, KS 66044-3064
(785) 832-5328 Fax (785) 832-5148
splinsky@douglascountyks.org

Sarah Plinsky
Interim County Administrator

MEMORANDUM

To : Board of County Commissioners

From : Tina Rakes, Building Codes Director

Date : 08/06/2019

Re : Amendment to Chapter 13, Construction Codes, permit exemption

The current language of 13-107.4.1, Chapter 13 of the Construction Codes exempts one-story detached accessory structures used as tool and storage sheds, playhouses, and similar uses, provided the floor area is not greater than 120 square feet (sq. ft.).

There was a change from the 2006 to the 2009 edition of the One and Two-Family Dwelling International Residential Code increasing the square footage of accessory buildings exempt from permits from 120 sq. ft. to 200 sq. ft. The request before you is to increase the allowable area for an exempt detached accessory building from 120 sq. ft. to 200 sq. ft. Additional language to the proposed resolution limits the maximum height of the side walls to 10 feet and prohibits the installation of water, electricity, plumbing and mechanical systems.

Staff Recommendation

Adoption of the amendments proposed in the attached Home Rule resolution to Chapter 13, 13-107.4.1 Construction Codes

HOME RULE RESOLUTION NO. HR-19-_____

A HOME RULE RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS AMENDING THE CONSTRUCTION CODES OF DOUGLAS COUNTY, KANSAS, SEPTEMBER 19, 2012 EDITION, AS CODIFIED AT CHAPTER 13 OF THE DOUGLAS COUNTY CODE.

WHEREAS, K.S.A. 19-101a, and amendments thereto, authorizes the Board of County Commissioners (hereinafter the "Board") to transact all County business and perform all powers of local legislation and administration it deems appropriate, including the enactment of legislation designed to protect the health, safety, welfare, and quality of life of the citizens of Douglas County; and

WHEREAS, by Resolution No. HR-12-9-3 the Board of County Commissioners adopted Construction Codes of Douglas County, Kansas, September 19, 2012 Edition, codified at Chapter 13 of the Douglas County Code (as subsequently amended, the "Construction Codes"), generally adopting new construction and building codes for the unincorporated areas of Douglas County, Kansas, replacing construction codes that were previously in place, with the new codes becoming effective January 1, 2013; and

WHEREAS, the Board desires to make certain amendments to the Construction Codes as set forth in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, SITTING IN REGULAR SESSION THIS ____ DAY OF _____ 2019 AND INTENDING TO EXERCISE THE POWERS OF HOME RULE LEGISLATION PURSUANT TO K.S.A. 19-101a, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. AMENDMENTS TO CONSTRUCTION CODES. The Construction Codes of Douglas County, Kansas, September 19, 2012 Edition, as codified at Chapter 13 of the Douglas County Code and as previously amended, are hereby amended as follows:

1.1 Section 13-107.4.1 of the Douglas County Code is amended and restated to read as follow:

13-107.4.1 **Building.**

1. One-story detached accessory structures used for tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 200 square feet (18.58 m²), with a maximum allowable wall height of 10 feet, and is not connected to electricity, water, natural gas or propane, public sewer or a private sanitation system.

Section 2. EFFECTIVE DATE. This is a home rule resolution and shall take effect and be in force and effect from and after its adoption and its publication once in the official County newspaper.

ADOPTED THIS ____ day of _____ 2019.

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS
COUNTY, KANSAS

Michelle Derusseau, Chair

Patrick Kelly, Vice Chair

Nancy Thellman, Member

ATTEST:

Jameson D. Shew, County Clerk



MEMORANDUM

To: Board of County Commissioners
From: Jim Lawson, Information Technology
Director
CC: Sarah Plinsky
Date: 8/9/2019
Subject: Replacement of Douglas County Storage Area Network (SAN) Units

The Douglas County shared storage area network needs to have two of our SAN units replaced. These units were purchased in 2014 and are reaching their end of life in December of 2019. I have attached some background material that will help explain what a SAN is.

After researching the current state of SAN technology, we decided to review solutions by Nimble, Western Digital and NetApp. We contacted a reseller of each solution to arrange meetings to discuss what they had to offer to meet the County's needs. We received responses from both the Nimble and Western Digital resellers but did not receive a response for the NetApp solution. We then had a demonstration of each product's capabilities and received quotes for the solutions that would best fit our needs. Here are the quotes we considered.

Model	Vendor	Price	Flash/Hybrid	Raw/Usable	Usage	Support
WD T4630	ISG	\$74,757	Hybrid	70TB/36.5TB	Prod	3-year, 4-hour
WD T4200	ISG	\$35,791	Hybrid	58TB/29TB	DR	3-year, 4-hour
Total WD Solution		\$110,548				
Nimble HF20	CDWG	\$40,995	Hybrid	42TB/33TB	Prod or DR	3-year, 4-hour
Nimble HF20	CDWG	\$40,995	Hybrid	42TB/33TB	Prod or DR	3-year, 4-hour
Total Nimble Solution		\$81,990				
NetApp	No response from vendor					

We determined that the new hybrid SAN units produced by Nimble Storage Systems would be the best fit for Douglas County. These units combine the best of flash based hard drives for speed and the efficiency of SAS based hard drives for capacity. The Nimble SAN units will process data ten times faster and will hold 33% more data than the units they are replacing. Even with the improved performance and capacity, the price of these units is \$46,944 less than we paid in 2014 (\$128,934). The reason that we purchase these in pairs is that one is for the primary storage site and one for disaster recovery that is housed at a remote site. The primary site retains our live data, while the DR site contains copies of our data and server operating systems. This redundancy protects and preserves our data in the event of a catastrophe while also giving us the capability to store historical backups off-site without having to use outdated tape technology.

The price we received from CDWG for the Nimble SAN's came from the cooperative contract National IPA Technology Solutions (2018011-01) that we have access to. These prices are a limited time special offer which is one reason the price is lower.

I am asking that the Commission authorize me to purchase two SAN units along with a three-year service agreement from CDWG for a price of \$81,990 utilizing the discounted pricing they made available. Since the units will be used to store land records, we can utilize the Register of Deeds technology fund 60272200-82030 to pay for this purchase. There is money available in this fund that was specifically earmarked for the purchase of replacement SAN units for our storage network. Thanks for your consideration of this request. I will be at the meeting to answer any questions that you have.

Jim Lawson

A handwritten signature in black ink that reads "Jim Lawson". The signature is written in a cursive, flowing style.

I.T Director
Douglas County, KS

Storage Area Network (SAN) Technology

What is it?

A Storage Area Network (SAN) is an enterprise-level storage network of several (often hundreds) of hard drives managed by an intelligent device. This allows for maximally efficient use of all available storage space, lowering total costs of ownership (TCO) and increasing return on investment (ROI). Most importantly, if a drive crashes, your data is not lost!

A SAN is an independent network for storage subsystems, free from the rest of the computer network. In effect, a SAN removes the storage from the servers; thus liberating the storage devices from the ownership of the servers. In such a setup where no server has ownership of storage subsystems, any server can gain access to any storage device. In other words, any user can gain access to any storage device of the SAN, regardless of the physical location of the storage or the user.

In addition to offering any-to-any connections, a SAN creates a scalable environment. Since storage and servers are independent from each other, storage devices or servers can be added or removed from their respective networks without affecting each other. Storage devices can be added to the SAN without any worry about a server's configurations. Isolating the potential disruptions of the servers from those of the storage reduces potential for interruptions.

Servers that host applications communicate with a SAN through iSCSI network equipment and the SAN determines where data is stored. If a hard drive fails for some reason, the other hard drives in the storage network essentially rebuild the data through a series of algorithms so no information is lost.

Benefits to using SANs:

- **Availability:** Due to its multiple levels of redundancy, it reduces the level of downtime associated with failures. A SAN allows for multiple physical connections to disks from single or multiple servers.
- **Disk Utilization:** Space can be assigned to any server that needs more storage space, thus allowing you to grow as needed with no downtime. This is referred to as storage on demand. The SAN enables more than one server to access the same physical disk which lets you allocate the free space on those disks more effectively. Because you can use disk space more effectively, no space goes to waste, thus you don't need to buy disks as often as you used to.
- **Management:** Storage is managed from a centralized location instead of on each server.
- **Reduced Data Center Rack Space:** By consolidating storage on the SAN instead of on the servers, it means that more servers with smaller footprints can be used. This eliminates the need for larger bulky servers.

- **Improved Disaster Recovery Capabilities:** Since storage is located on the SAN, a server failure can be recovered much faster. SAN devices have the ability to mirror the data on the disks to another location. This can make your data safe if a disaster occurs.
- **Vendor Consolidation:** Pooled storage architecture can consolidate the number of vendors involved in providing infrastructure services.
- **Clustering Support:** All SANs support server clustering. One of the reasons a SAN is purchased is to cluster multiple servers together while having the storage centralized on the SAN.
- **Better staff utilization:** SANs enable more data management with fewer IT resources.

Board of County Commissioners
Douglas County

We are pleased to present this report related to our audit of the regulatory basis financial statements of Douglas County, Kansas (County) as of and for the year ended December 31, 2018. This report summarizes certain matters required by professional standards to be communicated to you in your oversight responsibility for the County's financial reporting process.

This report is intended solely for the information and use of the Board of County Commissioners and management and is not intended to be, and should not be, used by anyone other than these specified parties.

This letter includes other comments and suggestions with respect to matters that came to our attention in connection with our audit of the County's financial statements. These items are offered as constructive suggestions to be considered part of the ongoing process of modifying and improving the County's practices and procedures.

Generally accepted auditing standards require the auditor to promote effective two-way communication between the auditor and those charged with governance. Consistent with this requirement, the following summarizes our responsibilities regarding the regulatory basis financial statement audit as well as observations arising from our audit that are significant and relevant to your responsibility to oversee the financial reporting process.

The Responsibilities of the Auditor and Management

Our responsibilities under auditing standards generally accepted in the United States of America, *Government Auditing Standards* issued by the Comptroller General of the United States and the *Kansas Municipal Audit and Accounting Guide* has been described to you in our arrangement letter dated September 10, 2018. Our audit of the financial statements does not relieve management or those charged with governance of their responsibilities, which are also described in that letter.

Overview of the Planned Scope and Timing of the Financial Statement Audit

We have issued a separate communication dated December 12, 2018 regarding the planned scope and timing of our audit and have discussed with you our identification of, and planned audit response to, significant risks of material misstatement. We made no significant changes to the scope or timing of our procedures.

Significant Accounting Practices, Including Policies, Estimates and Disclosures

Our views about the qualitative aspects of the County's significant accounting practices, including accounting policies, accounting estimates and financial statement disclosures are indicated herein, which you may wish to monitor for your oversight responsibilities of the financial reporting process:

Adoption of, or Change in, Accounting Policies - Management has the ultimate responsibility for the appropriateness of the accounting policies used by the County, and management may select among alternative accounting practices in certain circumstances. The County has elected to follow the regulatory basis of accounting as described in the *Kansas Municipal Audit and Accounting Guide* (KMAAG). This is in accordance with the County's Resolution No. 18-06, which waived compliance with generally accepted accounting principles, as allowed by K.S.A. 75-1120a(c). See 1.B.2 to the financial statement for a detailed description of the KMAAG regulatory basis of accounting, along with a description of all the County's significant accounting policies.

Significant or Unusual Transactions - We did not identify any significant or unusual transactions or significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

Management's Judgments and Accounting Estimates - Accounting estimates are an integral part of the preparation of financial statements and are based upon management's current judgment. The process used by management encompasses their knowledge and experience about past and current events, and certain assumptions about future events. You may wish to monitor throughout the year the process used to determine and record these accounting estimates. The following describes the significant accounting estimates reflected in the County's financial statements.

- Compensated absences: It is the County's policy to permit employees to accumulate certain amounts of vacation and sick leave. The County's policies are discussed in Note III.C.1. As a basis for our conclusions, we obtained a list of accumulated vacation and sick time through December 31, 2018 from the County's payroll system, and recalculated vacation and sick time per County policies for a sample of County employees. In addition, we reviewed total compensated absences by analytically comparing the current year results to prior year history.
- Incurred but not reported claims for health insurance: The County is self-insured for these risks. Estimates related to health insurance claims are based on a past history of claims incurred, and estimates of the lag time between when a claim is filed and paid. As a basis for our conclusions, we reviewed the County's health insurance liability for claims incurred but not paid at December 31, 2018, in comparison to the historical lag time for claim payments, to ensure amounts projected to be paid after year-end were proper.
- Net pension liability: The County followed guidelines as prescribed in the KMAAG for disclosing its KPERS net pension liability. The County utilized information provided in KPERS' report on Schedules of Employer and Nonemployer Allocations and Schedules of Pension Amounts by Employer and Nonemployer as of June 30, 2018, which was audited by KPERS' auditors. The County compared contributions made by the County to amounts included in this report. As a basis for our conclusions, we reviewed the KPERS report for reasonableness and verified and recalculated the County's information provided in the report.

Audit Adjustments

There were 3 types of audit adjustments to the original trial balance presented to us to begin our audit: 1) to adjust beginning fund balance to match the prior year report, 2) to adjust accounts payable in the Employee Benefits Trust and Workers' Compensation Funds for estimated claims incurred but not yet paid, and 3) to adjust various Health Department accounts to agree to supporting documentation.

Uncorrected Misstatements

During the course of our audit, we accumulated uncorrected misstatements that were determined by management to be immaterial, both individually and in the aggregate, to the financial statements. Therefore, the adjustments to correct these misstatements were not made to the financial statements. These items are summarized in the attached Summary of Adjustments Passed.

Management Representations

In connection with our audit procedures, we have obtained a written management representation letter. This representation letter constitutes written acknowledgments by management that it has the primary responsibility for the fair presentation of the financial statements in conformity with generally accepted accounting principles and also includes the more significant and specific oral representations made by officers and employees during the course of the audit. The letter is intended to reduce the possibility of misunderstandings between us and the County and reminds the signing officers to consider seriously whether all material liabilities, commitments and contingencies or other important financial information have been brought to our attention.

Other Disclosures

We did not discuss with management any alternative treatments within generally accepted accounting principles for accounting policies and practices related to material items during the current audit year; we encountered no disagreements with management over the application of significant accounting principles, the basis for management's judgments on any significant matters, the scope of the audit or significant disclosures to be included in the financial statements; we are not aware of any consultations management had with other accountants about accounting or auditing matters; no major issues were discussed with management prior to our appointment; and we did not encounter any difficulties in dealing with management relating to the performance of the audit.

Internal Controls

In planning and performing our audit of the regulatory basis financial statements of Douglas County as of and for the year ended December 31, 2018, in accordance with auditing standards generally accepted in the United States of America, we considered the County's internal control over financial reporting (internal control) as a basis for designing auditing procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the County's internal control. Accordingly, we do not express an opinion on the effectiveness of the County's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses and therefore, significant deficiencies or material weaknesses may exist that were not identified. However, as disclosed below, we identified certain deficiencies in internal control that we consider to be significant deficiencies.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. *A material weakness* is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the financial statements will not be prevented, or detected and corrected on a timely basis.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the following control deficiencies to be significant deficiencies.

Segregation of Duties:

- *Payroll Processing:* There is lack of adequate segregation of duties in the payroll function. The payroll clerk has access to add employees, modify master file information, process payroll and post to the general ledger. The clerk also has access to blank checks and the signature stamp software. Additionally, there is no reconciliation currently performed between the data in the payroll system and what is posted to the general ledger.

Mitigating controls include the fact that department heads, the County Treasurer and Assistant County Administrator receive copies of payroll reports for review. Department heads also review timesheets. Additionally, new hires and terminations are approved by the department heads and County Administrator where applicable. Beginning in July 2018, the County implemented an additional mitigating control to address this significant deficiency. The new mitigating control consists of an individual outside of the payroll department reviewing audit tables and any changes made by payroll personnel against supporting documentation quarterly. With the addition of this mitigating control, the significant deficiency was addressed beginning July 2018.

- *Purchase Orders:* Purchase orders under \$20,000 can be created and approved by the same person. The ERP system implemented in 2015 allows for the same person to both enter and approve the purchase orders they have entered, primarily in those departments that small, though all purchase orders over \$20,000 require an additional approval from at least the department making the purchase. There should be a separation between the entry function and the approval function to ensure that no fraudulent purchase orders are entered. Accounts payable is responsible for reviewing and approving setup of all new vendors in the system.

Other Matters

Information Security Governance

Executive managers and those charged with governance must be confident that the entity is protecting your information and the systems that process it. The potential impacts of a failure in the availability, confidentiality or integrity of your critical information assets is monumental in today's environment of cybersecurity breaches.

Many organizations believe their information security practices are adequately mitigating their risks. Unfortunately, they are often surprised to discover those practices are failing to perform as expected and the consequences are usually severe.

Information security is more than a technology issue. It is a governance and management challenge that involves risk management, accountability and reporting. And it requires executive stewardship to ensure the timely assessment of emerging threats and your organization's effective response to them.

Additional information on "Information Risk is Business Risk" can be accessed through our AGH University website located at <http://www.aghuniversity.com/webinars/archived/archived-webinars.aspx> (from the "select a topic" drop-down box, select Information Technology). Additionally, we encourage your management team to take advantage of peer networking groups, trade associations or other resources relating to IT and information risk and the most recent best practices as the constant risk evolves.

Additionally, a structured assessment can help you develop stronger, better and more systematic approaches to your information security. It will help you clearly and objectively understand the strengths and weaknesses in your current information security processes and the extent to which those processes are meeting your needs. Most important, it will guide you with recommendations to help you protect your information, facilities, people and technology.

We believe a review or assessment must be completed on a periodic basis; this assessment can be completed internally or by using an outsourced service provider. Executive managers should be involved with the review and summary reports should also be shared with those charged with governance.

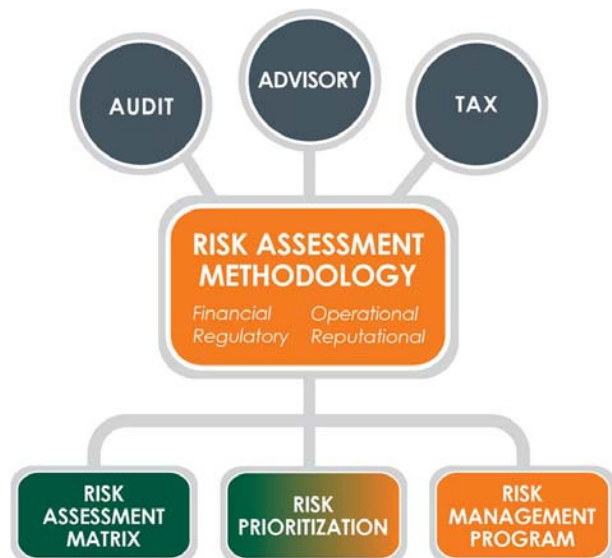
Vulnerability Assessment

In addition to a periodic information system governance review, the entity should also conduct periodic (at least annually or semi-annually) vulnerability assessments. There are more than 100,000 known network vulnerabilities that can leave organizations open to significant risk. High-profile security breaches have become commonplace and many companies are susceptible to the same failures.

Network vulnerability assessments can help you identify and resolve your vulnerabilities before they are exploited by cybercriminals. AGH's experienced security professionals use network vulnerability assessments to discover and analyze known flaws and weaknesses.

Using automated scanners – along with their experience and judgment – our security professionals will identify existing vulnerabilities, evaluate their severity and recommend steps for fixing the underlying problems.

Comprehensive Policy and Procedure Review



Given the broad and deep scope of your operations, you should consider completing a comprehensive evaluation of the adequacy and effectiveness of the entity's internal financial policies, processes and procedures, including a comparison to best practices among organizations the same size.

For entities that have experienced budget cuts in the finance area or those that have experienced turnover, a periodic review of controls is imperative. Even if your finance team has been stable over the years, we remind you that even the best design of controls is only as good as the people who carry out and execute such controls.

Financial policies, procedures and processes are a key element of sound fiscal administration. When policies are effective, they can preserve or enhance the fiscal health and wealth of the organization and create efficiencies for staff members.

This comprehensive evaluation could include:

1. Evaluation of existing controls
2. Identification of financial policies that could lead to vulnerability to fraud and/or abuse
3. For those identified weaknesses and risks, recommendations for improvements

Closing

We will be pleased to respond to any questions you have about this report or set up an introductory meeting to discuss the other recommendations at no charge. We appreciate the opportunity to continue to be of service to Douglas County.

Allen, Gibbs & Houlik, L.C.
CERTIFIED PUBLIC ACCOUNTANTS

July 30, 2019
Wichita, KS

Douglas County
Summary of Adjustments Passed
12/31/2018

Description	Debit (Credit) to				
	Assets	Liabilities / Encumbrances	Beg. Equity	Revenues	Expenditures

Effect of reversing prior year's entries in current year:

To record payables in non-budgeted funds	\$	-	\$	-	\$	87,346	\$	-	\$	(87,346)
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Current year adjustments passed:

To record payables in non-budgeted funds	-	(255,199)	-	-	255,199
To record accrued payroll	-	(158,842)	-	-	158,842

\$	-	\$	(414,041)	\$	87,346	\$	-	\$	326,695
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Current year effect	\$	326,695
Cumulative effect	\$	<u>414,041</u>

Ms. Sarah Plinsky
Interim County Administrator
Douglas County, Kansas
1100 Massachusetts St.
Lawrence, KS 66044

We are pleased to present this letter of internal control observations for Douglas County, Kansas (County) based on our audit of the financial statements for the year ended December 31, 2018.

Internal Controls

In planning and performing our audit of the financial statements, in accordance with auditing standards generally accepted in the United States of America, we considered the County's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the County's internal control. Accordingly, we do not express an opinion on the effectiveness of the County's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A deficiency in design exists when (a) a control necessary to meet the control objective is missing, or (b) an existing control is not properly designed so that, even if the control operates as designed, the control objective would not be met. A deficiency in operation exists when a properly designed control does not operate as designed or when the person performing the control does not possess the necessary authority or competence to perform the control effectively.

A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected on a timely basis. *A significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Following are descriptions of identified control deficiencies that we determined did not constitute significant deficiencies or material weaknesses:

Control Deficiencies Noted in Prior Years - Mitigating Controls in Place

As noted in the introductory section of this letter, a control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. Compensating controls can mitigate the severity of a deficiency, but do not eliminate the deficiency. Management's corrective actions have included supplementing the controls and procedures with mitigating controls to help detect and prevent possible misstatements. While certain employees may have access to incompatible functions, resulting in a control deficiency,

the deficiency in internal control is mitigated, reducing risk. We continue to report these to management as a reminder to remain diligent in ensuring that mitigating controls continue to function as designed. In the event of changes in personnel, policies or procedures, we recommend management re-evaluate whether the mitigating controls are still in place.

Health Department Segregation of Duties: The Finance Director and the Financial Specialist are involved in processing accounts payable and have access to master vendor files.

Mitigating controls include the fact that all checks require dual signatures; the Financial Specialist does not have check signing authority, access to change funds, bank account information, the bank reconciliation module, or access to the blank check stock. In addition the Finance Director also does not have check signing authority. Purchase orders are approved by the Director and/or Assistant Director and must be matched to invoices to get processed.

Tax System Access: During testing of access controls in the Aumentum (GRM) tax system, we noted that there is an "Administrator" function that allows users assigned to this role to have complete access to the system. In 2018, we noted that there were still five individuals who have complete access to the system, but there are mitigating controls that do exist: a) the appraised value of property is retained in a separate software package called Orion that only the Appraiser's office has access to; therefore, these individuals could not change the value of a property, b) when corrections of errors are processed, it begins in the Appraiser's office and goes through Board approval, and c) these individuals could move from a higher levying tax district to a lower levying tax district; however an outlier would be noticed when mapping out the tax districts. In addition, four of the individuals work in the IT department and do not perform functions within the system, but assist with technology issues as needed. User productivity reports are available to verify these individuals do not make any changes in the system.

Other Control Deficiencies Noted in Prior Years

Health Department Bank Reconciliations: During testing of the year-end bank reconciliations, we noted that two accounts had a variance. One checking account had a variance of \$526 while the main operating bank account had a variance of \$7,959. This variance has fluctuated slightly over the last few years. In the current year, after inquiry, the main operating account was reviewed and many items on the outstanding check and deposit listing were written off or removed. However, there is still a variance remaining. The bank reconciliations do have a second review done monthly by management and reconcile at the time of review. However, if a check is voided, it posts to the date the check was written which changes the already reviewed bank reconciliation. We recommend that the old general ledger activity be identified and resolved. We also recommend that when activity is changed after the bank reconciliation date, the bank reconciliation is reviewed to ensure general ledger activity has posted correctly.

Other Control Deficiencies New in Current Year

Health Department KPERS Contribution Records: During testing of KPERS contribution amounts, there were several instances where the contributions per the Health Department's records did not match the confirmation provided by KPERS. KPERS contributions are ultimately reviewed by KPERS and are eventually corrected, but Health Department records do not appear to be updated with the corrected contribution amounts. We recommend that contribution amounts are subject to a secondary review and reconciled against KPERS reports on a periodic basis to ensure general ledger activity has posted correctly.

Conclusion

This communication is intended solely for the information and use of management, Board of County Commissioners, and others within the organization, and is not intended to be and should not be used by anyone other than these specified parties.

Allen, Gibbs & Houlik, L.C.
CERTIFIED PUBLIC ACCOUNTANTS

July 30, 2019
Wichita Kansas

DOUGLAS COUNTY, KANSAS

REGULATORY BASIS
FINANCIAL STATEMENT

YEAR ENDED DECEMBER 31, 2018

AND

INDEPENDENT AUDITOR'S REPORT



DOUGLAS COUNTY, KANSAS

REGULATORY BASIS
FINANCIAL STATEMENT

YEAR ENDED DECEMBER 31, 2018

AND

INDEPENDENT AUDITOR'S REPORT

DOUGLAS COUNTY, KANSAS

**REGULATORY BASIS
FINANCIAL STATEMENTS**

Year Ended December 31, 2018

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DOUGLAS COUNTY, KANSAS

**REGULATORY BASIS
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Year Ended December 31, 2018

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is available at the County's office.*

INDEPENDENT AUDITOR'S REPORT

Board of County Commissioners
Douglas County, Kansas

Report on the Financial Statements

We have audited the accompanying fund summary statement of regulatory basis receipts, expenditures, and unencumbered cash balances of Douglas County, Kansas and the related municipal entities of the Douglas County Extension Council, Lawrence/Douglas County Health Department and Douglas County Free Fair (collectively, Douglas County, Kansas Financial Reporting Entity), as of and for the year ended December 31, 2018, and the related notes to the financial statement.

Management's Responsibility for the Financial Statement

Management is responsible for the preparation and fair presentation of this financial statement in accordance with the Kansas Municipal Audit and Accounting Guide as described in Note IB; this includes determining that the regulatory basis of accounting is an acceptable basis for the preparation of the financial statement in the circumstances. Management is also responsible for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of the financial statement that is free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on the financial statement based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and the *Kansas Municipal Audit and Accounting Guide*. Those standards require we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statement. The procedures selected depend on auditor's judgment, including the assessment of the risks of material misstatement of the financial statement, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statement in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statement.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Basis for Adverse Opinion on U.S. Generally Accepted Accounting Principles

As described in Note IB of the financial statement, the financial statement is prepared by the Douglas County, Kansas Financial Reporting Entity on the basis of the financial reporting provisions of the *Kansas Municipal Audit and Accounting Guide*, which is a basis of accounting other than accounting principles generally accepted in the United States of America.

The effects on the financial statement of the variances between the regulatory basis of accounting described in Note IB, and accounting principles generally accepted in the United States of America, although not reasonably determinable, are presumed to be material.

Adverse Opinion on U.S. Generally Accepted Accounting Principles

In our opinion, because of the significance of the matter discussed in the “Basis for Adverse Opinion on U.S. Generally Accepted Accounting Principles” paragraph, the financial statement referred to above does not present fairly, in conformity with accounting principles generally accepted in the United States of America, the financial position of the Douglas County, Kansas Financial Reporting Entity as of December 31, 2018, or changes in financial position and cash flows thereof for the year then ended.

Unmodified Opinion on Regulatory Basis of Accounting

In our opinion, the financial statement referred to above presents fairly, in all material respects, the aggregate cash and unencumbered cash balance of the Douglas County, Kansas Financial Reporting Entity as of December 31, 2018, and the aggregate receipts and expenditures for the year then ended in accordance with the financial reporting provisions of the *Kansas Municipal Audit and Accounting Guide* described in Note IB.

Other Matters

Supplementary Information

Our audit was conducted for the purpose of forming an opinion on the fund summary statement of regulatory basis receipts, expenditures, and unencumbered cash balances (basic financial statement) as a whole. The supplementary information listed in the table of contents is presented for analysis and is not a required part of the basic financial statement, however is required to be presented under the provisions of the *Kansas Municipal Audit and Accounting Guide*. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statement. The information has been subjected to the auditing procedures applied in the audit of the basic financial statement and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statement or to the basic financial statement itself, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the basic financial statement as a whole, on the basis of accounting described in Note IB.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated July 30, 2019 on our consideration of the Douglas County, Kansas Financial Reporting Entity’s internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Douglas County, Kansas Financial Reporting Entity’s internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Douglas County, Kansas Financial Reporting Entity’s internal control over financial reporting and compliance.

Allen, Gibbs & Houlik, L.L.C.

CERTIFIED PUBLIC ACCOUNTANTS

July 30, 2019
Wichita, Kansas

Douglas County, Kansas

Summary Statement of Receipts, Expenditures, and Unencumbered Cash Regulatory Basis

For the Year Ended December 31, 2018

	Beginning Unencumbered Cash Balance 1/1/2018	Cash Receipts	Expenditures	Ending Unencumbered Cash Balance 12/31/2018	Add Outstanding Encumbrances and Accounts Payable	Ending Cash Balance 12/31/2018
GOVERNMENTAL TYPE FUNDS:						
GENERAL FUND	\$ 3,594,566	\$ 54,858,903	\$ 53,513,289	\$ 4,940,180	\$ 1,208,464	\$ 6,148,644
SPECIAL PURPOSE FUNDS:						
Ambulance	511,345	8,371,381	8,504,567	378,159	276,114	654,273
Economic Development	2,575	-	2,575	-	-	-
Emergency Telephone Service	724,683	579,951	637,881	666,753	-	666,753
Employee Benefits	1,973,337	10,840,332	11,078,481	1,735,188	3,169,029	4,904,217
Motor Vehicle Operations	95,892	783,307	714,479	164,720	25,946	190,666
Road & Bridge	1,839,688	5,815,284	6,048,668	1,606,304	196,944	1,803,248
Special Alcohol	35,957	28,879	-	64,836	-	64,836
Special Building	972,221	804,949	376,312	1,400,858	24,903	1,425,761
Special Liability	44,374	599,785	558,682	85,477	-	85,477
Special Parks & Recreation	45,121	26,880	14,784	57,217	-	57,217
Youth Services-Juv Detention	166,481	3,241,179	2,971,769	435,891	125,868	561,759
Ambulance Capital Reserve	374,999	1,897,192	814,074	1,458,117	743,726	2,201,843
Community Correction Plan	(2,398)	510,766	471,015	37,353	16,423	53,776
Donations	41,826	1,022	1,820	41,028	-	41,028
Equipment Reserve	8,329,804	3,656,651	2,582,852	9,403,603	723,242	10,126,845
Grants Programs	211,302	224,470	292,701	143,071	3,710	146,781
Prosecutor Training & Assistance	9,308	10,124	15,663	3,769	-	3,769
Register of Deeds Technology	276,075	192,194	31,594	436,675	277	436,952
Sheriff Special Use	28,106	109,501	108,946	28,661	1,434	30,095
Special Law Enforcement Trust	603,661	139,607	88,947	654,321	63	654,384
Special Highway Improvement	1,096,268	61,366	161,145	996,489	-	996,489
Youth Services Grants	49,906	577,038	503,204	123,740	14,509	138,249
Valley View	122,187	5,707	70,000	57,894	-	57,894
TOTAL SPECIAL PURPOSE FUNDS	17,552,718	38,477,565	36,050,159	19,980,124	5,322,188	25,302,312
CAPITAL PROJECTS FUND:						
Capital Improvement Plan	16,209,665	7,723,230	2,640,544	21,292,351	1,393,437	22,685,788
TOTAL CAPITAL PROJECTS FUND	16,209,665	7,723,230	2,640,544	21,292,351	1,393,437	22,685,788
DEBT SERVICE FUNDS:						
Bond and Interest	467,026	323,827	302,855	487,998	-	487,998
Local County Sales Tax	2,326,760	3,550,180	2,596,706	3,280,234	-	3,280,234
TOTAL DEBT SERVICE FUNDS	2,793,786	3,874,007	2,899,561	3,768,232	-	3,768,232
BUSINESS FUNDS:						
Employee Benefit Trust	5,300,703	9,668,549	11,063,777	3,905,475	1,133,025	5,038,500
Workers' Compensation	465,707	479,206	278,635	666,278	124,242	790,520
TOTAL BUSINESS FUNDS:	5,766,410	10,147,755	11,342,412	4,571,753	1,257,267	5,829,020
TOTAL COUNTY	45,917,145	115,081,460	106,445,965	54,552,640	9,181,356	63,733,996

Douglas County, Kansas

Summary Statement of Receipts, Expenditures, and Unencumbered Cash Regulatory Basis (Continued)

For the Year Ended December 31, 2018

	Beginning Unencumbered Cash Balance 1/1/2018	Cash Receipts	Expenditures	Ending Unencumbered Cash Balance 12/31/2018	Add Outstanding Encumbrances and Accounts Payable	Ending Cash Balance 12/31/2018
RELATED MUNICIPAL ENTITIES:						
Douglas County Extension Council	\$ 594,262	\$ 760,398	\$ 805,193	\$ 549,467	\$ -	\$ 549,467
Lawrence/Douglas County Health Dept	3,078,976	3,554,269	3,649,659	2,983,586	335,815	3,319,401
Douglas County Free Fair	38,050	334,858	320,273	52,635	-	52,635
TOTAL RELATED MUNICIPAL ENTITIES	3,711,288	4,649,525	4,775,125	3,585,688	335,815	3,921,503
TOTAL REPORTING ENTITY (Excluding Agency Funds)	\$ 49,628,433	\$ 119,730,985	\$ 111,221,090	\$ 58,138,328	\$ 9,517,171	\$ 67,655,499

Composition of Cash:	Petty Cash - County	\$ 2,500
	Petty Cash - Health Department	803
	Checking Account - US Bank	5,742,941
	Investment Account - Kansas Municipal Investment Pool	22,252
	Certificates of Deposit - Bank of the West	1,250,000
	Certificates of Deposit - Commerce Bank	8,500,000
	Certificates of Deposit - Capitol Federal	19,500,000
	Certificates of Deposit - Central National Bank	85,544,034
	Certificates of Deposit - Health Department - Central National Bank	825,313
	Certificates of Deposit - Health Department - US Bank	375,824
	Certificates of Deposit - Mid America Bank	1,000,000
	Checking Account - Employee Benefits Trust - US Bank	2,192,173
	Checking Account - Risk Management - US Bank	44,870
	Insured Cash Sweep - US Bank	37,802,071
	Insured Cash Sweep - Employee Benefits Trust - US Bank	2,846,327
	Inmate Funds - Peoples Bank	10,695
	Checking Account - District Attorney - INTRUST Bank	132,092
	Checking Account - Sheriff Bond Fund - Peoples Bank	8,850
	Health Department - Peoples Bank	2,105,992
	Health Department - Central National Bank	11,472
	Extension Council - Central Bank of the Midwest	549,467
	Free Fair Board - Central Bank of the Midwest	52,635
	Total Cash	168,520,311
	Less Agency Funds per Schedule 3	(100,864,812)
	Total Reporting Entity (Excluding Agency Funds)	\$ 67,655,499

The accompanying notes are an
integral part of this financial statement.

Douglas County, Kansas

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Douglas County, Kansas

Notes to the Financial Statements

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Municipal Financial Reporting Entity

Douglas County, Kansas (County) is organized under the laws of the State of Kansas (Kansas or State) and is governed by an elected three member commission. This regulatory financial statement presents the County and its related municipal entities. The related municipal entities are included in the County's reporting entity because they were established to benefit the County and/or its constituents. Each related municipal entity has a December 31 year-end.

Related Municipal Entities

The Douglas County Extension Council (Council) provides services in such areas as Community Development, agriculture, home economics and 4-H clubs to all persons in the County. The Council is governed by an elected nine-member executive board. The County levies taxes for the support of the Council.

The Lawrence/Douglas County Health Department (Health Department) provides health care and education to citizens of the County. It is governed by an eight-member board (three members are appointed by the County, three by the City of Lawrence, one is jointly appointed, and one is a representative for the University of Kansas). The City of Lawrence provides office space for the Health Department. The County provides funding through the annual appropriation of the health fund tax levy.

The Douglas County Free Fair (Free Fair) manages and controls the business of the fair association and its property. The Free Fair's Board of Directors, representing each township within the County, is appointed by the County Commission. The County provides an annual appropriation to the Free Fair.

Separate financial statements are not available for each of the related municipal entities.

B. Fund Types and Basis of Accounting

1. Regulatory Basis Fund Types

The accounts of the County are organized on the basis of funds, each of which is considered to be a separate accounting entity. The operations of each fund are accounted for separately. Funds are classified into three categories: governmental, fiduciary, and business. Within each of these three categories there are one or more fund types. The County uses the following fund types:

Douglas County, Kansas

Notes to the Financial Statements

Governmental Fund Types

These are the funds through which most governmental functions typically are financed. The funds included in this category are as follows:

General Fund - This fund is the chief operating fund and was established to account for resources devoted to financing the general services that the County performs for its citizens. General tax revenues and other sources of revenue used to finance the fundamental operations of the County are included in this fund. This fund is charged with all costs of operating the government for which a separate fund has not been established.

Special Purpose Funds - These funds are established to account for the proceeds of specific tax levies and other revenue sources (other than tax levies for long-term debt or major capital projects) that are intended for specified purposes.

Debt Service Funds - These funds are established for the purpose of accumulating resources, including tax levies, for the payment of interest and principal on long-term general obligation debt.

Capital Project Funds - These funds account for debt proceeds and other financial resources to be used for the acquisition or construction of major capital facilities or equipment.

Business Fund Types

Internal Service Funds - These funds are used to account for risk management reserves, workers' compensation reserves, and health, dental and life reserves, which are services provided to other departments on a cost-reimbursement basis.

Fiduciary Fund Types

Agency Funds - These funds are used to report assets held by the municipal reporting entity in a purely custodial capacity (county treasurer tax collection accounts, etc.).

2. Regulatory Basis of Accounting

Regulatory Basis of Accounting and Departure from Accounting Principles Generally Accepted in the United States of America. The Kansas Municipal Audit and Accounting Guide (KMAAG) regulatory basis of accounting involves the recognition of cash, cash equivalents, marketable investments, and certain accounts payable and encumbrance obligations to arrive at a net unencumbered cash and investments balance on a regulatory basis for each fund, and the reporting of changes in unencumbered cash and investments of a fund resulting from the difference in regulatory basis receipts and regulatory basis expenditures for the fiscal year. All recognized assets and liabilities are measured and reported at cost, unless they have been permanently impaired and have no future cash value or represent no future obligation against cash. The KMAAG regulatory basis does not recognize capital assets, long-term debt, accrued receivables and payables, or any other assets, liabilities or deferred inflows or outflows, other than those mentioned above.

The municipality has approved a resolution that is in compliance with K.S.A. 75-1120a(c), waiving the requirement for application of generally accepted accounting principles and allowing the municipality to use the regulatory basis of accounting.

Douglas County, Kansas

Notes to the Financial Statements

C. Deposits and Investments

The County Treasurer maintains a cash and investment pool that is available for use by all funds. The pool has the general characteristics of demand deposit accounts in that each fund may deposit additional cash at any time and also effectively may withdraw cash at any time without prior notice or penalty. The pooled cash is invested to the extent available in authorized investments. In addition, cash and investments are separately maintained by other County officials and departments, third party trustees and fiscal agents.

The County's cash is considered to be active funds by management and is invested according to KSA 9-1401. The statute requires that banks eligible to hold active funds have a main or branch bank in the county and that the bank provide an acceptable rate for active funds.

Earnings from the investments are allocated to the general fund. Investments for the County as of December 31, 2018 consisted of certificates of deposit, repurchase agreements and investments in the Kansas Municipal Investment Pool, which are recorded at cost.

The County's investment policy and Kansas law (K.S.A. 12-1675 - 12-1677) allow monies not otherwise regulated by statute to be invested in:

1. Temporary notes of Douglas County, Kansas.
2. Time deposits, open accounts, or certificates of deposits with maturities of not more than two years.
3. Repurchase agreements with commercial banks, or state or federally chartered savings and loan associations that have offices located in Douglas County, Kansas.
4. U.S. Treasury bills or notes with maturities not exceeding two years.
5. U.S. government agency securities with a maturity of not more than four years.
6. The municipal investment pool fund operated by the Kansas Treasurer. This pool is not an SEC registered pool. The Pooled Money Investment Board (PMIB) provides the regulatory oversight for this pool.
7. A municipal investment pool established through the trust department of commercial banks that have offices located in Douglas County, Kansas.

In addition, the County's investment policy and Kansas law (K.S.A. 10-131) allows investment of the proceeds of bonds and temporary notes in the following in addition to those stated above:

1. U.S. government and agency obligations.
2. Time deposits with banks and trust companies in Douglas County, Kansas.
3. FNMA, FHLB, and FHLMC obligations.
4. Collateralized repurchase agreements.
5. Investment agreements with financial institutions, including broker/dealers whose obligations are rated in one of the three highest rating categories by either Moody's or Standard & Poor's.
6. Mutual funds whose portfolio consists entirely of obligations of the U.S. government, U.S. government agencies, FLMA, FHLB, and FHLMC.
7. Certain Kansas municipal bonds.

Douglas County, Kansas

Notes to the Financial Statements

II. STEWARDSHIP, COMPLIANCE, AND ACCOUNTABILITY

A. Budgetary Information

Kansas statutes require an annual operating budget be legally adopted for the general fund, special purpose funds (unless specifically exempted by statute), debt service funds, and certain business funds. Although directory rather than mandatory, the statutes provide for the following sequence and timetable of the legal annual operating budget:

- * Preparation of the budget for the succeeding calendar year on or before August 1st.
- * Publication of the proposed budget and notice of public hearing in the local newspaper on or before August 5th.
- * Public hearing on or before August 15th, but at least 10 days after publication of notice of hearing.
- * Adoption of the final budget on or before August 25th.

The County has the following levels of budget control:

- * The legal level of control is established at the fund level by Kansas statutes.
- * As allowed by Kansas statute, the governing body can increase the fund level expenditures from the originally adopted budget by amending the budget. An amendment may only be made for previously unbudgeted increases in regulatory receipts other than ad valorem taxes. To do this, a notice of public hearing to amend the budget must be published in the local newspaper. At least 10 days after the publication, the hearing may be held and the governing body may amend the budget at that time. The following funds had budget amendments in 2018: General fund, Ambulance fund, Road & Bridge fund, Special Liability fund and Youth Services-Juvenile Detention fund.

Budget comparison statements are presented for each budgeted fund showing actual receipts and expenditures compared to legally budgeted receipts and expenditures. These statements are shown at the legal level of control, which is at the fund level. Budgetary data in the financial statements represent the amended budget amounts.

All legal operating budgets are prepared using the regulatory basis of accounting, in which regulatory receipts are recognized when cash is received and expenditures include disbursements, accounts payable, and encumbrances, with disbursements being adjusted for prior year's accounts payable and encumbrances. Encumbrances are commitments for future payments and are supported by a document evidencing the commitment, such as purchase order or contract. All unencumbered appropriations (legal budget expenditure authority) lapse at year-end except for capital project funds appropriations, which are carried forward until such time as the project is completed or terminated. Encumbered appropriations are not reappropriated in the ensuing year's budget but are carried forward until liquidated or canceled.

Douglas County, Kansas

Notes to the Financial Statements

A legal operating budget is not required for capital project fund, internal service funds, fiduciary funds, and the following special purpose funds:

Ambulance Capital Reserve	Register of Deeds Technology
Community Correction Plan	Sheriff Special Use
Donations	Special Law Enforcement Trust
Equipment Reserve	Special Highway Improvement
Grants Programs	Youth Services Grants
Prosecutor Training & Assistance	Valley View

Spending in the above funds that are not subject to the legal budget requirements is controlled by federal regulations, other statutes, or by the use of internal spending limits established by the governing body.

B. Budget Violation

The Economic Development incurred expenditures in excess of budgeted expenditures by \$2,575, which violates K.S.A. 79-2935 due to overspending. This was caused by the fund being closed during 2018.

III. DETAILED NOTES ON THE FUNDS AND ACCOUNTS

A. Deposits and Investments

Deposits - At year-end, the carrying amount of deposits for the County was \$168,498,059 and the bank balance was \$168,413,182.

Investments - As of December 31, 2018, the County had the following investments and maturities:

Investment Type	Fair Value	Investment Maturity (at cost)	Percentage of Investments	Rating
		Less than 1 Year		
Kansas Municipal Investment Pool	\$ 24,743	\$ 22,252	100%	N/A
Total Fair Value	<u>\$ 24,743</u>	<u>\$ 22,252</u>		

Custodial Credit Risk. Custodial credit risk is the risk that, in the event of a bank failure, or failure of the counterparty, the County will not recover the value of its investments or deposits that are in possession of an outside party. State statutes require the County's deposits in financial institutions to be entirely covered by federal depository insurance or by collateral held under a joint custody receipt issued by a bank within the State of Kansas, the Federal Reserve Bank of Kansas City, or the Federal Home Loan Bank of Topeka, except during designated "peak periods" when required coverage is 50%. As of December 31, 2018, the County's deposits were fully covered and not exposed to custodial credit risk. At December 31, 2018, the

Douglas County, Kansas

Notes to the Financial Statements

County had invested \$22,252 in the State's municipal investment pool. The municipal investment pool is under the oversight of the Pooled Money Investment Board. The board is comprised of the State Treasurer and four additional members appointed by the State Governor. The board reports annually to the Kansas legislature. State pooled monies may be invested in direct obligations of, or obligations that are insured as to principal and interest, by the U.S. government or any agency thereof, with maturities up to four years. No more than ten percent of those funds may be invested in mortgage-backed securities. In addition, the State pool may invest in repurchase agreements with Kansas banks or with primary government securities dealers.

Credit Risk. State law limits the types of investments that the County may make. The County's investment policy does not add any further limitations.

Concentration of Credit Risk. State statutes place no limit on the amount the County may invest in any one issuer as long as the investments are adequately secured under K.S.A. 9-1402 and 9-1405.

Interest Rate Risk. State law limits investments in U.S. Treasury bills or notes and agency securities to those with maturities not exceeding two or four years, respectively, as discussed in Note IC.

B. Long-Term Debt

Changes in long-term debt were as follows:

Douglas County, Kansas
Statement of Changes in Long-Term Debt
Regulatory Basis
For the Year Ended December 31, 2018

Issue	Interest Rates	Date of Issue	Amount of Issue	Date of Final Maturity	Balance Beginning of Year	Additions	Reductions/ Payments	Balance End of Year	Interest Paid
<u>Douglas County:</u>									
General Obligation Bonds - Governmental Funds:									
Series 2008 General Obligation Bonds	4.00 - 4.75%	09/15/08	\$ 280,000	09/01/28	\$ 185,000	\$ -	\$ 15,000	\$ 170,000	\$ 8,488
Series 2009A GO Improvement Bonds	2.63 - 4.25%	10/01/09	2,445,000	09/01/30	1,950,000	-	120,000	1,830,000	77,450
Series 2012B Sales Tax Refunding Bonds	.65-2%	06/04/12	6,020,000	08/01/19	3,745,000	-	1,980,000	1,765,000	61,288
Series 2012D Taxable GO Bonds	1.45-2.55%	06/04/12	240,000	08/01/21	110,000	-	25,000	85,000	2,805
Series 2012E General Obligation Bonds	2.625-4%	09/05/12	175,000	08/01/32	150,000	-	10,000	140,000	5,312
Series 2013 GO Refunding and Sales Tax Bonds	2.00-4.50%	07/22/13	14,315,000	08/01/33	13,255,000	-	-	13,255,000	555,418
Total Bonded Indebtedness					<u>\$ 19,395,000</u>	<u>\$ -</u>	<u>\$ 2,150,000</u>	<u>\$ 17,245,000</u>	<u>\$ 710,761</u>

Funding received from the various bonds issuances was used to provide financing for improvements to certain roadways, sewers, the juvenile detention facility, judicial center, courthouse, spillway, fairground facilities, portions of the health department, communications system improvements, and a public works facility.

Douglas County, Kansas

Notes to the Financial Statements

Maturities of long-term debt are as follows:

	YEAR							
	2019	2020	2021	2022	2023	2024-2028	2029-2033	Total
PRINCIPAL:								
<u>Douglas County:</u>								
General Obligation Bonds - Governmental Funds:								
Series 2008 General Obligation Bonds	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 95,000	\$ -	\$ 170,000
Series 2009A GO Improvement Bonds	125,000	125,000	130,000	135,000	140,000	805,000	370,000	1,830,000
Series 2012B Sales Tax Refunding Bonds	1,765,000	-	-	-	-	-	-	1,765,000
Series 2012D Taxable GO Bonds	30,000	30,000	25,000	-	-	-	-	85,000
Series 2012E General Obligation Bonds	10,000	10,000	10,000	10,000	10,000	50,000	40,000	140,000
Series 2013 GO Refunding and Sales Tax Bonds	-	725,000	750,000	780,000	815,000	4,570,000	5,615,000	13,255,000
TOTAL PRINCIPAL	\$1,945,000	\$ 905,000	\$ 930,000	\$ 940,000	\$ 980,000	\$5,520,000	\$6,025,000	\$17,245,000
INTEREST:								
General Obligation Bonds - Governmental Funds:								
Series 2008 General Obligation Bonds	\$ 7,888	\$ 7,213	\$ 6,538	\$ 5,863	\$ 5,188	\$ 14,013	\$ -	\$ 46,703
Series 2009A GO Improvement Bonds	73,550	69,488	65,113	60,563	55,162	183,438	23,800	531,114
Series 2012B Sales Tax Refunding Bonds	26,450	-	-	-	-	-	-	26,450
Series 2012D Taxable GO Bonds	2,168	1,403	638	-	-	-	-	4,209
Series 2012E General Obligation Bonds	5,050	4,788	4,525	4,263	4,000	14,000	4,000	40,626
Series 2013 GO Refunding and Sales Tax Bonds	555,419	555,419	526,419	496,419	465,219	1,811,694	769,938	5,180,527
TOTAL INTEREST	\$ 670,525	\$ 638,311	\$ 603,233	\$ 567,108	\$ 529,569	\$2,023,145	\$ 797,738	\$ 5,829,629
TOTAL PRINCIPAL AND INTEREST	\$2,615,525	\$1,543,311	\$1,533,233	\$1,507,108	\$1,509,569	\$7,543,145	\$6,822,738	\$23,074,629

Conduit Debt - The County has entered into conduit debt arrangements wherein the County issues industrial revenue bonds to finance a portion of the construction of facilities by private enterprises. In return, the private enterprises have executed mortgage notes or leases with the County. The County is not responsible for payment of the original bonds, but rather the debt is secured only by the cash payments agreed to be paid by the private enterprises under the terms of the mortgage or lease agreements. Generally, the conduit debt is arranged so that payments required by the private enterprises are equal to the mortgage payment schedule related to the original debt. The total outstanding balance on the conduit debt could not be determined at December 31, 2018; however, the aggregate principal amount issued (to AGNL Plastics, L.L.C.) was \$21,000,000.

Arbitrage Liability - In 1986, federal law changed, making it illegal for an entity to issue tax-exempt debt, reinvest those proceeds in a tax-deductible instrument, and make an arbitrage profit on the differential in interest rates. A calculation was created which established the methodology for determining if the tax-exempt debt proceeds were invested to yield a profit. If a profit exists, all of that profit must be paid to the U.S. Treasury. The County has bonds subject to arbitrage, but does not have an arbitrage liability as of December 31, 2018. Actual payments could differ from the estimate.

Douglas County, Kansas

Notes to the Financial Statements

C. Other Long-Term Obligations From Operations

1. *Compensated Absences*

County policy - It is the County's policy to permit employees to accumulate vacation to a maximum of 320 hours for full-time employees and 145 hours for part-time employees. Accumulated vacation pay is payable upon termination or resignation from service from the County. During the first 4 years of employment, employees earn vacation at the rate of 4.5 hours per pay period; 5-9 years, employees earn 5.0 hours per pay period; 10-14 years, employees earn 6.0 hours per pay period; and after 15 years, 7.0 hours per pay period of vacation is earned each year.

All full-time equivalent employees earn sick leave at the rate of 4.75 hours per pay period, and may accumulate sick leave up to 1,040 hours. Upon retirement or termination, any employee, if employed for two years or more, shall be compensated for one-third accumulated sick leave up to a maximum of 240 hours at his or her regular rate of pay.

Health Department policy - The Health Department provides for vacation leave for full-time and part-time employees based on their length of service. During the first 4 years of employment, employees earn vacation at the rate of 4.53 hours per pay period; 5-9 years, employees earn 5.52 hours per pay period; 10-14 years, employees earn 6.41 hours per pay period; and after 15 years, 7.33 hours per pay period of vacation is earned each year. The maximum vacation that may be accumulated and paid out upon separation ranges from 155 to 245 hours depending on length of service. Full-time employees also earn sick leave credits at a rate of 3.75 hours per pay period. Upon retirement, employees shall be compensated for 20-40% of unused sick leave, with a cap ranging from 225 to 450 hours depending on length of service.

At December 31, 2018, the liability for compensated absences included:

Douglas County	\$ 3,953,831
Lawrence/Douglas County Health Department	165,606
	<u>\$ 4,119,437</u>

2. *Other Post-Employment Benefits*

Other Post-Employment Benefits, County Plan - The County sponsors a single-employer defined benefit healthcare plan that provides healthcare benefits to retirees and their dependents to age 65. The Douglas County Retiree Healthcare Plan (Plan) provides medical benefits to eligible retirees and their spouses. KSA 12-5040 requires all local governmental entities in the state that provide a group healthcare plan to make participation available to all retirees and dependents until the retiree reaches the age of 65 years.

The contribution requirements of plan participants and the County are established and amended by the County. The required contribution is based on projected pay-as-you-go financing requirements. The County pays 45% of the full premium for retiree coverage for eligible participants and qualified dependents, with the participants contributing the remainder. While retirees pay a portion of the applicable premium, conceptually, the County is subsidizing retirees because premiums for participants are charged at a level rate, regardless of age. The cost of this subsidy has not been quantified in this financial statement.

Douglas County, Kansas

Notes to the Financial Statements

Death and Disability Other Post-Employment Benefits - As provided by K.S.A. 74-4927, disabled members in the Kansas Public Employees Retirement System (KPERS) receive long-term disability benefits and life insurance benefits. The plan is administered through a trust held by KPERS that is funded to pay annual benefit payments. The employer contribution rate was set at 1% for the year ended December 31, 2018.

3. Risk Management & Self-Insurance Claims

The County is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; errors and omissions; injuries to employees; and natural disasters. The County carries commercial coverage for buildings and personal property, general liability, automobile fleet, inland marine, public official and employee errors and omissions, workers' compensation, medical professional liability, boiler and machinery, lawyers professional liability, and law enforcement liability. Claims have not exceeded commercial coverage in any of the last three years, and coverage has not been reduced substantially from the prior year.

The County has established a limited risk management program for employees' health care insurance. The program includes a stop-loss provision for claims over \$150,000 per individual. Beginning June 1, 2016, the stop-loss provision was increased to \$175,000 per individual. The County is also self-insured with respect to its obligations to provide workers' compensation for its employees. The estimated liability for payment of incurred (both reported and unreported) but unpaid claims for both programs are recorded in the Employee Benefit Trust Internal Service Fund. Claim liabilities are calculated considering the effects of inflation, recent claim settlement trends, including frequency and amounts of payouts, and other economic and social factors.

Changes in self-insured claims liabilities are as follows:

	<u>2018</u>
Estimated unpaid claims, January 1	\$ 1,178,939
Incurred claims (including reported and unreported)	7,340,722
Claim payments	<u>(7,277,695)</u>
Estimated unpaid claims, December 31	<u>\$ 1,241,966</u>

Liabilities related to risks of loss are reported when it is probable that a loss has occurred and the amount of loss can be reasonably estimated. The County has reserved \$4,571,753 of unencumbered cash in the Workers' Compensation Fund and the Employee Benefits Trust for future health and workers' compensation claims.

4. Defined Benefit Pension Plan

General Information about the Pension Plan

Plan description. The County participates in the Kansas Public Employees Retirement System (KPERS), a cost-sharing multiple-employer defined benefit pension plan as provided by K.S.A. 74-4901, et. seq. Kansas law establishes and amends benefit provisions. KPERS issues a publically available financial report that includes financial statements and required supplementary information. KPERS' financial statements are included in its Comprehensive Annual Financial Report which can be found on the KPERS' website at www.kpers.org or by writing to KPERS (611 South Kansas, Suite 100, Topeka, KS 66603) or by calling 1-888-275-5737.

Douglas County, Kansas

Notes to the Financial Statements

Contributions. K.S.A. 74-4919 and K.S.A. 74-49,210 establish the KPERS member-employee contribution rates. KPERS has multiple benefit structures and contribution rates depending on whether the employee is a KPERS 1, KPERS 2 or KPERS 3 member. KPERS 1 members are active and contributing members hired before July 1, 2009. KPERS 2 members were first employed in a covered position on or after July 1, 2009, and KPERS 3 members were first employed in a covered position on or after January 1, 2015. Effective January 1, 2015, Kansas law established the KPERS member-employee contribution rate at 6% of covered salary for KPERS 1, KPERS 2 and KPERS 3 members. K.S.A. 74-4975 establishes the Police and Firemen (KP&F) member-employee contribution rate at 7.15% of covered salary. Member contributions are withheld by their employer and paid to KPERS according to the provisions of Section 414(h) of the Internal Revenue Code.

State law provides that the employer contribution rates for KPERS 1, KPERS 2, KPERS 3 and KP&F be determined based on the results of each annual actuarial valuation. Kansas law sets a limitation on annual increases in the employer contribution rates. The actuarially determined employer contribution rate (not including the 1% contribution rate for the Death and Disability Program) and the statutory contribution rate was 8.39% for KPERS and 22.87% for KP&F for the fiscal year ended December 31, 2018. Contributions to the pension plan from the County were \$1,618,759 for KPERS and \$1,511,503 for KP&F the year ended December 31, 2018.

Net Pension Liability

Although KPERS administers one cost sharing multiple-employer defined benefit pension plan, separate (sub) actuarial valuations are prepared to determine the actuarial determined contribution rate by group. Following this method, the measurement of the collective net pension liability is determined separately for each group of the plan. The County participates in the local (KPERS) group and the Police and Firemen (KP&F) group. The Extension Council and Health Department also participate in the local (KPERS) group.

At December 31, 2018, the County's proportionate share of the collective net pension liability reported by KPERS was as follows:

	Net pension liability
Douglas County - KPERS	\$ 14,599,086
Douglas County - KP&F	11,964,930
Health Department	1,699,880
Extension Council	100,590
Total	<u>\$ 28,364,486</u>

The net pension liability was measured as of June 30, 2018, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of December 31, 2017, which was rolled forward to June 30, 2018. The County's proportion of the net pension liability was based on the ratio of the County's contributions to KPERS and KP&F, relative to the total employer and non-employer contributions of the local and KP&F subgroups within KPERS for the fiscal year ended June 30, 2018. Since the KMAAG regulatory basis of accounting does not recognize long-term debt, this liability is not reported in the financial statement.

Douglas County, Kansas

Notes to the Financial Statements

The complete actuarial valuation report including all actuarial assumptions and methods, and the report on the allocation of the KPERS collective net pension liability to all participating employers are publicly available on the website at www.kpers.org or can be obtained as described above.

D. Interfund Transfers

A summary of interfund transfers is as follows:

From	To	Authority	Amount
General Fund	Capital Improvement Plan	K.S.A. 19-120	\$ 7,339,494
General Fund	Youth Services-Juvenile Detention	Operating Transfer	1,013,692
General Fund	Local County Sales Tax	K.S.A. 12-197	3,550,000
General Fund	Equipment Reserve	K.S.A. 19-119	2,752,858
General Fund	Special Building	K.S.A. 19-119	4,507
Special Liability	Workers Compensation	K.S.A. 12-2615	475,000
Valley View	Special Building	Operating Transfer	70,000
Road & Bridge	Equipment Reserve	K.S.A. 19-119	625,000
Youth Services-Juvenile Detention	Equipment Reserve	K.S.A. 19-119	75,000
Motor Vehicle Operations	Equipment Reserve	K.S.A. 19-119	1,000
Ambulance	Ambulance Capital Reserve	K.S.A. 19-119	1,875,414
			<u>\$ 17,781,965</u>

The County uses interfund transfers to share administrative cost between funds, to set aside funds for capital improvement projects and equipment needs, and to allocate sales tax proceeds to certain special revenue funds.

IV. OTHER INFORMATION

A. Litigation

The County can be a defendant in various legal actions pending or in process and other miscellaneous claims. The ultimate liability, if any, that might result from the final resolution of the above matters is not presently determinable. Management and the County's counsel are of the opinion that the final outcome of any such cases will not have an adverse material effect on the County's financial position.

B. Grants

Amounts received or receivable from grantor agencies are subject to audit and adjustment by grantor agencies, principally the federal government. Any disallowed claims, including amounts already collected, may constitute a liability of the applicable funds. The amount, if any, of expenditures which may be disallowed by the grantor cannot be determined at this time although the County expects such amounts, if any, to be immaterial.

C. Deferred Compensation Plan

The County offers its employees a deferred compensation plan (Plan) created in accordance with Internal Revenue Code Section 457. The Plan, available to all County employees, permits them to defer a portion of their salary until future years. The deferred compensation is not

Douglas County, Kansas

Notes to the Financial Statements

available to employees until termination, retirement, death, or unforeseeable emergency. Plan assets are transferred to a plan agent in a custodial trust and are not available to pay the claims of the County's general creditors. Therefore, the liability and corresponding assets are not reflected in the financial statements.

D. Cost Sharing Arrangements

The County has entered into various cost sharing arrangements with the City of Lawrence, Kansas (City) to provide services and facilities. A listing of those arrangements is as follows:

Emergency Communications Services. In 1994, the City and the County agreed to combine their emergency communications services with the costs of the combined operations to be shared as follows: City 66% and County 34%. This agreement was modified in 1997 following the combination of the County emergency medical services and the City fire department in 1996 as discussed below.

Emergency Medical Services. In 1996, the County emergency medical services and the City fire department were combined with the City paying 74.36% and the County paying 25.64% of the operating costs of the combined operations. The County pays all the costs of buildings and equipment of the ambulance services and the City pays all the costs of buildings and equipment of the fire department.

As of the effective date of the 1996 agreement, all buildings, equipment and furniture were to be transferred to the ownership of the City. This agreement was later modified in 1997, 1998 and 2005.

In the current year, the County received 5 payments from the City which consisted of the fourth quarter 2017 payment and all 4 quarters of 2018. The city made all 4 payments to the City, per the agreement.

Health Facilities. In 1996, the City and County agreed to share equally in the cost of construction of a health facility to house the Lawrence-Douglas County Health Department, the Bert Nash Community Mental Health Center and the Douglas County Visiting Nurses Association. The agreement provided that on completion, the building, equipment and furniture would be owned by the City. This health facility was completed and occupied in 1997. A related agreement provides for the City and County to each pay half of the health facility maintenance and operating costs.

Planning Services. The County also pays 1/6th of the cost of the City's planning department.

Lawrence-Douglas County Bioscience Authority. In 2006, the County participated in the creation of the Lawrence-Douglas County Bioscience Authority (LDCBA), along with the City of Lawrence, the University of Kansas, and the Lawrence Chamber of Commerce. In December 2009, the City and County jointly acquired a building to be used by the LDCBA as a business incubator for life sciences companies. The acquisition was financed by general obligation bonds issued by the City. Debt service for the bonds is funded by rental revenue generated from leasing the building space. Should the rents received be insufficient to pay all the debt service on the bonds, the County has an agreement to pay the City 50% of such shortfall. Additionally, the County pays \$200,000 annually to help fund the LDCBA, an agreement which continues through 2018.

Douglas County, Kansas

Notes to the Financial Statements

Peaslee Center. In 2014, a combined initiative of the City, County and Economic Development Corporation of Lawrence-Douglas County created the Dwayne Peaslee Technical Training Center (Center). The City and County each committed to pay \$500,000 in 2015 to support renovations at the Center facility, along with each paying another \$100,000 in 2015 to support the Center's operations. In August 2015, the County also agreed to loan the Center the principal amount of \$143,295 for additional renovations at the facility. The loan carries an interest rate of 2.035%, and is to be repaid in 120 monthly payments of \$1,322 through August 2025. The County may, though is not obligated to, provide additional funding in support of the Center's operations in future years. Additional funding is anticipated to be provided in 2019.

Fire Station No. 1. In 2016, the City and County entered into an agreement to share in the cost of reconstruction of a fire station. The County agreed to pay 25.64% of the actual total cost for the part of the reconstruction to be occupied and used by the Lawrence Douglas County Fire and Medical Department. Subsequent to year-end, the agreement was modified so that It is now estimated that the County's portion would be approximately \$1,091,800, plus interest and costs of issuance. Additionally, the County will pay 32% of the actual total cost for the part of the reconstruction to be occupied and used by the Douglas County Senior Services, Inc. The County's share is estimated to be approximately \$922,900, plus interest and costs of issuance. As part of the agreement, the County paid \$520,000 to the City prior to December 31, 2016. The remaining balance of the County's portion of the actual total cost of the project is to be made in annual installments of at least \$100,000 until such time as the balance is paid in full, the first annual payment commenced in 2018.

E. Commitments

In March 2012, Douglas County approved an agreement with the Bioscience and Technology Business Center at the University of Kansas to help fund capital costs of the facility's expansion. The County's commitment is for \$1 million, to be paid in equal annual installments of \$100,000 over a 10-year period, beginning in 2012.

In August 2012, the County approved an agreement with Motorola for long-term services, maintenance and system updates in connection with the emergency communications system. The County's commitment is for \$3,104,583, to be paid over a 10 year period with payments beginning in 2014 of \$279,573, gradually increasing to \$380,474 in 2023.

In fiscal 2015, the County approved a project to renovate the fairgrounds. The total approved project budget was \$7,944,909. As of December 31, 2018, \$7,526,184 had been expended, leaving \$418,725 in construction and other project commitments remaining as of December 31, 2018.

F. Subsequent Event

On November 6, 2018, the electors of the County approved the imposition of a one-quarter percent countywide retailers' sales tax for the purpose of financing the costs of providing mental health services for the County and to issue sales tax/general obligation bonds to finance all or a portion of the capital costs to construct, furnish and equip new mental health facilities for the County. Collection of the sales tax commenced April 1, 2019.

REGULATORY - REQUIRED
SUPPLEMENTARY INFORMATION

Schedule of Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

	Certified Budget	Expenditures Chargeable to Current Year	Variance Over (Under)
GOVERNMENTAL TYPE FUNDS:			
GENERAL FUND	\$ 58,299,192	\$ 53,513,289	\$ (4,785,903)
SPECIAL PURPOSE FUNDS:			
Ambulance	8,593,274	8,504,567	(88,707)
Economic Development	-	2,575	2,575
Emergency Telephone Service	1,211,168	637,881	(573,287)
Employee Benefits	11,607,522	11,078,481	(529,041)
Motor Vehicle Operations	831,759	714,479	(117,280)
Road & Bridge	7,318,683	6,048,668	(1,270,015)
Special Alcohol	35,976	-	(35,976)
Special Building	1,788,165	376,312	(1,411,853)
Special Liability	710,000	558,682	(151,318)
Special Parks & Recreation	46,106	14,784	(31,322)
Youth Services-Juvenile Detention	3,089,418	2,971,769	(117,649)
DEBT SERVICE FUNDS:			
Bond and Interest	458,756	302,855	(155,901)
Local County Sales Tax	2,596,706	2,596,706	-

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

General Fund

	Actual	Budget	Variance- Over (Under)
Cash receipts:			
Taxes:			
Ad valorem property tax	\$ 39,246,707	\$ 38,772,976	\$ 473,731
Delinquent tax	390,525	392,000	(1,475)
Motor vehicle tax	3,646,563	3,698,755	(52,192)
Local county sales tax	7,292,917	7,300,000	(7,083)
Interest and penalties	886,502	695,000	191,502
Total taxes	<u>51,463,214</u>	<u>50,858,731</u>	<u>604,483</u>
Licenses, fees, and permits:			
Licenses, permits & fees	1,281,035	1,030,000	251,035
Charges for services	82,866	150,000	(67,134)
District court fees	513,559	454,300	59,259
Mortgage registration fees	441,108	800,000	(358,892)
Total licenses, fees, and permits	<u>2,318,568</u>	<u>2,434,300</u>	<u>(115,732)</u>
Interest:			
Interest on idle funds	678,656	890,000	(211,344)
Total interest	<u>678,656</u>	<u>890,000</u>	<u>(211,344)</u>
Other:			
Rental income	127,927	113,700	14,227
Sale of chemicals	92,565	80,000	12,565
Intergovernmental	19,267	17,527	1,740
Miscellaneous income	158,706	116,200	42,506
Total other	<u>398,465</u>	<u>327,427</u>	<u>71,038</u>
Total cash receipts	<u>\$ 54,858,903</u>	<u>\$ 54,510,458</u>	<u>\$ 348,445</u>
Expenditures:			
Administration:			
Personal services	\$ 441,212	\$ 310,167	\$ 131,045
Contractual services	108,074	60,000	48,074
Commodities	2,265	-	2,265
Capital outlay	1,023	-	1,023
Total administration	<u>552,574</u>	<u>370,167</u>	<u>182,407</u>
Administrative services:			
Personal services	449,383	475,790	(26,407)
Contractual services	551,267	556,303	(5,036)
Reimbursements	(74,755)	(62,157)	(12,598)
Total administrative services	<u>925,895</u>	<u>969,936</u>	<u>(44,041)</u>
Agencies county funded:			
Contractual services	7,458,442	7,646,469	(188,027)
Total agencies county funded	<u>7,458,442</u>	<u>7,646,469</u>	<u>(188,027)</u>

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

General Fund

	Actual	Budget	Variance- Over (Under)
Appraiser:			
Personal services	708,686	685,308	23,378
Contractual services	12,634	64,200	(51,566)
Capital outlay	736	2,000	(1,264)
Total appraiser	<u>722,056</u>	<u>751,508</u>	<u>(29,452)</u>
Behavioral health projects:			
Contractual services	125,000	1,503,500	(1,378,500)
Commodities	346	97,000	(96,654)
Miscellaneous	980,718	-	980,718
Total behavioral health projects	<u>1,106,064</u>	<u>1,600,500</u>	<u>(494,436)</u>
CIP projects - capital improvements:			
Transfers to CIP	7,339,494	6,339,494	1,000,000
Total CIP projects	<u>7,339,494</u>	<u>6,339,494</u>	<u>1,000,000</u>
Commissioners:			
Personal services	108,161	19,217	88,944
Contractual services	231,212	49,324	181,888
Miscellaneous	178,454	386,377	(207,923)
Total commissioners	<u>517,827</u>	<u>454,918</u>	<u>62,909</u>
Coroner:			
Contractual services	296,664	221,375	75,289
Commodities	1,806	2,000	(194)
Capital outlay	260	3,500	(3,240)
Miscellaneous	-	104,000	(104,000)
Total coroner	<u>298,730</u>	<u>330,875</u>	<u>(32,145)</u>
County Clerk:			
Personal services	431,954	633,858	(201,904)
Contractual services	1,056	2,204	(1,148)
Commodities	378	955	(577)
Miscellaneous	372	294	78
Transfers	200,000	-	200,000
Total county clerk	<u>633,760</u>	<u>637,311</u>	<u>(3,551)</u>
Countywide:			
Contractual services	744,674	763,065	(18,391)
Commodities	139,626	166,000	(26,374)
Miscellaneous	12,649	14,800	(2,151)
Reimbursements	(391)	(400)	9
Total countywide	<u>896,558</u>	<u>943,465</u>	<u>(46,907)</u>

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

General Fund

	Actual	Budget	Variance- Over (Under)
Court operating:			
Personal services	337,094	337,471	(377)
Contractual services	760,018	847,438	(87,420)
Commodities	24,255	23,770	485
Capital outlay	6,122	1,550	4,572
Miscellaneous	4,339	17,174	(12,835)
Reimbursements	(95,083)	(93,838)	(1,245)
Total court operating	1,036,745	1,133,565	(96,820)
Court trustee:			
Personal services	441,421	437,173	4,248
Contractual services	2,523	4,150	(1,627)
Commodities	1,059	1,400	(341)
Capital outlay	3,620	1,150	2,470
Miscellaneous	5,983	5,700	283
Reimbursements	-	(1,700)	1,700
Total court trustee	454,606	447,873	6,733
Criminal justice services:			
Personal services	-	79,588	(79,588)
Contractual services	-	31,659	(31,659)
Commodities	-	2,812	(2,812)
Capital Outlay	-	17,891	(17,891)
Agencies and projects	-	15,336	(15,336)
Miscellaneous	-	28,181	(28,181)
Total criminal justice services	-	175,467	(175,467)
DA criminal justice coordination:			
Personal services	39,361	-	39,361
Total DA criminal justice coordination	39,361	-	39,361
District Attorney:			
Personal services	2,029,413	2,179,897	(150,484)
Contractual services	142,640	188,979	(46,339)
Capital outlay	6,262	6,150	112
Miscellaneous	14,248	47,560	(33,312)
Reimbursements	(72,649)	(94,379)	21,730
Total district attorney	2,119,914	2,328,207	(208,293)
Elections:			
Personal services	179,484	88,775	90,709
Contractual services	207,306	101,980	105,326
Commodities	193,939	33,956	159,983
Reimbursements	(138,169)	-	(138,169)
Transfers	-	90,549	(90,549)
Miscellaneous	360	45	315
Total elections	442,920	315,305	127,615

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

General Fund

	Actual	Budget	Variance- Over (Under)
Emergency communication center:			
Personal services	1,505,272	1,760,928	(255,656)
Contractual services	15,787	68,000	(52,213)
Commodities	10,738	30,000	(19,262)
Capital outlay	56,975	25,000	31,975
Miscellaneous	-	1,500	(1,500)
Reimbursements	(1,016,105)	(1,223,734)	207,629
Total emergency communication center	<u>572,667</u>	<u>661,694</u>	<u>(89,027)</u>
Emergency management:			
Personal services	181,038	149,964	31,074
Contractual services	40,285	43,832	(3,547)
Commodities	508	2,000	(1,492)
Capital outlay	10,297	5,000	5,297
Miscellaneous	3,573	4,500	(927)
Transfers	45,000	45,000	-
Total emergency management	<u>280,701</u>	<u>250,296</u>	<u>30,405</u>
Fairgrounds:			
Personal services	252,291	278,417	(26,126)
Contractual services	37,079	36,399	680
Commodities	38,150	36,399	1,751
Transfers	60,000	27,299	32,701
Total fairgrounds	<u>387,520</u>	<u>378,514</u>	<u>9,006</u>
First Responders:			
Personal services	8,091	2,200	5,891
Contractual services	89,391	117,650	(28,259)
Commodities	8,568	17,050	(8,482)
Capital outlay	10,380	2,400	7,980
Transfers	811	5,000	(4,189)
Miscellaneous	97	-	97
Total first responders	<u>117,338</u>	<u>144,300</u>	<u>(26,962)</u>
Fleet operations:			
Personal services	256,938	232,943	23,995
Contractual services	83,607	73,959	9,648
Commodities	703,511	920,368	(216,857)
Capital outlay	10,875	13,501	(2,626)
Transfers	25,000	21,094	3,906
Total fleet operations	<u>1,079,931</u>	<u>1,261,865</u>	<u>(181,934)</u>
Geographic information system:			
Personal services	188,349	186,973	1,376
Contractual services	2,605	5,800	(3,195)
Commodities	106	1,200	(1,094)
Total geographic information system	<u>191,060</u>	<u>193,973</u>	<u>(2,913)</u>
Heritage Conservation Fund			
Personal services	35,218	34,201	1,017
Miscellaneous	161,344	265,799	(104,455)
Transfers	103,437	-	103,437
Total heritage conservation fund	<u>299,999</u>	<u>300,000</u>	<u>(1)</u>

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

General Fund

	Actual	Budget	Variance- Over (Under)
Information technology:			
Personal services	802,002	844,974	(42,972)
Contractual services	517,081	550,160	(33,079)
Commodities	11,652	12,500	(848)
Capital outlay	159,549	177,500	(17,951)
Miscellaneous	125	500	(375)
Transfers	40,000	40,000	-
Total information technology	<u>1,530,409</u>	<u>1,625,634</u>	<u>(95,225)</u>
Maintenance:			
Personal services	590,667	562,863	27,804
Contractual services	153,561	161,100	(7,539)
Commodities	126,748	126,500	248
Reimbursements	(37,149)	(30,979)	(6,170)
Transfers	25,000	25,000	-
Total maintenance	<u>858,827</u>	<u>844,484</u>	<u>14,343</u>
Noxious weeds:			
Personal services	225,567	231,903	(6,336)
Contractual services	2,328	2,805	(477)
Commodities	125,370	125,510	(140)
Transfers	20,000	20,000	-
Total noxious weeds	<u>373,265</u>	<u>380,218</u>	<u>(6,953)</u>
Parks:			
Personal services	96,392	115,919	(19,527)
Contractual services	28,350	32,000	(3,650)
Commodities	28,910	41,800	(12,890)
Transfers	25,000	25,000	-
Total parks	<u>178,652</u>	<u>214,719</u>	<u>(36,067)</u>
Register of Deeds:			
Personal services	370,454	361,181	9,273
Miscellaneous	30,976	30,000	976
Total register of deeds	<u>401,430</u>	<u>391,181</u>	<u>10,249</u>
Shared costs & transfers:			
Personal services	87,166	105,068	(17,902)
Agencies and projects	1,341,257	-	1,341,257
Reimbursements	(144,159)	(128,078)	(16,081)
Transfers	5,561,309	8,973,172	(3,411,863)
Miscellaneous	57,577	1,861,464	(1,803,887)
Total shared costs & transfers	<u>6,903,150</u>	<u>10,811,626</u>	<u>(3,908,476)</u>
Sheriff:			
Personal services	4,660,280	4,758,245	(97,965)
Contractual services	354,767	341,258	13,509
Commodities	185,787	186,722	(935)
Transfers	701,500	322,225	379,275
Reimbursements	(132,940)	(94,940)	(38,000)
Total sheriff	<u>5,769,394</u>	<u>5,513,510</u>	<u>255,884</u>

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

General Fund

	Actual	Budget	Variance- Over (Under)
Sheriff jail:			
Personal services	5,690,603	5,437,030	253,573
Contractual services	2,185,208	2,825,121	(639,913)
Commodities	611,510	593,042	18,468
Transfers	505,000	490,158	14,842
Reimbursements	(931,052)	(635,167)	(295,885)
Total sheriff jail	<u>8,061,269</u>	<u>8,710,184</u>	<u>(648,915)</u>
Sustainability management:			
Personal services	141,329	150,334	(9,005)
Contractual services	72,785	77,043	(4,258)
Reimbursements	(35,070)	(34,059)	(1,011)
Total sustainability management	<u>179,044</u>	<u>193,318</u>	<u>(14,274)</u>
Treasurer:			
Personal services	319,625	308,963	10,662
Contractual services	11,028	13,375	(2,347)
Commodities	12,342	19,000	(6,658)
Capital outlay	900	1,000	(100)
Transfers	1,000	1,000	-
Total treasurer	<u>344,895</u>	<u>343,338</u>	<u>1,557</u>
Utility building maintenance:			
Contractual services	22,079	56,500	(34,421)
Total utility building maintenance	<u>22,079</u>	<u>56,500</u>	<u>(34,421)</u>
Utilities:			
Contractual services	1,039,799	1,181,645	(141,846)
Commodities	-	2,000	(2,000)
Capital outlay	6,989	28,000	(21,011)
Reimbursements	(38,042)	(42,135)	4,093
Total utilities	<u>1,008,746</u>	<u>1,169,510</u>	<u>(160,764)</u>
Zoning:			
Personal services	398,558	391,603	6,955
Contractual services	1,343	5,165	(3,822)
Commodities	66	4,500	(4,434)
Transfers	8,000	8,000	-
Total zoning	<u>407,967</u>	<u>409,268</u>	<u>(1,301)</u>
Total expenditures	<u>\$ 53,513,289</u>	<u>\$ 58,299,192</u>	<u>\$ (4,785,903)</u>
Receipts over (under) expenditures	1,345,614		
Unencumbered cash, beginning	3,594,566		
Unencumbered cash, ending	<u>\$ 4,940,180</u>		

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

Special Purpose Fund - Ambulance

	Actual	Budget	Variance- Over (Under)
Cash receipts:			
Ad valorem property tax	\$ 5,024,560	\$ 4,890,000	\$ 134,560
Delinquent tax	44,078	22,060	22,018
Motor vehicle tax	420,568	458,198	(37,630)
Charges for service	2,877,590	3,000,000	(122,410)
Miscellaneous	4,585	9,300	(4,715)
	<u>\$ 8,371,381</u>	<u>\$ 8,379,558</u>	<u>\$ (8,177)</u>
Total cash receipts			
Expenditures:			
Contractual services	\$ 6,347,502	\$ 6,459,860	\$ (112,358)
Commodities	206,444	160,000	46,444
Capital outlay	75,118	98,000	(22,882)
Miscellaneous	89	-	89
Transfers	1,875,414	1,875,414	-
	<u>\$ 8,504,567</u>	<u>\$ 8,593,274</u>	<u>\$ (88,707)</u>
Total expenditures			
Receipts over (under) expenditures	(133,186)		
Unencumbered cash, beginning	<u>511,345</u>		
Unencumbered cash, ending	<u>\$ 378,159</u>		

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

Special Purpose Fund - Economic Development

	Actual	Budget	Variance- Over (Under)
Cash receipts:			
Ad valorem property tax	\$ -	\$ -	\$ -
Total cash receipts	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
Expenditures:			
Miscellaneous	\$ 2,575	\$ -	\$ 2,575
Total expenditures	<u>\$ 2,575</u>	<u>\$ -</u>	<u>\$ 2,575</u>
Receipts over (under) expenditures	(2,575)		
Unencumbered cash, beginning	<u>2,575</u>		
Unencumbered cash, ending	<u>\$ -</u>		

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

Special Purpose Fund - Emergency Telephone Service

	Actual	Budget	Variance- Over (Under)
Cash receipts:			
911 emergency telephone service tax	\$ 575,130	\$ 550,000	\$ 25,130
Interest on idle funds	4,821	4,000	821
Total cash receipts	<u>\$ 579,951</u>	<u>\$ 554,000</u>	<u>\$ 25,951</u>
Expenditures:			
Contractual services	\$ 627,800	\$ 729,000	\$ (101,200)
Capital outlay	10,081	34,500	(24,419)
Miscellaneous	-	447,668	(447,668)
Total expenditures	<u>\$ 637,881</u>	<u>\$ 1,211,168</u>	<u>\$ (573,287)</u>
Receipts over (under) expenditures	(57,930)		
Unencumbered cash, beginning	<u>724,683</u>		
Unencumbered cash, ending	<u>\$ 666,753</u>		

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

Special Purpose Fund - Employee Benefits

	Actual	Budget	Variance- Over (Under)
Cash receipts:			
Ad valorem property tax	\$ 9,158,773	\$ 9,048,212	\$ 110,561
Delinquent tax	100,006	100,200	(194)
Motor vehicle tax	909,077	847,126	61,951
Intergovernmental	601,228	440,000	161,228
Miscellaneous	71,248	50,000	21,248
	<u>\$ 10,840,332</u>	<u>\$ 10,485,538</u>	<u>\$ 354,794</u>
Total cash receipts			
Expenditures:			
Personal services	\$ 11,077,147	\$ 10,919,113	\$ 158,034
Miscellaneous	1,334	688,409	(687,075)
	<u>\$ 11,078,481</u>	<u>\$ 11,607,522</u>	<u>\$ (529,041)</u>
Total expenditures			
Receipts over (under) expenditures	(238,149)		
Unencumbered cash, beginning	<u>1,973,337</u>		
Unencumbered cash, ending	<u>\$ 1,735,188</u>		

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

Special Purpose Fund - Motor Vehicle Operations

	Actual	Budget	Variance- Over (Under)
Cash receipts:			
Charges for service	\$ 783,307	\$ 750,000	\$ 33,307
Total cash receipts	<u>\$ 783,307</u>	<u>\$ 750,000</u>	<u>\$ 33,307</u>
Expenditures:			
Personal services	\$ 673,138	\$ 712,845	\$ (39,707)
Contractual services	36,160	44,150	(7,990)
Commodities	4,181	7,250	(3,069)
Transfers	1,000	1,000	-
Miscellaneous	-	66,514	(66,514)
Total expenditures	<u>\$ 714,479</u>	<u>\$ 831,759</u>	<u>\$ (117,280)</u>
Receipts over (under) expenditures	68,828		
Unencumbered cash, beginning	<u>95,892</u>		
Unencumbered cash, ending	<u>\$ 164,720</u>		

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

Special Purpose Fund - Road and Bridge

	Actual	Budget	Variance- Over (Under)
Cash receipts:			
Ad valorem property tax	\$ 3,356,619	\$ 3,340,000	\$ 16,619
Delinquent tax	40,145	62,653	(22,508)
Motor vehicle tax	350,093	366,115	(16,022)
Fees and permits	-	12,000	(12,000)
Charges for service	28,158	19,061	9,097
Intergovernmental	1,892,975	1,900,000	(7,025)
Miscellaneous	147,294	169,000	(21,706)
	<u>\$ 5,815,284</u>	<u>\$ 5,868,829</u>	<u>\$ (53,545)</u>
Total cash receipts			
Expenditures:			
Personal services	\$ 2,712,972	\$ 2,719,903	\$ (6,931)
Contractual services	1,493,737	1,643,580	(149,843)
Commodities	1,199,282	2,317,200	(1,117,918)
Capital outlay	17,677	13,000	4,677
Transfers	625,000	625,000	-
	<u>\$ 6,048,668</u>	<u>\$ 7,318,683</u>	<u>\$ (1,270,015)</u>
Total expenditures			
Receipts over (under) expenditures	(233,384)		
Unencumbered cash, beginning	<u>1,839,688</u>		
Unencumbered cash, ending	<u>\$ 1,606,304</u>		

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

Special Purpose Fund - Special Alcohol

	Actual	Budget	Variance- Over (Under)
Cash receipts:			
Special alcohol tax	\$ 28,879	\$ 27,987	\$ 892
Total cash receipts	<u>\$ 28,879</u>	<u>\$ 27,987</u>	<u>\$ 892</u>
Expenditures:			
Agencies	\$ -	\$ 35,976	\$ (35,976)
Total expenditures	<u>\$ -</u>	<u>\$ 35,976</u>	<u>\$ (35,976)</u>
Receipts over (under) expenditures	28,879		
Unencumbered cash, beginning	<u>35,957</u>		
Unencumbered cash, ending	<u>\$ 64,836</u>		

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

Special Purpose Fund - Special Building

	Actual	Budget	Variance- Over (Under)
Cash receipts:			
Ad valorem property tax	\$ 659,705	\$ 651,863	\$ 7,842
Delinquent tax	5,398	2,000	3,398
Motor vehicle tax	65,339	31,179	34,160
Transfers	74,507	-	74,507
	<u>804,949</u>	<u>-</u>	<u>74,507</u>
Total cash receipts	<u>\$ 804,949</u>	<u>\$ 685,042</u>	<u>\$ 119,907</u>
Expenditures:			
Contractual services	\$ 33,483	\$ 400,000	\$ (366,517)
Commodities	1,424	-	1,424
Capital outlay	341,405	1,388,165	(1,046,760)
	<u>376,312</u>	<u>1,388,165</u>	<u>(1,046,760)</u>
Total expenditures	<u>\$ 376,312</u>	<u>\$ 1,788,165</u>	<u>\$ (1,411,853)</u>
Receipts over (under) expenditures	428,637		
Unencumbered cash, beginning	<u>972,221</u>		
Unencumbered cash, ending	<u>\$ 1,400,858</u>		

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

Special Purpose Fund - Special Liability

	Actual	Budget	Variance- Over (Under)
Cash receipts:			
Ad valorem property tax	\$ 563,698	\$ 557,000	\$ 6,698
Delinquent tax	3,332	2,100	1,232
Motor vehicle tax	32,755	27,500	5,255
Transfers	-	150,000	(150,000)
	<u>599,785</u>	<u>736,600</u>	<u>(136,815)</u>
Total cash receipts	<u>\$ 599,785</u>	<u>\$ 736,600</u>	<u>\$ (136,815)</u>
Expenditures:			
Contractual services	\$ 77,643	\$ 75,000	\$ 2,643
Transfers	475,000	625,000	(150,000)
Miscellaneous	6,039	10,000	(3,961)
	<u>558,682</u>	<u>710,000</u>	<u>(151,318)</u>
Total expenditures	<u>\$ 558,682</u>	<u>\$ 710,000</u>	<u>\$ (151,318)</u>
Receipts over (under) expenditures	41,103		
Unencumbered cash, beginning	<u>44,374</u>		
Unencumbered cash, ending	<u>\$ 85,477</u>		

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

Special Purpose Fund - Special Parks and Recreation

	Actual	Budget	Variance- Over (Under)
Cash receipts:			
Special alcohol tax	\$ 19,098	\$ 17,527	\$ 1,571
Miscellaneous	7,782	-	7,782
Total cash receipts	\$ 26,880	\$ 17,527	\$ 9,353
Expenditures:			
Recreation facilities	\$ 14,784	\$ 46,106	\$ (31,322)
Total expenditures	\$ 14,784	\$ 46,106	\$ (31,322)
Receipts over (under) expenditures	12,096		
Unencumbered cash, beginning	45,121		
Unencumbered cash, ending	\$ 57,217		

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

Special Purpose Fund - Youth Services-Juvenile Detention

	Actual	Budget	Variance- Over (Under)
Cash receipts:			
Ad valorem property tax	\$ 1,629,060	\$ 1,619,900	\$ 9,160
Delinquent tax	16,768	10,402	6,366
Motor vehicle tax	159,044	132,250	26,794
Intergovernmental	400,503	186,970	213,533
Interest on idle funds	5,357	1,700	3,657
Reimbursements	16,755	1,100	15,655
Transfers	1,013,692	1,093,692	(80,000)
	<u>1,013,692</u>	<u>1,093,692</u>	<u>(80,000)</u>
Total cash receipts	<u>\$ 3,241,179</u>	<u>\$ 3,046,014</u>	<u>\$ 195,165</u>
Expenditures:			
Personal services	\$ 2,054,091	\$ 2,084,679	\$ (30,588)
Contractual services	359,905	400,785	(40,880)
Commodities	102,278	132,475	(30,197)
Capital outlay	25,319	25,672	(353)
Transfers	75,000	75,000	-
Miscellaneous	355,176	370,807	(15,631)
	<u>355,176</u>	<u>370,807</u>	<u>(15,631)</u>
Total expenditures	<u>\$ 2,971,769</u>	<u>\$ 3,089,418</u>	<u>\$ (117,649)</u>
Receipts over (under) expenditures	269,410		
Unencumbered cash, beginning	<u>166,481</u>		
Unencumbered cash, ending	<u>\$ 435,891</u>		

Douglas County, Kansas

Schedule 2-13

Schedule of Receipts and Expenditures
Regulatory Basis

For the Year Ended December 31, 2018

Non-budgeted Special Purpose Funds

	Ambulance Capital Reserve	Community Correction Plan	Donations	Equipment Reserve	Grants Programs	Prosecutor Training & Assistance	Register of Deeds Technology
Cash receipts:							
Charges for services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,124	\$ 189,012
Licenses, permits, and fees	-	-	-	-	-	-	-
Intergovernmental	-	489,374	-	3,970	224,470	-	-
Miscellaneous	-	21,392	1,022	62,044	-	-	-
Interest income	12,478	-	-	55,989	-	-	3,182
Sale of property	9,300	-	-	80,790	-	-	-
Transfers	1,875,414	-	-	3,453,858	-	-	-
Total cash receipts	1,897,192	510,766	1,022	3,656,651	224,470	10,124	192,194
Expenditures:							
Personal services	-	451,945	-	-	149,070	-	-
Contractual services	-	5,888	-	-	137,936	15,663	18,006
Commodities	-	6,664	1,820	138,305	-	-	-
Capital outlay	814,074	-	-	2,353,136	4,037	-	13,588
Miscellaneous	-	6,518	-	-	1,658	-	-
Agencies and projects	-	-	-	91,411	-	-	-
Transfers	-	-	-	-	-	-	-
Total expenditures	814,074	471,015	1,820	2,582,852	292,701	15,663	31,594
Receipts over (under) expenditures	1,083,118	39,751	(798)	1,073,799	(68,231)	(5,539)	160,600
Unencumbered cash, beginning	374,999	(2,398)	41,826	8,329,804	211,302	9,308	276,075
Unencumbered cash, ending	\$ 1,458,117	\$ 37,353	\$ 41,028	\$ 9,403,603	\$ 143,071	\$ 3,769	\$ 436,675

(Continued)

Douglas County, Kansas

Schedule 2-13

Schedule of Receipts and Expenditures
Regulatory Basis

For the Year Ended December 31, 2018

Non-budgeted Special Purpose Funds

	Sheriff Special Use	Spec Law Enforcement Trust	Special Highway Improvement	Youth Services Grants	Valley View	Total
Cash receipts:						
Charges for services	\$ -	\$ -	\$ -	\$ -	\$ 5,280	\$ 204,416
Licenses, permits, and fees	109,501	60,829	-	-	-	170,330
Intergovernmental	-	2,008	61,366	577,038	-	1,358,226
Miscellaneous	-	72,182	-	-	-	156,640
Interest income	-	4,588	-	-	427	76,664
Sale of property	-	-	-	-	-	90,090
Transfers	-	-	-	-	-	5,329,272
Total cash receipts	109,501	139,607	61,366	577,038	5,707	7,385,638
Expenditures:						
Personal services	21,975	-	-	337,546	-	960,536
Contractual services	10,358	66,259	147,072	143,245	-	544,427
Commodities	76,613	6,127	3,247	13,459	-	246,235
Capital outlay	-	15,495	-	7,118	-	3,207,448
Miscellaneous	-	1,066	10,826	1,836	-	21,904
Agencies and projects	-	-	-	-	-	91,411
Transfers	-	-	-	-	70,000	70,000
Total expenditures	108,946	88,947	161,145	503,204	70,000	5,141,961
Receipts over (under) expenditures	555	50,660	(99,779)	73,834	(64,293)	2,243,677
Unencumbered cash, beginning	28,106	603,661	1,096,268	49,906	122,187	11,141,044
Unencumbered cash, ending	\$ 28,661	\$ 654,321	\$ 996,489	\$ 123,740	\$ 57,894	\$ 13,384,721

Schedule of Receipts and Expenditures
Regulatory Basis

For the Year Ended December 31, 2018

Capital Project Fund

	Capital Improvement Plan
Receipts and other sources:	
Lease proceeds	\$ 26,000
Intergovernmental	201,437
Interest on idle funds	151,232
Miscellaneous	5,067
Transfers	7,339,494
Total receipts and other sources	7,723,230
Expenditures and other uses:	
Contractual services	1,663,774
Miscellaneous	459,365
Capital outlay	517,405
Total expenditures	2,640,544
Receipts and other sources over (under) expenditures	5,082,686
Unencumbered cash, beginning	16,209,665
Unencumbered cash, ending	\$ 21,292,351

Schedule of Receipts and Expenditures - Actual and Budget
Regulatory Basis

For the Year Ended December 31, 2018

Debt Service Fund - Bond and Interest Fund

	Actual	Budget	Variance- Over (Under)
Cash receipts:			
Taxes	\$ 1	\$ 100	\$ (99)
Special assessments	323,826	303,117	20,709
Total cash receipts	<u>\$ 323,827</u>	<u>\$ 303,217</u>	<u>\$ 20,610</u>
Expenditures:			
Principal	\$ 170,000	\$ 170,000	\$ -
Interest	94,055	94,055	-
Payment to State	38,800	38,800	-
Miscellaneous	-	30,000	(30,000)
Future payments	-	125,901	(125,901)
Total expenditures	<u>\$ 302,855</u>	<u>\$ 458,756</u>	<u>\$ (155,901)</u>
Receipts over (under) expenditures	20,972		
Unencumbered cash, beginning	<u>467,026</u>		
Unencumbered cash, ending	<u>\$ 487,998</u>		

Debt Service Fund - Local County Sales Tax

	Actual	Budget	Variance- Over (Under)
Cash receipts:			
Special assessments	\$ 180	\$ -	\$ 180
Transfer	3,550,000	3,350,000	200,000
Total cash receipts	<u>\$ 3,550,180</u>	<u>\$ 3,350,000</u>	<u>\$ 200,180</u>
Expenditures:			
Principal	\$ 1,980,000	\$ 1,980,000	\$ -
Interest	616,706	616,706	-
Total expenditures	<u>\$ 2,596,706</u>	<u>\$ 2,596,706</u>	<u>\$ -</u>
Receipts over (under) expenditures	953,474		
Unencumbered cash, beginning	<u>2,326,760</u>		
Unencumbered cash, ending	<u>\$ 3,280,234</u>		

Schedule of Receipts and Expenditures
Regulatory Basis

For the Year Ended December 31, 2018

Internal Service Fund - Employee Benefits Trust

	Actual
Cash Receipts:	
Charges for services	\$ 9,109,269
Interest earnings	26,615
Miscellaneous	532,665
Total cash receipts	9,668,549
Expenditures:	
Claims paid	10,024,585
Contractual services	1,039,192
Total expenditures	11,063,777
Receipts over expenditures	(1,395,228)
Unencumbered cash, beginning	5,300,703
Unencumbered cash, ending	\$ 3,905,475

Internal Service Fund - Workers' Compensation

	Actual
Cash Receipts:	
Interest earnings	\$ 2,006
Intergovernmental revenue	2,104
Miscellaneous	96
Transfers	475,000
Total cash receipts	479,206
Expenditures:	
Personal services	123,596
Contractual services	121,174
Miscellaneous	33,865
Total expenditures	278,635
Receipts over expenditures	200,571
Unencumbered cash, beginning	465,707
Unencumbered cash, ending	\$ 666,278

Schedule of Receipts and Expenditures
Regulatory Basis

For the Year Ended December 31, 2018

Related Municipal Entity - Douglas County Extension Council

	Actual
Cash receipts:	
County appropriation	\$ 510,874
Charges for services	236,010
Miscellaneous	13,514
Total cash receipts	760,398
Expenditures:	
Personnel services	558,536
Contractual services	164,962
Commodities	70,467
Capital outlay	11,228
Total expenditures	805,193
Receipts over expenditures	(44,795)
Unencumbered cash, beginning	594,262
Unencumbered cash, ending	\$ 549,467

Related Municipal Entity - Lawrence/Douglas Co Health Dept.

	Actual
Cash receipts:	
City/County appropriation	\$ 1,495,517
Grants	1,498,630
Fines, fees and permits	-
Charges for services	541,463
Interest	8,694
Miscellaneous	9,965
Total cash receipts	3,554,269
Expenditures:	
Personnel services	2,803,703
Contractual services	463,135
Commodities	328,751
Capital outlay	54,070
Total expenditures	3,649,659
Receipts over expenditures	(95,390)
Unencumbered cash, beginning	3,078,976
Unencumbered cash, ending	\$ 2,983,586

Schedule of Receipts and Expenditures
Regulatory Basis

For the Year Ended December 31, 2018

Related Municipal Entity - Douglas County Free Fair

	<u>Actual</u>
Cash receipts:	
County appropriation	\$ 12,000
Charges for services	322,762
Interest	<u>96</u>
Total cash receipts	<u>334,858</u>
Expenditures:	
Personnel services	36,751
Contractual services	82,680
Commodities	191,021
Capital outlay	<u>9,821</u>
Total expenditures	<u>320,273</u>
Receipts over expenditures	14,585
Unencumbered cash, beginning	<u>38,050</u>
Unencumbered cash, ending	<u><u>\$ 52,635</u></u>

Summary of Receipts and Disbursements
Regulatory Basis

For the Year Ended December 31, 2018

Agency Funds

Fund	Beginning Cash Balance	Cash Receipts	Cash Disbursements	Ending Cash Balance
Distributable Funds:				
Tax Accounts	\$ 95,411,102	\$ 325,302,036	\$ 323,377,462	\$ 97,335,676
Motor Vehicle Accounts	3,208,381	15,044,416	14,890,450	3,362,347
Total Distributable Funds	<u>98,619,483</u>	<u>340,346,452</u>	<u>338,267,912</u>	<u>100,698,023</u>
Other Agency Funds:				
Sheriff Seized Property	2,815	21	-	2,836
Sheriff Inmate Funds	7,973	241,739	239,017	10,695
Sheriff Bond Fund	8,257	603,557	602,964	8,850
District Attorney Funds	158,206	129,067	142,876	144,397
Payroll Clearing	67	-	56	11
Total Other Agency Funds	<u>177,318</u>	<u>974,384</u>	<u>984,913</u>	<u>166,789</u>
Total Agency Funds	<u>\$ 98,796,801</u>	<u>\$ 341,320,836</u>	<u>\$ 339,252,825</u>	<u>\$ 100,864,812</u>

INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL
OVER FINANCIAL REPORTING AND ON COMPLIANCE
AND OTHER MATTERS BASED ON AN AUDIT OF THE FINANCIAL STATEMENT
PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

Board of County Commissioners
Douglas County, Kansas

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the fund summary statement of regulatory basis receipts, expenditures, and unencumbered cash balances of Douglas County, Kansas and the related municipal entities of the Douglas County Extension Council, the Lawrence/Douglas County Health Department, and the Douglas County Free Fair (collectively, County) as of and for the year ended December 31, 2018, and the related notes to the financial statement, and have issued our report thereon dated July 30, 2019. The County prepared the regulatory basis financial statement to meet the requirements of the State of Kansas on the basis of the financial reporting provisions of the Kansas Municipal Audit and Accounting Guide, which is a basis of accounting other than accounting principles generally accepted in the United States of America.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered the County's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statement, but not for the purpose of expressing an opinion on the effectiveness of the County's internal control. Accordingly, we do not express an opinion on the effectiveness of the County's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statement will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. We did identify certain deficiencies in internal control that we consider to be significant deficiencies, described below.

Finding 2018-001 Significant Deficiency - Prior Reference Number: 2017-001

Condition - There is a lack of adequate segregation of duties in the payroll function.

Cause - The payroll clerk has access to add employees, modify master file information, process payroll and post to the general ledger. The clerk also has access to blank checks and the signature stamp software. Additionally, there is no reconciliation currently performed between the data in the payroll system and what is posted to the general ledger.

Effect - A lack of controls and procedures could result in a misstatement to the financial statements.

Recommendation - Beginning in July 2018, the County implemented an internal control to address this significant deficiency. The new internal control consists of an individual outside of the payroll department reviewing audit tables and any changes made by payroll personnel against supporting documentation quarterly. With the addition of this internal control, the significant deficiency was addressed beginning July 2018.

Finding 2018-002 Significant Deficiency - Prior Reference Number: 2017-002

Condition - Purchase orders under \$20,000 can be created and approved by the same person.

Cause - The new ERP system implemented in 2015 allows for the same person to both enter and approve the purchase orders they have entered, primarily in those departments that are small, though all purchase orders over \$20,000 require an additional approval from at least the department making the purchase.

Effect - A lack of controls and procedures could result in a misstatement to the financial statements.

Recommendation - There should be a separation between the entry function and the approval function to ensure that no fraudulent purchase orders are entered. Accounts payable is responsible for reviewing and approving setup of all new vendors in the system.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the County's financial statement is free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

The County's Responses to Findings

The County's responses to the findings identified in our audit are described below. The County's responses were not subjected to the auditing procedures applied in the audit of the financial statement and, accordingly, we express no opinion on them.

Finding 2018-001: Management's Response/Corrective Action Plan (Unaudited)

Corrective Action Taken:

Human Resources/Payroll (HRPY) module of our ERP software, ONESolution, went live on April 1, 2016. Now Payroll and the General Ledger are both subsystems/modules of the same ERP system. The Treasurer's office balances the Payroll and GL subsystems after each payroll cycle. In addition the Treasurer's office continues to do daily balancing of all transactions that impact the General Ledger and bank accounts.

Also, unlike the legacy system, HR employees and Department Heads have access to Payroll in ONESolution. They can see the payroll master records for the employees.

We have separated the HR and Payroll duties in more than one area. First, employee master records are changed by information entered from the departments, approved by HR and then Payroll via a workflow embedded in ONESolution. Second, the County Clerk's office (Payroll) now uses two employees to complete the payroll cycle. They have separate duties to serve as double checks for every payroll run.

In 2018, a new procedure was developed to audit employee master and employee pay records for changes that are made outside of the standard workflow process. Administrative Services staff reviews all changes made within specified timeframes to ensure any changes made relate to an intended change from an electronic PAF form or there is related correspondence. The audit trail function was turned on in July of 2018 and all transactions in 2018 were reviewed on or after that date.

Finding 2018-002: Management's Response/Corrective Action Plan (Unaudited)

Management's Response:

It is important to note that some departments are small enough that the department head does enter and approve the Purchase Orders. However, no vendors can be added without the approval of Accounts Payable. Also, when the invoice is presented for payment Accounts Payable reviews every invoice regardless of the dollar amount.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. The report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Allen, Gibbs & Houlik, L.C.
CERTIFIED PUBLIC ACCOUNTANTS

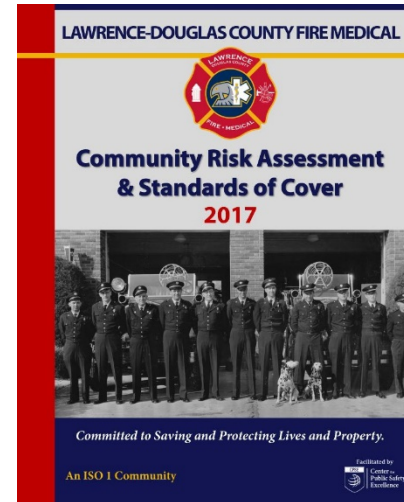
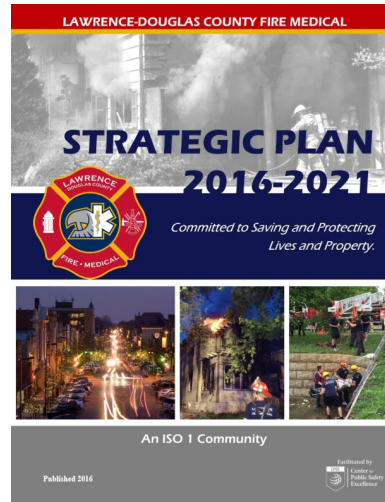
July 30, 2019
Wichita, Kansas

Lawrence – Douglas County Fire Medical



Continuous Improvement Model

Components



- Fire and Emergency Services Self-Assessment Manual
- Site Visit / Accreditation Report
- Annual Compliance Report

Annual Compliance Report (ACR)

Key Performance Indicators



- Annual communication to the Authority Having Jurisdiction (AHJ) of the department's capabilities and capacities.
 - Verification to the Commission on Fire Accreditation International (CFAI) of the department's progress towards recommendations.
-

Performance Monitoring



Response Time Metrics



High Risk Emergency Medical Incidents

Alarm Handling Time

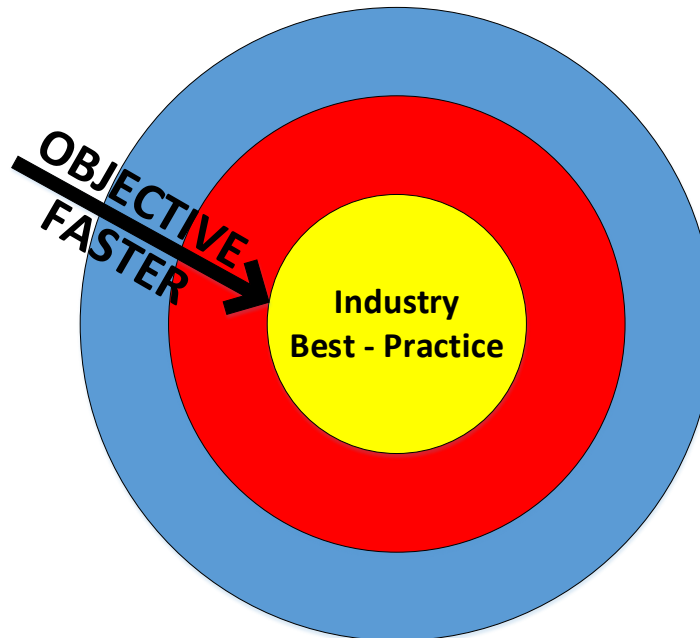


Turnout Time



Travel Time

Total Response Time

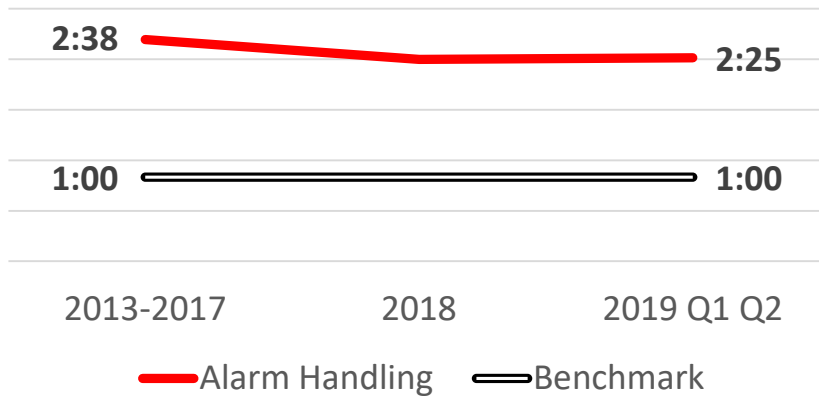


Performance Monitoring

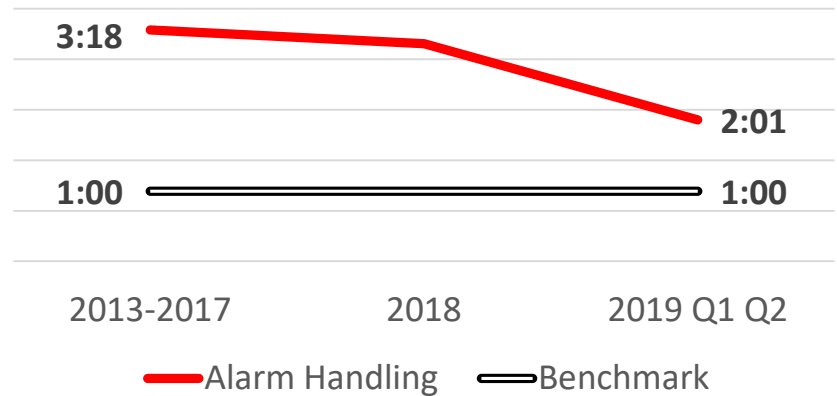
Response Time Metrics

Alarm Handling Time

Urban



Rural

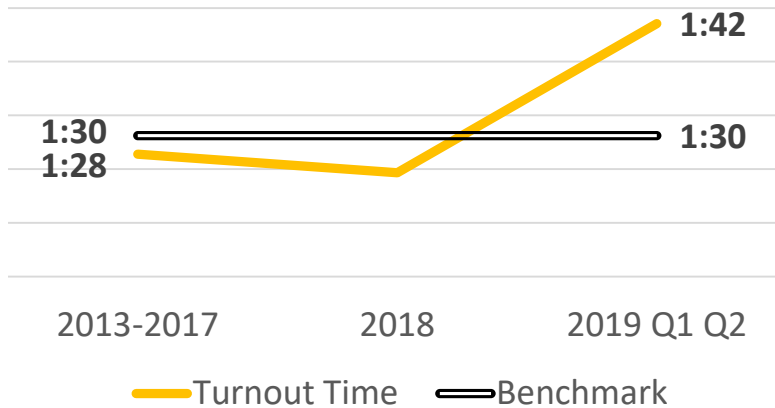


Performance Monitoring

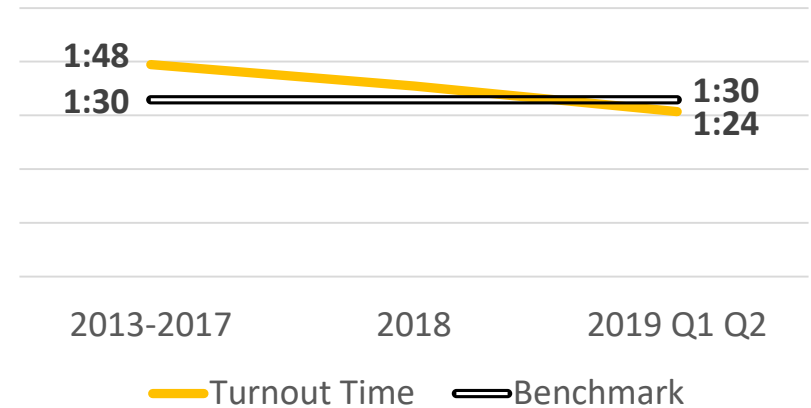
Response Time Metrics

Turnout Time

Urban



Rural

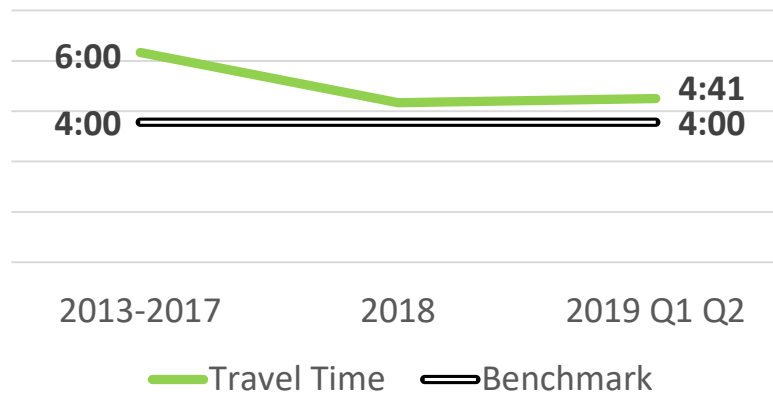


Performance Monitoring

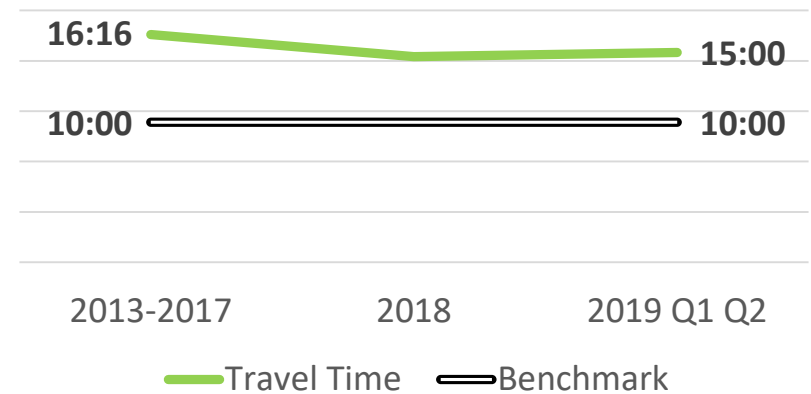
Response Time Metrics

Travel Time

Urban



Rural



Performance Monitoring

- Program Evaluation

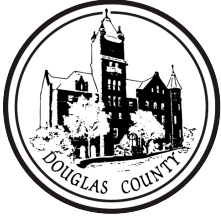
- Purpose
- Inputs / Resources
- Outputs
- Outcomes / Impacts
- Recommendations / Next Steps
- Benefit of Recommendations



Conclusion

- Internal Station Location Study
- Enhancing the Community Risk Assessment
- Mobile Integrated Health Program
- Community Feedback / Engagement





DOUGLAS COUNTY ADMINISTRATOR

1100 Massachusetts Street
Lawrence, KS 66044-3064
(785) 832-5328 Fax (785) 832-5148
splinsky@douglascountyks.org

Sarah Plinsky
Interim County Administrator

MEMO

August 9, 2019

To: County Commissioners
From: Sarah Plinsky, Interim County Administrator
RE: Amended lease extension with the Housing Authority

In order to access \$200,000 in additional state/federal funding for the mental health supportive housing project (to install solar panels and build in furniture), the County needs to amend the Housing Authority lease with the County to make it a 99 year lease. The current lease is a 30 year lease (which is what HUD required) with four 10-year automatic renewals exercisable by the LDCHA.

Attached is the proposed amendment and the original lease for your reference. John Bullock and Shannon Oury have reviewed the lease. If approved, Shannon will get her board to sign off and it will be submitted to HUD.

Recommended Action:

Staff recommends approving an amended lease agreement with the Lawrence-Douglas County Housing Authority extending the lease for mental health supportive housing from 30 years to 99 years.

LEASE

THIS LEASE is entered into and made effective the 11 day of July, 2018 (the "**Effective Date**"), between BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS ("**Landlord**" or "**Douglas County**"), and LAWRENCE DOUGLAS COUNTY HOUSING AUTHORITY, an Agency of the City of Lawrence and Douglas County, Kansas, ("**Tenant**" or "**LDCHA**").

WHEREAS, Douglas County, in collaboration with many partners, intends to build a mental health campus which includes a mental health crisis/recovery/restoration center and related services, transitional housing and permanent supported housing ("**Campus**"); and

WHEREAS, Douglas County desires to construct permanent supported housing consisting of approximately 8-10 units on a portion of the Campus and to have the same operated by the LDCHA as affordable housing units on a portion of real property (the "**Property**") legally described in **Exhibit "A"**; and

WHEREAS, LDCHA desires to operate this newly constructed permanent supported housing on the Campus as permanent supported affordable housing units ("**Leased Premises**"); and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Lease, Landlord and Tenant agree as follows:

1. **INITIAL TERM OF LEASE.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Premises commencing on the date the Landlord receives an occupancy permit for the Leased Premises (the "**Commencement Date**") for a term of thirty (30) years (the "**Initial Term**") and shall terminate at midnight on the last day of that 30-year term (the "**Termination Date**"), unless earlier terminated or extended in accordance with the provisions of this Lease.

2. **AUTOMATIC EXTENSION OF LEASE.** Upon the expiration of the Initial Term, this Lease will automatically renew and be extended for a successive term of ten (10) years (the "**Successive Term**"). Upon the expiration of the first Successive Term, the Lease will automatically renew for an additional Successive Term of ten (10) years. Thereafter, the Lease will continue to automatically renew in this fashion for 3 additional Successive Terms, for a total Lease term, including both the Initial Term and all Successive Terms, of eighty (80) years. The terms and conditions of this Lease will be the same for each Successive Term, with the sole exception that the rent for each Successive Term will be one dollar per term (\$1.00). Provided, however, that if Tenant gives Landlord written notice of non-renewal not less than ninety (90) days before the expiration of the Initial Term or any Successive Term, then the Lease will not renew and will terminate at midnight on the last day of the then-existing term.

3. **PAYMENT OF RENT.** For rent during the Initial Term, Tenant will pay Landlord an amount equal to the HUD Total Development and Housing Cost Cap Limit ("**Rent**") applicable to this project and approved by HUD. All of this Rent will be paid in full within ten (10) days of the Commencement Date of the Lease. Tenant agrees to use its best efforts to maximize the HUD funds available for this project.

4. **USE OF LEASED PREMISES.** Tenant shall use and occupy the Leased Premises solely for the permanent supported affordable housing units and for no other additional purpose. Landlord and Tenant agree to execute and file with the Register of Deeds of Douglas County the Declaration of Covenants, Conditions, and Restrictions for Permanent Supported Affordable Housing Units attached hereto as **Exhibit "B."** Tenant shall obtain, at Tenant's expense, all licenses, approvals, and permits necessary for the operation and conduct of Tenant's activities upon the Leased Premises.

5. **CONSTRUCTION OF LEASED PREMISES.** It is understood by the parties that Landlord is building the Leased Premises consisting of approximately 8-10 units specifically for the Tenant to lease pursuant to

this Lease. As such, Landlord will allow Tenant to be substantially involved in the design of the Leased Premises and in the procurement of furniture, fixtures and equipment for the Leased Premises. Specifically,

A. Landlord shall coordinate with the Tenant and endeavor to further the interests of the Tenant in the project.

B. Landlord represents, and agrees that it will construct the Leased Premises in accordance with the usual and customary standards of construction in Douglas County and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, and ordinances.

C. Tenant shall have substantial input into the design of the Leased Premise and Landlord will review with Tenant all drawings, specifications, and other construction documents as they are developed by the Architect during the schematic design and design development of the Project.

D. Before proceeding into the construction document stage, the Landlord shall obtain Tenant's written approval of the design development documents, which approval shall not unreasonably be withheld.

E. Once designed, Landlord shall provide all labor, materials, equipment, tools, machinery, and construction services necessary for the completion of the Leased Premises in conformity with the construction documents. Landlord shall not make any adjustment to the approved design except as approved by the Tenant in writing, which approval shall not unreasonably be withheld.

F. During the construction of the Leased Premises, Landlord shall deliver a monthly status report to Tenant.

G. Landlord shall consult with Tenant on the selection of materials, finishes, equipment, component systems, and types of construction used in construction of the Leased Premises.

H. Landlord shall transfer to Tenant, to the extent they are transferable, all rights under manufacturer's warranties on appliances, equipment, fixtures, and consumer products included in the Improvements.

I. Tenant shall have the right to reject any materially defective work of which Tenant becomes aware and Landlord shall promptly correct any such defect at Landlord's expense.

J. Prior to the Commencement Date, should any portion of the Leased Premises be materially damaged or defective due to (i) an error or omission in any plans, drawings, specifications, and other construction document materials; or (ii) an error or negligence of any contractor or sub-contractor constructing the Leased Premises, Landlord shall promptly correct any such damage or defect. Should the Landlord unreasonably refuse or neglect to correct any such damage or defect within a reasonable time after notice, Tenant may cause the damage or defect to be corrected and collect monetary damages equal to the cost of replacing or repairing the defective work. If Tenant has not provided written notice to Landlord of any alleged damage or defect in or to the Leased Premises within one (1) year of the Commencement Date, Tenant will be deemed to have accepted the Leased Premises as-is, approved the condition thereof, and waived any claim for repairs, corrections, or other alterations of the Leased Premises by Landlord.

6. **PERMITTED TERMINATIONS.** If this Contract is terminated by either party under this paragraph, neither party shall have any further rights or obligations under this Lease.

A. Landlord may terminate this lease if Landlord is unable to obtain any and all necessary governmental approvals deemed necessary by Landlord for construction of the Leased Premises.

B. Tenant or Landlord may terminate this lease if Tenant does not obtain approval of this Lease from the U.S. Department of Housing and Urban Development ("HUD").

C. Within thirty (30) days of the approval of the Lease by HUD, Tenant, at Tenant's expense, shall perform an Environmental Review or the Property pursuant to 24 CFR part 58 or part 50. If such review does not satisfy the requirements of 24 CFR part 58 or part 50, Tenant may terminate this Lease.

D. Within thirty (30) days of the approval of the Lease by HUD, Tenant, at Tenant's expense, shall schedule with HUD a Site and Neighborhood Standards Review pursuant to 24 CFR 941.202. If such review does not satisfy the requirements of 24 CFR 941.202, Tenant may terminate this Lease.

E. If Landlord fails or refuses to substantially involve Tenant in the design of the Leased Premises as set forth in paragraph 5 above, Tenant may terminate this Lease.

7. **PROPERTY TAXES.** Although neither party expects any real estate taxes to be due and owing, should any property taxes become due during the tenancy, Landlord agrees to pay the same. Real estate taxes shall mean all taxes, assessments, and charges levied upon or with respect to the Property or the Leased Premises. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees, storm water drainage fees or other assessments for governmental services or purported benefits to the Real Estate. Real Estate Taxes shall also include any other tax, fee, or other excise, however described, that may be levied or assessed as a substitute for or as an addition to, in whole or in part, any other real estate taxes, whether now customary or in the contemplation of the parties on the day of this Lease.

8. **ALTERATIONS.** Tenant, at Tenant's sole expense, may make any material or structural alterations, additions, or modifications in or to the Leased Premises without the written consent of Landlord. All alterations, additions, and modifications which shall be made by Tenant of, in, or to the Leased Premises shall be the property of Landlord and shall remain upon and be surrendered with the Leased Premises as a part thereof at the termination of this Lease. The parties acknowledge and agree that Tenant's Work shall be solely for the benefit of Tenant and Tenant's occupancy of the Premises, and that Tenant shall not be considered an agent of Landlord, at any time or for any reason, in the completion of Tenant's Work as set forth in this Lease. All improvements made to the Leased Premises by Tenant shall be made in a manner and with materials satisfactory to Landlord, and all work in making improvements by Tenant shall be completed in accordance with all applicable construction and building codes of the City of Lawrence, Kansas, and all other valid laws, ordinances, rules, and regulations applicable thereto. Tenant will defend, indemnify, and hold Landlord harmless from and against all claims, demands, liens or judgments arising out of or related to Tenant's alteration of the Leased Premises.

9. **ASSIGNMENT AND SUBLETTING.** Tenant shall not assign, mortgage, or encumber this Lease without the prior written consent of Landlord. This section does not prevent Tenant from using the Leased Premises for supported residential housing.

10. **REMOVAL OF PERSONAL PROPERTY.** If Tenant shall fail to remove Tenant's personal property and effects from the Leased Premises upon the expiration or termination of this Lease, Landlord shall have the right and option, but not the obligation, to remove, store, discard and/or dispose of such personal property and effects, without notice and without liability to Tenant or any other person, lienholder or creditor, and Landlord shall have a lien on such personal property for any expenses reasonably incurred for moving, storage and/or disposal charges, insurance, and attorney's fees.

11. **NOTICE OF DEFECTS.** Tenant shall, upon the discovery of any other substantial defect in or injury to said Premises, or any need of other substantial repairs, promptly report the same to Landlord in writing or by telephone; however, Landlord shall be under no duty to remedy such defects or make such repairs unless otherwise expressly required to do so by this Lease.

12. **DAMAGE BY FIRE OR OTHER CASUALTY.**

A. **Prior to Commencement Date.** Prior to the Commencement Date, Landlord shall bear the risk of loss to the Leased Premises and, in the event of loss or damage by fire or other casualty, cause such damage to be repaired within a reasonable time.

B. **On and after Commencement Date.** On and after the Commencement Date, Tenant shall bear the risk of loss to the Leased Premises, and to loss of Tenant's personal property located on or about the Leased Premises. In the event of loss or damage by fire or other casualty, Tenant shall cause such damage to be repaired within a reasonable time.

D. **Disclaimer.** Tenant understands that Landlord will not carry insurance of any kind on Tenant's furniture or furnishings or on any fixtures or equipment removable by Tenant under the provisions of this Lease, and that Landlord shall not be obligated to repair any damage thereto or replace the same. Landlord may elect to carry insurance covering all or a portion of the Leased Premises, but this will be considered for Landlord's benefit only, and will not create or imply any obligation on the part of Landlord except as expressly stated in this Agreement.

13. **MAINTENANCE AND ALTERATIONS.**

A. **Landlord's Duties.** During the term of this Lease Landlord shall maintain the access driveway in a state of good repair, ordinary wear and tear and damage caused by Tenant, its agents, employees, and invitees, excepted. Landlord shall have no other duties related to repair, maintenance, or other upkeep of the Leased Premises, except as set forth in paragraphs 5(J) and 12(A), above.

B. **Tenant's Duties.** On and after the Commencement Date, Tenant shall, at all times during the Initial Term and any Successive Term of this Lease, at Tenant's sole cost and expense, maintain the Leased Premises in a good and safe condition, and maintain the grounds of the Leased Premises, which maintenance shall include, without limitation, mowing, watering, removing debris, and otherwise maintaining any landscaping on the Premises.

C. **Right to Cure.** In the event Tenant fails, refuses or is otherwise unable to maintain or make any reasonable and necessary repairs to the Leased Premises, as described above, Landlord may, at Landlord's option and upon written notification to Tenant, cause such repairs to be made, for which purpose Landlord and Landlord's agents and employees shall have full access to the Leased Premises. Tenant shall immediately upon demand by Landlord pay to Landlord the cost of making such repairs. Landlord shall provide to Tenant all warranty information with respect to equipment, appliances, and other items of personal property located within the Leased Premises for which a warranty shall have been provided to Landlord, and Tenant shall be entitled to remedies under such warranties with respect to its obligations under this paragraph.

14. **SIGNS.** The parties understand and agree that the current ordinances of the City of Lawrence, Kansas restrict the signage that Tenant may place and display on the Leased Premises. Prior to erecting or displaying any exterior signage, Tenant shall submit to Landlord plans for the design and placement of Tenant's signage. At that time, Landlord and Tenant shall approve and attach hereto a description of acceptable signage and the location thereof for Tenant's business. No signage that is visible from the exterior shall be installed by Tenant without the prior written consent of Landlord.

15. **UTILITIES.** Tenant, at its sole expense, shall pay for all fuel, gas, water, electricity, telephone, refuse removal, sewer charges, and other utility services used by it on the Leased Premises, including electricity for the lighting of parking areas on the Leased Premises. Tenant shall indemnify and hold Landlord harmless from and against payment of all loss, costs, charges, and expenses occasioned by or arising from any utility charges. In the event Tenant shall fail to pay the utility charges which Tenant is obligated to pay by the terms of this Lease, Landlord may, at its election and without waiving any of Landlord's rights arising because of such default by Tenant, pay any such utility charges and the amount so paid therefor shall thereupon immediately become due and payable from Tenant to Landlord, together with interest thereon, at the rate of one percent (1%) per month until paid, but the payment of interest shall not excuse or cure any default by Tenant under this Lease.

17. **WASTE, NUISANCE, AND HAZARDOUS SUBSTANCES.**

A. **Covenant.** Tenant covenants not to commit, permit, or allow to occur on the Leased Premises any (1) waste, (2) noxious or offensive activity, (3) disturbing or disruptive noise, or (4) any other nuisance, nor shall anything be done on the Leased Premises which may be or become an annoyance, nuisance, security risk or safety hazard to Landlord, the tenants in the Leased Premises, or any of their agents, employees, guests or invitees. Tenant shall, free of all expense to Landlord, abate all nuisances upon demand by Landlord.

B. **Prohibited Use; Tenant's Obligations.** Tenant shall not suffer or permit any pollutants, chemical, or other toxic, hazardous, or radioactive substances to be discharged, disbursed, released, used, treated, generated, disposed of, or allowed to escape on the property and shall not install, use, incorporate into, or dispose of any asbestos or asbestos-containing materials, any lead-based paints, or any polychlorinated biphenyls (PCB's) on the property. Tenant agrees that it will not keep, use, sell, or offer for sale in or upon the Leased Premises any article which may be prohibited by an insurance policy. In the event Tenant's occupancy or conduct of business in or on the Leased Premises, whether or not Landlord has consented to the same, results in any increase in premiums for the insurance carried from time to time by Landlord, Tenant shall pay any such increase in premiums as additional rent within ten (10) days after bills for such additional premiums shall be rendered by Landlord. Tenant shall promptly comply with all reasonable requirements of the insurance authority, or of any insurer now or hereafter in effect relating to the Leased Premises. If any insurance policy on the Leased Premises or any part thereof shall be cancelled or if cancellation shall be threatened, or if the coverage shall be reduced or be threatened to be reduced, in any way by reason of the use or occupation of the Leased Premises or any part thereof by Tenant, any assignee or subtenant of Tenant, or by anyone permitted by Tenant to be upon the Leased Premises, and if Tenant fails to take reasonable efforts to remedy the condition giving rise to the cancellation, threatened cancellation, reduction, or threatened reduction of coverage following Tenant's receipt of written notice, or to diligently prosecute such remedial action to completion within a reasonable time following Tenant's receipt of such written notice, Landlord may, at its option, enter upon the Leased Premises and attempt to remedy the condition, and Tenant shall forthwith pay the cost to Landlord as additional rent. Landlord shall not be liable for any damage or injury caused to any property of Tenant or of others located on the Leased Premises as a result of such entry, unless such damage or injury was caused by the negligence or willful act or failure to act of Landlord or its agents, servants or employees. If Landlord is unable to remedy the offensive conditions, Landlord shall have all of the remedies provided for in this Lease in the event of a default by Tenant. Notwithstanding the foregoing provisions of this paragraph, if Tenant fails to remedy the condition, Tenant shall be in default and Landlord shall have no obligations to attempt to remedy.

18. **INSURANCE.**

A. **Property Insurance.** On and after the Commencement Date, Tenant shall cause the Leased Premises and appurtenances to be insured against casualty loss with extended coverages, in an amount or amounts to be determined by Landlord, in Landlord's sole judgment, as adequate.

B. **Liability Insurance.** Tenant shall keep in force, at its sole cost, during the term of this Lease and during such other time as the Tenant occupies the Leased Premises or any part thereof, liability insurance with respect to the Leased Premises, with insurers and in form reasonably acceptable to Landlord with a minimum combined single limit of \$1,000,000.00 on account of bodily injuries to, or death of more than one person, as a result of any one occurrence or disaster, and property damage insurance with minimum limits of \$500,000.00. Tenant's employees shall not be excluded from coverage under such insurance notwithstanding their coverage under workers compensation insurance. Tenant shall cause such policy or policies to name or contain an endorsement naming Landlord as an additional insured thereunder.

C. **Workers' Compensation.** In the event Tenant's business places any or all of its employees under the coverage of workers compensation, or similar statutes, Tenant shall keep in force, at its own expense, during the Initial Term and any Successive Term of this Lease, and during such other times as Tenant occupies the Leased Premises or any part thereof, workers compensation or similar insurance affording statutory coverage and containing statutory limits. A copy of the policy or proper certificates of the insurance so maintained by Tenant shall be delivered to Landlord by Tenant. Tenant's obligation to maintain insurance, as provided in this subparagraph, shall commence on the Commencement Date.

19. **MECHANIC'S LIENS.** Tenant shall not permit any liens to stand against the Leased Premises for any labor or materials furnished to Tenant in connection with any work performed thereon, pursuant to any addition, alteration, or modification to the Leased Premises authorized by this Lease and/or for which consent has been granted by Landlord. Landlord and Tenant understand and agree that any improvements or alterations to be made by Tenant on or to the Leased Premises are for the convenience of Tenant and not for or because of any benefit to Landlord or the Leased Premises, and Tenant shall not be the agent of Landlord for any such improvements or alterations.

20. **DAMAGE TO PROPERTY OF TENANT.** Landlord shall not be liable to Tenant for any damage to property of Tenant or others contained in the Leased Premises. Landlord shall not be liable for loss of or damage to any property of Tenant by theft, or otherwise, unless expressly provided herein.

21. **DEFAULT BY TENANT, SPECIFIC REMEDIES.** If Tenant shall fail to pay any rent or other payment required by this Lease within ten (10) days from the date Landlord notifies Tenant of said late payment; if the Leased Premises shall be abandoned or vacated without the written consent of Landlord; if Tenant shall fail to comply within twenty (20) days after written notice to Tenant, with any term, provision, condition, or covenant of this Lease, other than the payment of rent, and shall not cure such failure within twenty (20) days after written notice to Tenant of such failure to comply; if Tenant shall become insolvent; if Tenant shall make an assignment for benefit of creditors; or if a receiver is appointed for a substantial part of the assets of Tenant; or if Tenant fails, refuses, or is unable for any reason to provide supported housing at the Leased Premises, Landlord shall have the option to do any one or more of the following, in addition to and not in limitation of any other remedy permitted by law or by this Lease:

A. **Terminate Lease.** Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, but if Tenant shall fail to do so, Landlord may, without further notice and without prejudice to any other remedy Landlord may have, enter upon the Leased Premises and expel or remove Tenant and Tenant's effects, by force if necessary (so long as a breach of the peace does not occur), without being liable to prosecution or any claim for damages therefor; and Tenant agrees to indemnify Landlord for all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Leased Premises on terms satisfactory to Landlord or through decrease in rent, or otherwise;

B. **Other Remedies.** Landlord may, but is under no obligation to do so, and in Landlord's sole discretion, as agent of Tenant, do whatever Tenant is obligated to do by the provisions of this Lease and may enter the Leased Premises, by force if necessary (without a breach of the peace), without being liable to prosecution or any claim for damages therefore, in order to accomplish this purpose.

C. **Landlord under No Duty to Operate Leased Premises or Provide Housing.** At no time and under no circumstances will the Landlord be required to occupy, manage, oversee, or operate the Leased Premises. Landlord does not have and will not have any duty to offer, provide, furnish, pay for, or otherwise arrange for or deliver supported housing or any other services, benefits, facilities, or opportunities actually or potentially provided by Tenant. If Tenant is unable to provide supported housing and related services and benefits to residents of the Leased Premises, Tenant will bear the full responsibility to address the ramifications, if any, thereof, and Landlord will have no responsibility or obligation therefor.

22. **ENTRY BY LANDLORD.** Except as otherwise provided in this Lease or pursuant to applicable law, Landlord has no right to entry into the Leased Premises unless approved, in writing, by the Tenant.

23. **SURRENDER.** No holding over by Tenant after the term of this Lease or the expiration of any extension or renewal period thereof shall operate to extend this Lease. If Tenant remains in possession of the Premises or any part thereof after the expiration of a term, with or without the consent of Landlord, such occupancy shall be a tenancy from month-to-month at a rental rate of \$1.00 per month. Upon the expiration or other termination of this Lease, Tenant will peaceably surrender the Leased Premises to Landlord.

24. **QUIET ENJOYMENT.** Tenant, on payment of the rent and observance of the covenants, agreements, and conditions required of Tenant by this Lease, shall peaceably and quietly hold the Leased Premises for the Initial Term of this Lease and any Successive Term(s), subject, however, to the terms of this Lease.

25. **SEVERABILITY.** If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws effective during the term of this Lease, then and in that event, the parties hereto intend that the remainder of this Lease shall not be affected thereby, and the parties to this Lease also intend that in lieu of each clause or provision of this Lease that is illegal, invalid, or unenforceable, there be added as part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

26. **INTEGRATION.** Tenant expressly agrees, as a material consideration for the execution of this Lease, that there are, and were, no verbal representations, understandings, stipulations, agreements, or promises pertaining thereto not incorporated in writing herein, and it is likewise agreed that this Lease shall not be altered, waived, amended, or extended otherwise than is provided herein, except same may be done in writing signed by the proper authority, and it is also agreed that no agent or representative of Landlord shall have authority to make a valid alteration, amendment, or extension of this Lease, except in writing, signed by the proper authority.

27. **NOTICES.** Notices, demands, or other communications under this Lease shall be in writing and shall be deemed to have been given or submitted upon personal delivery or upon deposit in the United States mail by certified or registered mail, postage prepaid, with return receipt requested, addressed to Landlord or Tenant, as the case may be, at the Landlord's or Tenant's last known address. Notices shall be deemed received upon personal delivery or three (3) days following deposit in the mail, if mailed in accordance with this paragraph.

28. **INDEMNITY.** Tenant agrees to indemnify and hold harmless Landlord, and Landlord's members, officers, employees and agents, from any injury, expense, damages, or claims including, without limitation, attorneys' fees, whether due to damage to the Premises, claims for injuries to the person or property of any other person, occupant, guest, invitee, tenant of the Leased Premises, or of any other person rightfully in or about the Leased Premises for any purpose whatsoever, or administrative or criminal action by a governmental authority, where such injury, expense, damages, or claims are the result of, or alleged to be the result of: (i) negligence or misconduct of Tenant, its agents, servants, or employees, or of any other persons entering upon the Premises under express or implied invitation of Tenant; (ii) any violation or breach of any term to terms of this Lease; (iii) the violation by any of the persons named of any provision of this Lease, or of any laws or ordinances or governmental regulations; (iv) a defect in that part of the Leased Premises hereby leased to Tenant; or (v) Tenant's use and occupancy of the Leased Premises.

29. **REQUIREMENTS OF PUBLIC AUTHORITY.** During the term of this Lease, Tenant shall, at its own cost and expense, pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable attorneys' fees, that may in any manner arise out of or be imposed because of the failure of Tenant to comply with all present and future laws, ordinances, requirements, orders, directives, rules, and regulations of the federal, state, county governments, and of all other political subdivisions, or governmental or quasi-governmental authorities affecting the Leased Premises or appurtenance thereto, or any part thereof, and Tenant's use of the Leased Premises, was the same or in force at the commencement of the term of this Lease or may in the future be passed, enacted, or directed.

30. **CAPTIONS.** The caption of each paragraph of this Lease is added as a matter of convenience only and shall be considered to be of no effect in the construction of any provision or provisions of this Lease.

31. **CONSTRUCTION.** Wherever appropriate, the singular shall include the plural and the impersonal pronoun shall include the personal pronoun.

32. **BROKERAGE.** Tenant represents and warrants to Landlord that no real estate agent or broker has negotiated or participated in the negotiations of this Lease on behalf of Tenant, or submitted or showed the Premises as Tenant's agent, or is entitled to any commission in connection herewith as the agent of Tenant. Tenant agrees to indemnify and hold Landlord harmless from any and all loss, cost, expense (including attorneys' fees and disbursements), liability and damages that Landlord may suffer by reason of the incorrectness of the foregoing representation and warranty.

IN WITNESS WHEREOF, the parties hereto, by duly authorized representatives, have executed and delivered this Lease as of the Effective Date.

TENANT:

Lawrence Douglas Housing Authority

By _____

Its: Chair

LANDLORD:

**Board of County Commissioners of Douglas
County, Kansas**

By: _____

Nancy Thellman, Chair

Attest: _____

Jamie Shew, County Clerk

Date: _____

7/12/18

By: _____

Jameson D. Shew

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Lots 41, 42, 43, 44, 45, 46, 47 and 48 in Block No. 5, in that part of the City
of Lawrence known as West Lawrence, Douglas County, Kansas.
and
Lot 2 of the Bert Nash Addition, Lawrence, Douglas County, Kansas

AMENDMENT TO LEASE AGREEMENT

THIS **Amendment to Lease Agreement** is made this ____ day of July, 2019, between BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS ("**Landlord**" or "**Douglas County**"), and LAWRENCE DOUGLAS COUNTY HOUSING AUTHORITY, an Agency of the City of Lawrence and Douglas County, Kansas, ("**Tenant**" or "**LDCHA**").

RECITALS

WHEREAS, the Lease Agreement was executed by the Landlord and Tenant on July 11, 2018 ("**Lease**") (said Lease is attached hereto as Exhibit "A"); and

WHEREAS, the Initial Term of the Lease was thirty (30) years; and

WHEREAS, the Lease provided for four extensions of ten (10) years apiece, for a total term of eighty (80) years; and

WHEREAS, LDCHA has the opportunity to receive \$200,000 in HTF funds from the Kansas Housing Resource Corporation if the lease is amended to be a ninety-nine (99) year lease; and

WHEREAS, the parties now desire to amend the Term of said Lease as set forth herein.

AGREEMENT

NOW THEREFORE, said Lease is hereby amended and for good and valuable consideration, the receipt of which is acknowledged, it is agreed as follows:

1. **Term.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Premises commencing on the date the Landlord receives an occupancy permit for the Leased Premises (the "**Commencement Date**") for a term of ninety-nine (99) years (the "**Initial Term**") and shall terminate at midnight on the last day of that 99-year term (the "**Termination Date**"), unless earlier terminated or extended in accordance with the provisions of this Lease.

2. **Automatic Extension of Lease.** Deleted

3. **Entire Agreement.** Tenant further agrees that no other provisions of the lease is changed, modified, or amended except as stated herein and Tenant shall remain liable under all the terms, covenants, and conditions of said Lease as originally executed to the end of the term thereof.

4. **Binding Effect.** This Agreement shall be binding upon the successors and assigns of the parties. The parties shall execute and deliver such further and additional instruments, agreements, and other documents as may be necessary to evidence or carry out the provisions of this Agreement.

5. **Notices.** All notices or other documents under this Agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.

6. **Non-Waiver.** No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

7. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

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

9. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

TENANT:

Lawrence Douglas Housing Authority

By _____
Joshua Powers, Chair

LANDLORD:

**Board of County Commissioners of
Douglas County, Kansas**

By: _____
Michelle Derousseau, Chair

Attest:

Jamie Shew, County Clerk

Date: _____



DOUGLAS COUNTY ZONING & CODES

3755 E 25th Street
Lawrence, KS 66047
(785) 331-1343
tvoigt@douglascountyks.org

Sarah Plinsky
Interim County Administrator

MEMORANDUM

TO : Board of County Commissioners

FROM: Tonya Voigt, Zoning Director

DATE : July 25, 2019

RE : Rural Certificate of Survey's Outside the UGA

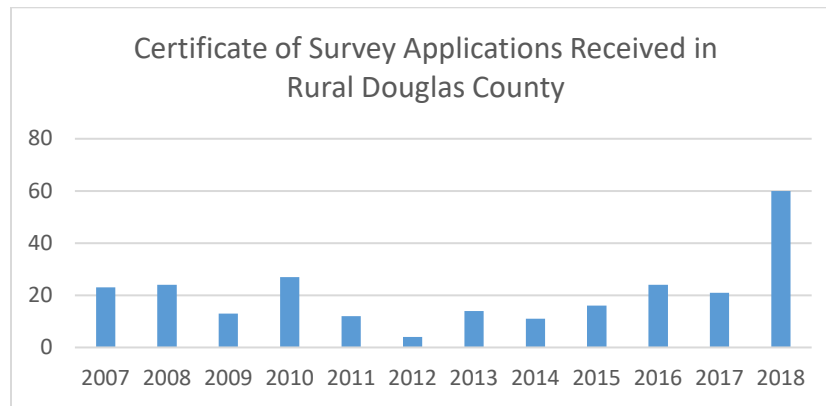
The current comprehensive plan (Horizon 2020) promotes the maintenance of a strong and clear distinction between the urban and rural areas of the County. The plan states that 'new residential development in Douglas County should protect and enhance the rural character and quality of unincorporated portions of the County.' Specifically, 'the pattern of rural residential development should be to cluster residences to minimize impacts on the rural character of Douglas County and to protect existing agricultural and natural uses in those areas beyond the UGA of Lawrence, and the other incorporated cities of Eudora, Baldwin City and Lecompton.'

The plan outlines these policies to implement this goal:

- Direct rural residential development to group or cluster residential parcels in or adjacent to existing subdivisions, growth centers and to be in near proximity to transportation corridors to consolidate and reduce the costs associated with the extension of public services.
- Non-farm residential development should be directed to urban areas.
- Rural residential development should be encouraged to locate within the Urban Growth Areas.

The current zoning regulations do not entirely promote these goals. The regulations do not provide tools to 'direct rural residential development,' or to preserve prime farm ground or rural characteristics. While our regulations state we do not allow "subdivisions" outside the UGA, the Certificate of Survey process allows property to be easily split into smaller parcels for residential use. The process is administratively approved after review by County and City staff. Staff review is limited to technical guidelines and does not require a broader review of the planning policies outlined in the comprehensive plan. The regulations do not require public notification or public discussion prior to approval.

Certificate of Survey applications have risen dramatically in recent years, as landowners and developers have identified the potential for residential development under our current regulations. The chart below shows the number of Certificate of Survey applications received per year.



We've also received an increasing number of concerns from nearby landowners, regarding the amount of working farmland being removed from production, the number of lots being created, and the impacts on local roads. Because certificates of survey are administratively approved, neighboring property owners are unaware of the changes until after the development has been approved. At this time, the only option for a concerned property owner to voice concern is to request an appeal to the commission when a certificate of survey application has been approved. I anticipate the commission will start to see these appeals regularly in the near future. The language is vague in the subdivision regulations and doesn't outline a clear appeal process or the factors to consider when appealing.

11-107-i (1) – 'Upon the approval or denial of an application for a division of land, a party aggrieved by the planning director's decision may appeal that decision to the Board of County Commissioners. To have standing to make an appeal, the party must have been the applicant or an Owner of property within ¼ mile of the land that is the subject of the decision.'

We've been working with the Planning Office for several months to draft revised Zoning Regulations for BOCC review. The zoning regulations were first adopted in 1966 with various edits and additions through the years, but the fact remains that much of the original language remains and is no longer consistent with our long range plan

The draft regulations propose to add zoning districts to identify agricultural versus residential land uses. Any parcel of land, with the exception of farms, which is not zoned to allow for a residential or commercial use, would have to be rezoned before a building permit can be issued for that parcel. Rezoning would allow staff to consider the character of adjacent parcels, the zoning and uses nearby, the suitability of the property to the proposed use, the impact of the proposals on

infrastructure, the length of time that the subject and adjacent properties have been utilized for their current uses and the benefits to the public health, safety and welfare. The review process would include public notification, and an opportunity for public input.

Proposed criteria to be used for review of residential land development outside the UGA would include:

- minimum acreage and maximum density requirements
- compliance with road frontage and entrance spacing requirements,
- consideration of existing road and bridge conditions
- avoidance of regulatory floodway and floodplain,
- preservation of working farm soils,
- preservation of old growth forest and native prairies
- preservation of historic landmarks, and
- avoidance of steep slopes.

The draft revised regulations are intended to allow different land uses to be located and organized in a manner that promotes the public health, safety, comfort and general welfare, to conserve property values, and to facilitate adequate transportation and water supply systems.

In light of the dramatic increase in recent development applications, and the subsequent concerns from neighboring landowners, the BOCC could consider a moratorium on certificates of survey until the proposed zoning regulations have been discussed or adopted. The draft regulations could be ready for a full discussion within a few weeks if the board chooses to move forward. We can provide several current development examples that demonstrate the need for this discussion. The ideal outcome would be a set of regulations that support the comprehensive plan and protect natural and agricultural land characteristics in our rural areas.



DOUGLAS COUNTY ADMINISTRATIVE SERVICES

Division of Purchasing

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MEMO TO: The Board of County Commissioners
Sarah Plinsky, Interim County Administrator

FROM: Jackie Waggoner, Purchasing Director
Division of Purchasing

SUBJECT: Consider Additional Project Cost for 1006 New Hampshire

DATE: August 7, 2019

In April the Board of County Commissioners approved an agreement to lease 1006 New Hampshire. On July 24, 2019 staff received approval to contract with Mar Lan Construction for the construction services. At that time staff indicated additional expenses would be brought to you for consideration in the near future.

The attached spreadsheet reflects a breakdown of the additional expenses and includes items already approved/ordered which are highlighted and will not be included in the recommended motion. In an effort to keep the project moving forward Sarah Plinsky approved phase I of the furniture in the amount of \$25,122 so administrative staff could move sooner. This is within her authority under our Purchasing Policy.

The contractors used for this project were selected because they either have a cooperative contract established through a competitive bidding process that the county can piggyback from, or they are our contractor. While we anticipate this to include all items, our motion will include seeking authority for our Interim Administrator to have authority up to 10% of the total cost.

Pam Weigand will be available at the meeting to answer any questions you may have.

RECOMMENDATION: The Board of County Commissioners approves the collective cost of \$204,105 for the 1006 New Hampshire project and allow the Interim Administrator to approve change orders up to 10% of this cost.

