



**City of Leavenworth**  
100 N. 5<sup>th</sup> Street  
Leavenworth, Kansas 66048

**CITY COMMISSION REGULAR MEETING**  
**COMMISSION CHAMBERS**  
**TUESDAY, OCTOBER 10, 2023 6:00 P.M.**

**Welcome to your City Commission Meeting – Please turn off or silence all cell phones during the meeting**  
*Meetings are televised everyday on Channel 2 at 6 p.m. and midnight and available for viewing on YouTube*

**CALL TO ORDER** – Pledge of Allegiance Followed by Silent Meditation

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**PROCLAMATIONS:**

1. Proclamations (pg. 02)
  - a. Domestic Violence Awareness Month
  - b. Military Retiree Appreciation Day

**OLD BUSINESS:**

**Consideration of Previous Meeting Minutes:**

2. Minutes from September 26, 2023 Regular Meeting **Action:** Motion (pg. 04)

**Second Consideration Ordinance:**

3. Second Consideration Ordinance No. 8226 Approval of Special Use Permit for 722 S 5<sup>th</sup> Street, Restaurant in OBD Zoning District **Action:** Roll Call Vote (pg. 10)

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**NEW BUSINESS:**

**Public Comment:** *(i.e. Items not listed on the agenda or receipt of petitions)-Public comment is limited to 2-3 minutes and no action will be taken by the Commission on public comment items - Please state your name and address. A signup sheet will be provided in the commission chambers for anyone wishing to speak.*

**General Items:**

4. Update on Unsafe & Dangerous Fire Damaged Structure 805 N 18<sup>th</sup> Street **Action:** Motion (pg. 13)

**Bids, Contracts and Agreements:**

5. Consider Approval of Design-Build Contract for Parks & Recreation Office Construction **Action:** Motion (pg. 15)
6. Consider Approval to Purchase Bomb Robot for the Police Department **Action:** Motion (pg. 70)

**Staff Report:**

- Convention & Visitors Bureau Semi-Annual Report (pg. 73)

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**Consent Agenda:**

Claims for September 23, 2023 through October 6, 2023, in the amount of \$1,524,022.47; Net amount for payroll #20 effective October 6, 2023, in the amount of \$371,068.30 (No Police & Fire Pension).

**Action:** Motion

**Discussion Items:**

**Other:**

**Adjournment**

**Action:** Motion

# City of Leavenworth, Kansas



## Proclamation

- WHEREAS,** *One in every four women will experience domestic violence during her lifetime with approximately 15.5 million children exposed to domestic violence every year; and*
- WHEREAS,** *when a family member is abused, it can have long-term damaging effects on the victim that also leaves a mark on family, friends, and the community at large; and*
- WHEREAS,** *domestic violence is widespread and is devastating to society as a whole, and the problem crosses all economic, racial, gender, educational, religious, and societal barriers; and*
- WHEREAS,** *the crime of domestic violence violates an individual's privacy, dignity, security, and humanity due to the systematic use of physical, emotional, sexual, psychological, and economic control or abuse; and*
- WHEREAS,** *victims should have help to find the compassion, comfort, and healing they need, with access to medical and legal services, counseling, transitional housing so that they can escape the cycle of abuse and domestic abusers should be punished to the full extent of the law; and*
- WHEREAS,** *we encourage domestic violence victims and their families to seek assistance from the Alliance Against Family Violence Hotline (913-675-7217); and*
- WHEREAS,** *it is important to recognize the compassion and dedication of the individuals who provide services to victims of domestic violence; and*
- WHEREAS,** *the United States President, Congress and other agencies have expressed a commitment to eliminating domestic violence; and we must dedicate ourselves to protect vulnerable members of our society with local programs, state coalitions, national organizations, and other agencies to increase public awareness of domestic violence, and to eliminate it through prevention and education.*

**NOW, THEREFORE,** *I, Jermaine Wilson, Mayor of the City of Leavenworth, Kansas hereby proclaim the month of October 2023 as:*

## Domestic Violence Awareness Month

*and urge all the people of Leavenworth, Kansas to work towards the elimination of domestic violence.*

**IN WITNESS WHEREOF,** *I set my hand and have affixed the Great Seal of the City of Leavenworth, Kansas this 10<sup>th</sup> day of October in the year of two-thousand and twenty-three.*

\_\_\_\_\_  
*Jermaine Wilson, Mayor*

ATTEST:

\_\_\_\_\_  
*Sarah Bodensteiner, CMC, City Clerk*

# City of Leavenworth, Kansas



## Proclamation

**WHEREAS,** *Military Retirees have served our country faithfully in times of peace and war; and*

**WHEREAS,** *Military Retirees have made significant sacrifices in defense of our freedom and liberty; and*

**WHEREAS,** *a large number of Military Retirees and their families live, work, and play in the Leavenworth community; and*

**WHEREAS,** *the Fort Leavenworth Garrison will conduct a Retiree Appreciation Day on October 28, 2023.*

**NOW, THEREFORE,** *I, Jermaine Wilson, Mayor of the City of Leavenworth, Kansas do hereby join the Fort Leavenworth Garrison in recognizing the contributions, sacrifices, and loyalty of Military Retirees in our community by proclaiming October 28, 2023 as:*

## Military Retiree Appreciation Day

**IN WITNESS WHEREOF,** *I set my hand and have affixed the Great Seal of the City of Leavenworth, Kansas this 10<sup>th</sup> day of October in the year of two-thousand and twenty-three.*

\_\_\_\_\_  
*Jermaine Wilson, Mayor*

ATTEST:

\_\_\_\_\_  
*Sarah Bodensteiner, CMC, City Clerk*



**CITY OF LEAVENWORTH**  
100 N. 5th Street  
Leavenworth, Kansas 66048

**City Commission Regular Meeting**  
**Commission Chambers**  
**Tuesday, September 26, 2023 6:00 p.m.**

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**CALL TO ORDER** - The Governing Body met for a regular meeting and the following commission members were present in the commission chambers: Mayor Jermaine Wilson, Mayor Pro-Tem Griff Martin and Commissioners Nancy Bauder, Edd Hingula and Camalla Leonhard.

**Staff members present:** City Manager Paul Kramer, Assistant City Manager Penny Holler, Fire Chief Gary Birch, Deputy Fire Chief Mike Shore, Fire Marshall Andy Brooks, Planning & Community Development Director Julie Hurley, Community Development Coordinator Julie McKeel, Public Works Director Brian Faust, City Attorney David E. Waters and City Clerk Sarah Bodensteiner.

Mayor Wilson asked everyone to stand for the pledge of allegiance followed by silent meditation.

**PROCLAMATIONS:**

**Fire Prevention Week October 8-14, 2023** – Mayor Wilson read the proclamation proclaiming October 8-14, 2023 as Fire Prevention Week. The proclamation was accepted by Fire Marshall Andy Brooks.

Fire Marshall Brooks:

- Cooking is leading cause of home fires in the U.S.
- 2 of every 5 fires starts in the kitchen
- Plan and practice at home escape plans
- Have working smoke alarms
- Have a fire extinguisher
- Call the fire department to have a home fire safety or get a smoke alarm

**OLD BUSINESS:**

**Consideration of Previous Meeting Minutes:**

Commissioner Bauder moved to accept the minutes from the September 12, 2023 regular meeting and September 19, 2023 special meeting. Commissioner Martin seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 5-0.

**Public Comment:** (*Public comment on non-agenda items or receipt of petitions – limited to 2-3 minutes*)  
None.

**Resolutions:**

**Resolution B-2347 Capital Fund Program Grant for Planters II** – Planning & Community Development Director Julie Hurley presented for approval Resolution B-2347 for the 2023 Capital Fund Program (CFP) grant # KS01P06850123 for Planters II in the amount of \$205,453.00. The grant funds must be accepted annually by the City Commission.

Commissioner Leonhard moved to adopt Resolution B-2347 accepting the 2023 Capital Fund Program grant for Planters II. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 5-0.

**Resolution B-2348 Capital Fund Program 5 Year Action Plan and Capital Fund Annual Statement for Planters II** – Planning & Community Development Director Julie Hurley presented for approval Resolution B-2348 authorizing the submission of plans to the U.S. Department of Housing and Urban Development (HUD).

Commissioner Bauder moved to approve the plan and adopt Resolution B-2348 authorizing submission to HUD. Commissioner Leonhard seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 5-0.

**Resolution B-2349 Community Development Block Grant Consolidated Annual Performance and Evaluation Report (CAPER)** – Community Development Coordinator Julie McKeel presented for approval Resolution B-2349 approving the 2022-2023 CAPER for submission to the U.S. Department of Housing and Urban Development (HUD). Ms. McKeel provided a brief summary of the grant year to include the following:

- The CAPER is required to report goals, projections and how funds were spent
- Assisted 8 homeowners with minor repairs
- Helped with the acquisition of 5 homes for first time home buyers
- Provided rent or utility assistance to 5 public service agencies who served over 5000 individuals
- Partnered with Public works on a sidewalk project on Dakota Street
- Removed 2 unsafe or blighted structures and 4 accessory structures

Mayor Wilson:

- Asked about upcoming goals

Ms. McKeel:

- Looking at working on radon; compliance and testing

Commissioner Hingula:

Asked if people attended the public hearing for the CAPER

Asked about Habitat for Humanity being a service agency

Ms. McKeel:

- No one was at the public hearing, which is not uncommon
- The closest Habitat for Humanity is in Lawrence or Kansas City, so folks get referred there if they are looking for those services

Commissioner Bauder moved to approve Resolution B-2349 approving the CAPER 2022-2023 for submission to the U.S. Department of Housing and Urban Development (HUD). Commissioner Hingula seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 5-0.

**Bids, Contracts and Agreements:**

**Consider Award of Contract for Building Access Control System for the Fire Department** – Deputy Fire Chief Mike Shore presented for consideration approval to move forward with the purchase and installation of a building access control system for both Fire Station #1 and Fire Station #2. Currently, the fire stations do not have building access control systems, which leave the stations vulnerable to unwanted intruders. Manual keypad locks are used to enter the stations from the exterior doors, however no locks are present for the doors leading to the apparatus bays into the station interiors. In order to change the manual keypad currently in place, a locksmith is required and the cost to perform the work is expensive. A building access control system will provide greater safety for our employees and our facilities. Building access will be much easier to control, there are 19 doors between the 2 fire stations, as access permissions can be added or removed quickly through the software program which applies to both locations. Wanting a scalable solution that can grow with the station. When Fire Station #3 is rebuilt, the building access control system will be installed during that construction project. Request for Proposals were published and three responses were received. The City’s 2023 CIP included \$45,000 for this project, funds saved from the overhead door opener project, \$10,000 will be used, and Reserve CIP Sales Tax Fund dollars will cover the remaining cost.

Commissioner Bauder:

- Asked if this is similar to how City Hall is set up
- Asked if the cost is for the 2 stations or 3

Mr. Kramer:

- It is similar, but more complex with 24 hour access needs

Mr. Shore:

- Project is for 2 stations, the 3<sup>rd</sup> station will be included with the Station #3 Build Project

Commissioner Hingula:

- Asked if the 19 doors are pedestrian doors or if they included the overhead doors as well

Mr. Shore:

- Replied correct, no overhead doors, just pedestrian doors

Commissioner Martin moved to award the contract for the Fire Department Building Access Control Project to INA Alert, in an amount not to exceed \$69,954.43. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 5-0.

**Consider Award of Bid for Traffic Calming Devices North of Leavenworth High School** – Public Works Director Brian Faust presented for consideration award of bid for the construction of Traffic Calming Devices Project, north of Leavenworth High School. The City has received several requests to address concerns over excessive speed in the area north of the high school. The area is bounded by 10<sup>th</sup>, Klemp, Halderman, and Ohio Streets. In the spring of 2022, the City installed temporary “speed humps”; at two locations along Klemp Street. As these were designed for temporary use, staff removed them right after school was out for summer break. While the intention was to reinstall the humps in the fall, the significant amount of input received had the City reinstall the devices in June. As the devices installed were constructed using hard plastic/rubber, they were not designed to last for years or for the impact of snow plows. Staff received direction from the Commission to move forward with a more comprehensive traffic

calming solution. Project plans were prepared and the project was advertised for bid. The Traffic Calming Improvements are expected to begin later this fall with completion in sixty calendar days after Notice to Proceed. The project consists of new "speed humps" and signage along Klemp, Grand, and South Streets in the area north of Leavenworth High School. Funding for this project is being provided by American Rescue Plan Act dollars.

Commissioner Hingula:

- Asked if adding the speed humps will move the speeding problems to the south
- Asked if the speed humps be able to handle snow plows

Commissioner Martin:

- Asked for clarity on the number of speed humps on each street

Mayor Wilson:

- Asked about a completion time frame, if the install will be done by Christmas Break?

Commissioner Hingula moved to award the bid of the Traffic Calming Devices Project to Kaaz Construction, in an amount not to exceed \$99,569.00. Commissioner Leonhard seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 5-0.

**Consider Award of Contract for Safe Streets and Roads for All Vision Zero Action Plan** – Public Works Director Brian Faust presented for consideration approval of the contract for the development of the Safe Streets and Roads for All Vision Zero Action Plan. The purpose of this grant is to improve roadway safety by significantly reducing or eliminating roadway fatalities and serious injuries. The program focuses on development of a comprehensive safety action plan and its implementation for all users of our highways, streets, and roadways, including pedestrians, bicyclists, public transportation users, motorists, personal conveyance and micro-mobility users, and commercial vehicle operators. The program provides funding to develop tools to strengthen a community's approach to roadway safety, save lives and prevent serious harm. There are two types of grants in which funding is available: Planning and Demonstration Grants and Implementation Grants. The City of Leavenworth applied for and was awarded a \$350,000 planning grant to develop a Vision Zero (Comprehensive Safety) Action Plan. The Action Plan will be a living document based on the Core Elements for Vision Zero Communities and the Vision Zero Network's Guidelines for an Effective Vision Zero Action Plan, which outlines short, mid-term and long-term goals, short-term action items, indicators to track success, strong emphasis on data and equity, public outreach/engagement, social media interaction, visual materials, technical input, meeting preparation and support, task force meeting facilitation, and preparation of written plans and documents. The Vision Zero Action Plan identifies recommended strategies and policies that will help eliminate deaths and serious injuries on our roads. These recommendations may relate to street design guidelines, funding allocations, education, and emergency responders. The Action Plan will also be used to identify and prioritize a set of Vision Zero street reconstruction projects and potential system-wide safety programs. The Action Plan will provide the documentation necessary to meet the requirements for the City of Leavenworth to apply for future Safe Streets and Roads for All Discretionary Grant Opportunities. The cost will be funded by a combination of grant and City dollars: Federal Grant funding 80%, KDOT funding 10%, and City funding 10%.

David Church with WSP USA, Inc.:

- Over last 5 years there have been 11 fatalities and 67 serious injuries in Leavenworth

- Goal is to create a safe system: safe vehicles, safe roads, safe speed, safe road users, safe post-crash care
- Community based approach
- Involve members of the community and emphasis area teams with items to focus on
- Delve into the details to come up with strategies to make a safe system and develop projects to go with those strategies
- Proven approach with reducing fatalities and serious injuries

Commissioner Martin:

- Asked what other cities and items have you worked with and what areas of emphasis

Mr. Church:

- City of Kansas City, MO was looking at speed limits in residential area
- City of Omaha, NE wanted to focus on repurposing the many one-way roads, arking options, and bike lanes in their downtown area

Commissioner Martin:

- Asked what was the catalyst to look at developing an Action Plan

Mr. Kramer:

- We are seeing a trend across transportation funding that require studies and plans, that you are required to have in place before you can even become eligible to apply for funding
- More efficient use of infrastructure dollars to fit into a community-wide plan
- Would not be eligible for grant dollars without these plans

Commissioner Hingula:

- Asked when the community outreach piece would begin

Mr. Church:

- This is at least a 12 month process
- We'd delve into data first and identify the areas were problems are now and potential problems can be
- Public meeting would occur towards the end, maybe mid-next year, but opportunities to engage with the public during the entire process

Commissioner Bauder moved to award the contract for the Safe Streets and Roads for All Vision Zero Action Plan to WSP USA, Inc., and authorize the Mayor to execute a contract in an amount not to exceed \$349,977.64. Commissioner Martin seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 5-0.

### **First Consideration Ordinances:**

**First Consideration Ordinance for Special Use Permit 722 S 5<sup>th</sup> Street to Allow Restaurant in Office Business District** – Planning & Community Development Director Julie Hurley presented for first consideration an ordinance to approve a special use permit at 722 S 5<sup>th</sup> Street to allow a restaurant use in a property zoned OBD, Office Business District. Restaurant uses are allowed in the OBD zoning district with



the approval of a Special Use Permit. The property is surrounded by a mix of uses and is located approximately three blocks south of the Central Business District and one block north of Spruce Street. The applicant also previously applied for, and received, a variance to allow for a reduction in the number of required parking spaces for a restaurant use at the subject location. Notification was sent to property owners within 200' of the subject property, as required by Kansas statute. Staff has received no inquiries or comments regarding the proposed restaurant use. The Planning Commission considered the item at their September 11, 2023 meeting and voted 3-1 to recommend approval of the Special Use Permit, with the condition that the Special Use Permit only applies to the first floor of the 722 S 5<sup>th</sup> Street. Staff recommends approval of the Special Use Permit request for a restaurant use in a property zoned Office Business District based on the analysis and findings provided in the report.

Commissioner Hingula:

- Asked if it is known what kind of cuisine would be going in the space

There was a consensus by the Commission to place on first consideration.

**Consent Agenda:**

Commissioner Leonhard moved to approve claims for September 9, 2023 through September 22, 2023, in the amount of \$932,229.52; Net amount for Payroll #19 effective September 22, 2023 in the amount of \$402,946.91 (Includes Police & Fire Pension in the amount of \$7,134.65). Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 5-0.

**Other:**

Commissioner Hingula:

- Advised residents to be careful while driving

Commissioner Martin:

- Enjoyed the 5k and CAMP Leavenworth

Commissioner Bauder:

- Enjoyed the kids at CAMP Crafty, it was a really nice event
- Thank you to O'Neill Events and all City Staff

Mayor Wilson:

- CAMP Leavenworth was a fun and exciting event, thanks to all who participated
- Thanked the Fire Department for their engagement at the Anthony Elementary Family Fun Night

**Adjournment:**

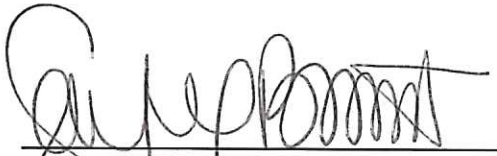
Commissioner Martin moved to adjourn the meeting. Commissioner Bauder seconded the motion and the motion was unanimously approved and the meeting was adjourned.

Time Meeting Adjourned 6:47 p.m.

Minutes taken by City Clerk Sarah Bodensteiner, CMC

**POLICY REPORT  
SECOND CONSIDERATION ORDINANCE 8226  
SPECIAL USE PERMIT TO ALLOW RESTAURANT USE IN OFFICE BUSINESS DISTRICT  
LOCATED AT 722 S 5<sup>TH</sup> STREET**

**OCTOBER 10, 2023**



Sarah Bodensteiner, CMC  
City Clerk



Paul Kramer  
City Manager

**BACKGROUND:**

At the September 26, 2023 City Commission regular meeting the City Commission reviewed and placed on first consideration:

**AN ORDINANCE ALLOWING A SPECIAL USE FOR FOOD AND BEVERAGE GENERAL  
IN OFFICE BUSINESS DISTRICT ZONING DISTRICT LOCATED AT 722 S 5<sup>TH</sup> STREET  
IN THE CITY OF LEAVENWORTH, KANSAS.**

There have been no changes to the ordinance since first introduced. Ordinance No. 8226 is now presented for second consideration and requires a roll call vote.

**ATTACHMENTS:**

- Ordinance No. 8226

*(Summary Published in the Leavenworth Times on October 14, 2023)*

**ORDINANCE NO. 8226**

**AN ORDINANCE ALLOWING A SPECIAL USE FOR FOOD  
AND BEVERAGE GENERAL IN OFFICE BUSINESS  
DISTRICT ZONING DISTRICT LOCATED AT 722 S 5<sup>th</sup>  
STREET IN THE CITY OF LEAVENWORTH, KANSAS.**

**WHEREAS**, under the 2016 Development Regulations of the City of Leavenworth, Kansas, as amended, the Governing Body of the City of Leavenworth, Kansas was given the power to locate special uses in each zoning district by ordinance; and

**WHEREAS**, the City Planning Commission, after fully complying with the requirements of the ordinances of the City of Leavenworth, Kansas held a public hearing on September 11, 2023 in the Commission Chambers, 1<sup>st</sup> Floor of City Hall, 100 N. 5<sup>th</sup> Street, Leavenworth, Kansas the official date and time set out as was published in the Leavenworth Times newspaper; and

**WHEREAS**, upon a motion made, duly seconded, and passed, the Planning Commission adopted findings of fact and recommended approval of the request for Food and Beverage General in Office Business District, located at 722 S. 5<sup>th</sup> Street, Leavenworth, Kansas.

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH,  
KANSAS:**

**Section 1.** That a special use permit be issued for Food and Beverage General on the following described property:

The South 56.4 feet of Lots Fifteen (15) and Sixteen (16) in Block Twenty-Seven (27) in Clark and Rees' Addition to the City of Leavenworth, more particularly described as follows: commencing at the Southeast corner of said Lot Sixteen (16) in Block Twenty-Seven (27) in said Clark and Rees' Addition; thence North along the East line of said Lot 16, 56.4 feet; thence west and parallel to the centerline of the partition wall dividing the two buildings now located on the South part of said Lots extended to a point on the West line of said Lot 15, 56.4 feet North of the South line of said Lot 15; thence South along the West line of said Lot 15, 56.4 feet to the Southwest corner of said Lot 15, thence East along the South line of said Lot 15 and 16 to the point of beginning, and all improvements, buildings and fixtures located thereon. Also, all party wall rights and rights to connect and use the sewer on said Lot 15 connecting said premises with the public sewer located in the alley North of said Lots 15 and 16 and all of the foregoing property is located in Leavenworth County, Kansas; subject to easements, restrictions, reservations

and covenants, now of record, all taxes, both general and special, not now due and payable;

More commonly referred to as: 722 S 5<sup>th</sup> Street, Leavenworth, Kansas.

**Section 2.** That this special use permit is subject to the following:

- a. The Special Use Permit only applies to the first floor of 722 S 5<sup>th</sup> Street, Leavenworth, KS 66048.

**Section 3.** That this Ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper of the City of Leavenworth, Kansas, as provided by law.

Passed by the Leavenworth City Commission on this 10<sup>th</sup> day of October, 2023.

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Jermaine Wilson, Mayor

ATTEST:

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Sarah Bodensteiner, CMC, City Clerk

POLICY REPORT PWD NO. 23-44

UPDATE FOR UNSAFE STRUCTURE  
805 N. 18TH STREET

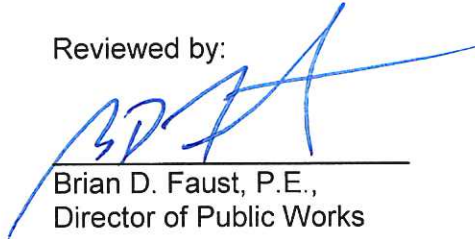
October 10, 2023

Prepared by:



Harold D. Burdette,  
Chief Building Inspector

Reviewed by:



Brian D. Faust, P.E.,  
Director of Public Works

Reviewed by:



Paul Kramer,  
City Manager

**ISSUE:**

Consider the status of the fire-damaged structure located at 805 N. 18th Street.

**BACKGROUND:**

This structure was damaged by fire on January 21, 2023. The City received a check from the insurance company for \$33,939.63. A Public Hearing was held on July 11, 2023, regarding the status of the structure. The Commission adopted Resolution No. B-2339, which stated that the owner was given 90 days for repair or removal of the structure.

A building permit was issued on July 31, 2023 to SERVPRO of Leavenworth and NW Wyandotte County, and progress has been made. The roof has been replaced and the demolition of the interior has been completed.

When structures are damaged by fire and other hazards and the damage is severe enough that the settlement from the insurance company exceeds 75% of the face value of the policy covering the structure, the insurance company is required to draft a payment to the City of Leavenworth for 15% of the settlement. This money is to be used to either remove the structure if the owner decides not to repair it, or return the money to the property owner once repairs have progressed to a reasonable point or are completed and the structure is ready for occupancy. In this situation, the owner paid for the demolition, so all of the money shall be returned to the property owner once the City Commission directs staff to do so.

**RECOMMENDATION:**

Staff recommends that the City Commission allow the owner and contractor to have additional time to make repairs.

**ATTACHMENT:**

Photos of the property

Policy Report No. 23-44 Unsafe Structure 805 N. 18th Street



**POLICY REPORT NO. P&R 14-23**  
**Parks & Recreation Department**  
**Design-Build Agreement with Sands Construction LLC**  
**For Parks and Recreation Office Construction**  
**October 10, 2023**

**PREPARED BY:**

  
Steve Grant  
Parks and Recreation Director

**REVIEWED BY:**

  
Paul Kramer  
City Manager

**ISSUE:**

Consider approval of the design-build agreement with Sands Construction LLC for the design and construction of Parks and Recreation Administrative Offices at the Riverfront Community Center.

**BACKGROUND:**

The 2023-2027 CIP programmed the construction of new administration offices for the Parks and Recreation Department in 2023. The new offices will occupy what is currently referred to as the “southwing” portion of the center, with access directly to the office area from Esplanade Street. The public will be more proficiently, professionally, and safely served from this new location. This project was identified as qualifying to be funded through the American Rescue Plan Act (ARPA).

The City solicited qualifications from design-build teams for the project. Design-build is where both the designer and construction contractor are part of a team that works together for a cost effective design and construction project. This is different from a design-bid-build process where a design is complete then the construction is bid.

Two design-build teams submitted proposals to the City, which were review by administrative staff. Staff came to a consensus to negotiate with the design-build team led by Sands Construction LLC. Sands Construction will work in conjunction with Design Lab, LLC on formulation and completion of the project.

**BUDGET IMPACT:**

The approved 2023-2027 CIP includes \$385,000 for the Parks and Recreation office construction project. Utilizing ARPA funds have been approved for this project. Final total project amount, Exhibit A *Design-Build Amendment*, will come back to the City Commission for final approval once determined.

**RECOMMENDATION:**

Staff recommends the Commission approve the agreement between the City and Sands Construction LLC, and authorize the mayor to sign the agreement, as well as Exhibit B *Insurance and Bonds*.

**ATTACHMENTS:**

Design-Build Agreement between Owner and Design-Builder (A141)

Exhibit A, Final Contract Sum to be determined.

Exhibit B, Insurance and Bonds Requirements.



# AIA® Document A141® – 2014

## *Standard Form of Agreement Between Owner and Design-Builder*

AGREEMENT made as of the 25 day of September in the year  
2023

*(In words, indicate day, month and year.)*

BETWEEN the Owner:

*(Name, legal status, address and other information)*

**City of Leavenworth**

100 N 5<sup>th</sup> Street  
Leavenworth, KS 66048  
Parks & Recreation Group

and the Design-Builder:

*(Name, legal status, address and other information)*

**Sands Construction, LLC**

1284 Eisenhower Rd  
Leavenworth, KS 66048

for the following Project:

*(Name, location and detailed description)*

**Design Build, Parks & Recreation Administration Office Relocation**

Leavenworth Community Center  
123 S Esplanade St, Leavenworth, KS 66048

The Owner and Design-Builder agree as follows.

This portion of the agreement is relevant to the Design Fees for the Architect and other supporting consultants as needed, with the design of remodel of the space.

Sands Construction is providing design-build services to remodel approximately 2,550 square feet of space in the Riverfront Community Center in Leavenworth, KS to house new offices for the Leavenworth Parks & Recreation department. The new office suite will contain individual offices, one conference room and ancillary spaces such as a kitchen and two toilet rooms. The kitchen and toilet rooms are existing but will receive limited modifications. No exterior improvements are anticipated for the project.

Interior design, as well as mechanical, plumbing and electrical engineering will be included as part of the architectural design services. Structural design is not included, although a structural investigation will be performed to evaluate if a potential wall relocation will have structural impacts.

If structural engineering becomes necessary, such services will be treated as an Additional Service. Structural Engineering/Design (other than the structural analysis described above. If structural design services become necessary, the Architect will coordinate with Sands Construction and provide such services for a mutually agreed upon fee as determined at that time.

**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.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

The project will consist of two phases with the first phase including limited design services as necessary to provide the Parks & Recreation department with visual tools to present to the City Council for approval of the project. When the 1<sup>st</sup> phase of the design portion has been completed and approved, Sands Construction will submit the Design Build Amendment A, along with the Construction Budget for the project.

The second phase of the design will contain design services necessary to complete the project, including construction documents and building permit assistance. Limited construction phase design services will also be included and are anticipated in the following activities:

1. Monthly site visits to observe the construction (by architect - does not include consultants)
2. Responses to contractor's requests for information/clarification.
3. Review of contractor submittals

Please note that this covers the initial phase only, as outlined above. A proposal for the balance of design services will be submitted separately. Deliverables for the initial phase are limited to the following:

1. Two basic color renderings of new office suite (does not include life-like renderings)
2. Floor plan, finish plan and finish schedule
3. Hand drawn mark-ups for mechanical, electrical and plumbing modifications
4. Cut sheets for new mechanical, electrical and plumbing equipment and/or fixtures
5. Structural analysis report for potential wall relocation, if required.

**Clarifications:**

The following items are outside the scope of services and are anticipated to be selected and coordinated by the building's owner. Any such items shown in the design will be for contextual purposes only.

1. Exterior site investigations (surveys, geotechnical, etc.)
2. Site design, including landscaping, paving, fencing, etc.
3. Low voltage systems (IT/communication, audio/visual, security, etc.), other than those outlined in the City's Request For Qualifications
4. Signage (other than code required items)
5. Retail shelving and display systems
6. Furniture, fixtures and equipment (FFE) selection (including appliances)
7. City Planning approvals or variance requests
8. Interior Environmental/Asbestos Investigation

**NOTE: When all design provisions are agreed upon between the Contractor and Owner, SANDS CONSTRUCTION will provide the cost breakdown of the actual construction renovation pricing with an Amendment A Design-Build for the contract.**

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	COMPENSATION AND PROGRESS PAYMENTS
3	GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
4	WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
5	WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
6	CHANGES IN THE WORK
7	OWNER'S RESPONSIBILITIES
8	TIME
9	PAYMENT APPLICATIONS AND PROJECT COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	UNCOVERING AND CORRECTION OF WORK
12	COPYRIGHTS AND LICENSES
13	TERMINATION OR SUSPENSION
14	CLAIMS AND DISPUTE RESOLUTION
15	MISCELLANEOUS PROVISIONS
16	SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

A	DESIGN-BUILD AMENDMENT
B	INSURANCE AND BONDS
C	SUSTAINABLE PROJECTS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)*

§ 1.1.1 The Owner's program for the Project:

*(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)*

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

*(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)*

**Attachment I, Owners Letter dated March 7, 2023**

**§ 1.1.3 The Project's physical characteristics:**

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

**This will include the remodel of approximately 2,550 square feet of space in the Riverfront Community Center in Leavenworth, KS to house new offices for the Leavenworth Parks & Recreation department.**

**NOTE: Sands Construction has been advised by the City representatives that all remediation of asbestos or other hazardous materials has been completed. During the construction of this project if Sands Construction finds any hazardous materials, including mold, the City will take care of that cost or allocate additional funds with an approved change order to Sands Construction to correct the problem.**

**§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:**

*(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)*

N/A

**§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:**

*(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)*

N/A

**§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:**

*(Provide total for Owner's budget, and if known, a line item breakdown of costs.)*

**Projected Budget: \$385,000.00**

**§ 1.1.7 The Owner's design and construction milestone dates:**

**.1 Design phase milestone dates:**

Unknown at this time. As final design is decided an appropriate schedule will be developed.

**.2 Submission of Design-Builder Proposal:**

The Design-Builder Proposal will follow as design criteria is established and approved.

**.3 Phased completion dates:**

Undetermined at this time.

**.4 Substantial Completion date:**

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20

User Notes:

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Undetermined at this time.

.5 Other milestone dates:

N/A

§ 1.1.8 The Design-Builder shall retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

*(List name, legal status, address and other information.)*

.1 Architect

**DESIGN LAB**, 5007 w. 63 Terr, Prairie Village, KS 66208  
Dennis Oroark, 913.461.4325

.2 Consultants

Mechanical, Electric, & Plumbing Engineering, if necessary

.3 Contractors

**SANDS CONSTRUCTION, LLC**, 1284 Eisenhower Rd,  
Leavenworth, KS 66048, 913.306.4015  
Joe Radzevich, Sr Est/PM, 913.599.9149

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

*(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)*

N/A

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

*(List name, address and other information.)*

**Steve Grant, Director of Parks & Recreation, City of Leavenworth, KS**

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

*(List name, address and other information.)*

**Paul Kramer, City Manager**

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21 User Notes:

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§ 1.2.3 The Owner will retain the following consultants and separate contractors:  
(List discipline, scope of work, and, if known, identify by name and address.)

N/A

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:  
(List name, address and other information.)

- **Joe Radzevich, Sr Est/Project Manager, Sands Construction, 913.599.9149**
- **Jessica Metcalf, Project Manager, Sands Construction, 913278.0050**
- **Adin Hite and/or Chris House, Superintendents, Sands Construction**
- **Bev Hill, Manager/Project Administration, 913.370.7496**
- **Dennis O’Roark, Architect, Design Lab, 913.461.4325**

§ 1.2.5 Neither the Owner’s nor the Design-Builder’s representative shall be changed without ten days’ written notice to the other party.

**§ 1.3 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

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

- Arbitration pursuant to Section 14.4
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

**§ 1.4 Definitions**

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 **The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 **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 Design-Builder, Contractor(s),

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Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, **shop drawings, product data, and samples**. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

## ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

### § 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

*(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)*

\$50,000 for Architectural and General Contractor for Design Services. If there is a significant increase in the SOW this cost could escalate; however, we are not anticipating that increases at this time.]

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

[NOTE TO DRAFT: Basis for compensation prior to Design-Build Amendment required here.]

Individual or Position

Rate

**§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment**

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 [Intentionally deleted]; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of zero percent (0%) of the expenses incurred.

**§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment**

§ 2.1.4.1 The parties acknowledge and agree that Owner's City Commission regularly meets only twice per month, and that such limited meeting schedule shall be deemed an extenuating circumstance for purposes of K.S.A. 16-1901, *et seq.*, as amended. Subject to extenuating circumstances, as described in K.S.A. 16-1901 *et seq.*, amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.  
*(Insert rate of monthly or annual interest agreed upon.)*

**10% per annum**

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

**§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment**

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

**ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT**

**§ 3.1 General**

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to

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applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

#### § 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a weekly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

#### § 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for

periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 **Design-Builder's Submittals**

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it 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 Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

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

**§ 3.1.13 Royalties, Patents and Copyrights**

**§ 3.1.13.1** The Design-Builder shall pay all royalties and license fees.

**§ 3.1.13.2** The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturer is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

**§ 3.1.14 Indemnification**

**§ 3.1.14.1** To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, 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 Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. 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 3.1.14.

**§ 3.1.14.2** The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 3.1.15 Contingent Assignment of Agreements**

**§ 3.1.15.1** Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; 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 an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

**§ 3.1.15.2** Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 3.1.15.3** Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

**§ 3.1.16 Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

**ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT**

**§ 4.1 General**

**§ 4.1.1** Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; 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.

#### § 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:

*(List additional information, if any, to be included in the Design-Builder's written report.)*

N/A

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

#### § 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan; (N.A)
- .3 Building plans, sections and elevations;
- .4 Structural system; (N/A)
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

#### § 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires, which shall be not less than thirty (30) days after the date of Design-Builder's Proposal.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement. Notwithstanding anything herein to the contrary, election by Owner to not execute or enter into the Design-Build Amendment shall not be deemed a termination or suspension of the Project or entitle Design-Builder to additional compensation beyond those amounts established above for design work.

## ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

### § 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

### § 5.2 Construction

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

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

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 5.3 Labor and Materials

§ 5.3.1 The Design-Builder 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.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

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

#### § 5.4 Taxes

The Design-Builder acknowledges that the Project is tax-exempt and Owner shall not be responsible for any sales, consumer, use and similar taxes, for the Work provided by the Design-Builder. Any assessed tax because of Design-Builder oversight shall be at Design-Builder's cost.

§ 5.4.1 The Owner will furnish to the Design-Builder a sales and compensating tax exemption certificate number from the State of Kansas for the construction of this Project, which must be provided by Design-Builder to all Contractors and Subcontractors and material suppliers. Upon completion of the Project, the Design-Builder must furnish a project completion certification to the Owner and the Kansas Department of Revenue, Business Tax Bureau, Robert B. Docking State Office Building, Topeka, Kansas. All invoices must be retained by the Design-Builder and Contractor(s) for a period of five (5) years and are subject to audit by the Kansas Department of Revenue.

#### § 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project. The costs of such permits or fees shall not include any consideration for any profit, mark-up, or administrative fee.

§ 5.5.2 The Design-Builder 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.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such 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 14.

#### § 5.6 Allowances

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

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder'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 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

### § 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection.

### § 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

### § 5.9 Use of Site

The Design-Builder 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 Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

### § 5.10 Cutting and Patching

The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents. The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

### § 5.11 Cleaning Up

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

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

#### § 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

#### § 5.13 Construction by Owner or by Separate Contractors

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

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 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 Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.13.1.5 The Design-Builder shall assume all responsibility and costs in complying with federal, state, and local regulations for equal employment opportunity, anti-discrimination, safety, and other regulations. The Design-Builder shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, ethnic group, national origin, age, disability, gender identity, or sexual orientation. The Design-Builder shall take affirmative action to ensure that applicants are employed, and that applicants are treated during employment, without regard to that applicant's race, religion, color, sex, ethnic group, national origin, age, or sexual orientation. Such action shall include, but not limited to, employment, upgrading, demotion, transfer, recruitment, advertisement, layoff termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Design-Builder shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the requirements of these non-discrimination provisions.

§ 5.13.1.6 The Design-Builder shall, in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, ethnic group, national origin, age, sexual orientation, or gender identity.

§ 5.13.1.7 The Design-Builder shall include all of Sections 5.13.1.5 through 5.13.1.7 in every subcontract or purchase order, and shall require each Subcontractor and material and equipment supplier to include Sections 5.13.1.5 through 5.13.1.7 in each of their subcontracts and purchase orders, so that such provisions will be binding upon each Subcontractor, Sub-Subcontractor, and material and equipment supplier.

#### § 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder 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 Design-Builder's construction and operations with theirs as required by the Design-Build Documents.



§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying 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 Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

#### § 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, 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 will allocate the cost among those responsible.

### ARTICLE 6 CHANGES IN THE WORK

#### § 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

#### § 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

#### § 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

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

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, 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 Design-Build 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 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and 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, 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 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. 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.

§ 6.3.9 [Intentionally deleted.]

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

**ARTICLE 7 OWNER'S RESPONSIBILITIES**

**§ 7.1 General**

**§ 7.1.1** The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

**§ 7.1.2** The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder 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.

**§ 7.2 Information and Services Required of the Owner**

**§ 7.2.1** The Owner shall furnish information reasonably necessary for the Design-Builder's providing of its services and the execution of the Work in a timely manner, including information regarding the requirements for and the limitations of the Project.

**§ 7.2.2** The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

**§ 7.2.3** The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

**§ 7.2.4** The Owner shall reasonably cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

**§ 7.2.5** The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

**§ 7.2.6** If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

**§ 7.2.7** [Intentionally deleted.]

**§ 7.2.8** Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

**§ 7.2.9** Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

**§ 7.2.10** [Intentionally deleted.]

Init.

### § 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of 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; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner 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 Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

### § 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder 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 Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

### § 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

## ARTICLE 8 TIME

### § 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control (but not including delays not permitted to be claimed under Section 14.1.6 below); or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

## ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

### § 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

### § 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

### § 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 [Intentionally deleted.]

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.1.3 Five percent (5%) of the certified amount for completed Work shall be withheld as retainage. Retainage will not be reduced until the Project has been approved for Substantial Completion from the applicable building code officials. Upon Substantial Completion retainage shall be reduced to One Hundred Fifty Percent (150%) of the remaining punch list Work as set forth in Section 9.8. Owner and Contractor agree that retainage of five percent (5%) of the Contract Sum is required to ensure performance of the Contract.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as 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 Design-Builder 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.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 Immediately, upon receipt of each Progress Payment and upon receipt of the Final Payment as provided in this Article 9, the Design-Builder shall provide Owner with a statement under oath, and acknowledging receipt of such payment and certifying that Design-Builder has paid all Subcontractors the sums due and owning the Subcontracts as evidenced by the Application for Payment, pursuant to the terms of the applicable Subcontracts. Such acknowledgment and certification will be provided on the lien waiver bound in the Project Manual. Design-Builder shall not be entitled to receive any further payments pursuant to the Agreement unless and until Design-Builder is in compliance with the terms of this Section. Design-Builder acknowledges the right of Owner to advise subcontractors and sub-contractors that Owner has made a Progress Payment or has made final payment to the Design-Builder. The Owner may decline to approve any Application for Payment and the Owner shall not be required to make any Progress Payments or Final Payment to the Design-Builder if the Design-Builder is in violation of any term or condition of this Agreement.

#### § 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

#### § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner 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 to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, 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 Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, 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 failure to carry out the Work in accordance with the Design-Build Documents.

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

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§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

#### § 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment 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 Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, 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 Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

#### § 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, 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 Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

**§ 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 Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

**§ 9.8.2** When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner 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 Design-Builder to complete all Work in accordance with the Design-Build Documents.

**§ 9.8.3** Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

**§ 9.8.4** Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

**§ 9.8.5** When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build 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.

**§ 9.8.6** The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build 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 Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance 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 Design-Builder 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 Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder 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 Design-Builder.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner and Design-Builder 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 Design-Build Documents.



**§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (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 Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or 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. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of 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** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

**§ 9.10.5** Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

**ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

**§ 10.1 Safety Precautions and Programs**

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

**§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder 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 Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 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 Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

§ 10.2.7 The Design-Builder 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 the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written 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

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build 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 Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written 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 Design-Builder 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 Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, 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 materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder 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 Design-Builder, the Design-Builder 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 Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

### ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

#### § 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

#### § 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

#### § 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, 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 an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder 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 the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the

rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 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.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

#### § 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build 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. Such adjustment shall be effected whether or not final payment has been made.

### ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's

licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

#### ARTICLE 13 TERMINATION OR SUSPENSION

##### § 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

##### § 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

###### § 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or

employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, 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;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 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.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, and costs incurred by reason of such termination.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

#### § 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract and/or Design-Builder's right to perform or complete the Work if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate the Contract or, with or without terminating the Contract, terminate Design-Builder's right to perform or complete the Work and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon purchased solely for the Project, excluding Design-Builder's personal tools, equipment and machinery;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract and/or Contractor's right to perform or complete the Work for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract and/or Design-Builder's right to perform or complete the Work; provided, that such payment shall not exceed the value of the Work actually completed and material supplied by Design-Builder as of the date of termination, and the Design-Builder shall not be entitled to anticipated profits or anticipated overhead upon the whole Contract or for other direct, indirect, or consequential damages arising out of or resulting from the Owner's termination.

§ 13.2.2.5 If after notice of termination pursuant to this Section 13.2.2 it is determined that the Design-Builder had not defaulted, the termination shall be deemed to have been effected for the convenience of Owner, and the Design-Builder shall be paid in accordance with Section 13.2.4 below.

### § 13.2.3 Suspension by the Owner for Convenience

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

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. 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 Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### § 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Such termination shall be without prejudice to any Claims which Owner may have against the Design-Builder. The Owner and Contractor acknowledge the provisions and limitations of the Kansas cash-basis law, K.S.A. 10-1101 *et seq.*, as amended, and the Kansas budget law, K.S.A. 79-1935, as amended.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder 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 Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs of early demobilization incurred by reason of such termination.

## ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

### § 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, 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 Design-Builder arising out of or relating to the Contract; provided, that a Claim shall not include the exercise by Owner or Design-Builder of any right or remedy otherwise granted to it in the Contract Documents, including but not limited to their respective rights under Article 14 above. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period allowed by applicable law.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party 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.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder'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.

§ 14.1.6.2 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, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. The average number of calendar days, including weekends and holidays, during which adverse weather should be anticipated for the general locale of this project are listed below for each month for the year.

Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
6	5	3	3	4	4	3	3	3	2	2	4.

§ 14.1.6.2.1 The Design-Builder shall include provision in its bids and construction schedules for no less than the above number of calendar days per month during which adverse weather might potentially delay its Work. Design-Builder shall also: keep detailed onsite logs to substantiate the actual weather conditions and site conditions, including temperature, precipitation, snow or ice cover, wind and similar environmental data; and document the number of personnel onsite, their activities and time periods for those activities, and the specific days and times when adverse weather prevented Work from occurring, and why or how it prevented work from occurring.

§ 14.1.6.2.2 To be eligible for a time extension to the Contract due to adverse weather, the Design-Builder must have been prevented from working for fifty percent (50%) of more of the Design-Builder's scheduled Work effort for that day, such day must have included at least four (4) hours of scheduled Work between the hours of 8:00 am and 5:00 pm, the Work delayed must be on the critical path of the Design-Builder's Construction Schedule, and such Work could not be mitigated by reasonable action on the part of the Design-Builder. Furthermore, at least one of the following elements must be present: rainfall in excess of 0.10 inches on that day; snowfall in excess of 1.0 inches on that day; an average temperature on that day of less than 20 degrees Fahrenheit; sustained wind speeds on that day in excess of 25 miles per hour; or other weather-related events which impact the critical path and are mutually agreed by both parties to have such an impact.

§ 14.1.6.2.3 Requests for time extensions and the Work of separate Contractors will be considered independently, since a delay to one may or may not affect the others. A time extension to one separate Contractor does not imply that a similar time extension will also be granted to the other separate Contractors, although requests will be considered from a Contractor not directly delayed by adverse weather who can substantiate that the delayed Work of another Contractor will affect the timely completion of the Work. The Design-Builder must, with each Application for Payment, notify the Owner of the number of adverse weather days claimed during the period covered by such Application for Payment. Claims based on days not included in such Application for Payment shall be deemed waived.



**§ 14.1.7 Claims for Consequential Damages**

The Design-Builder 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 Design-Builder 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 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

**§ 14.2 Initial Decision**

**§ 14.2.1** An initial decision shall be required as a condition precedent to litigation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. The Owner shall render the initial decision on Claims.

**§ 14.2.2 Procedure**

**§ 14.2.2.1 Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

**§ 14.2.2.2 Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

**§ 14.2.3** In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

**§ 14.2.4** If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

**§ 14.2.5** The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify 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 litigation.

**§ 14.2.6** [Intentionally deleted.]

**§ 14.2.6.1** [Intentionally deleted.]

**§ 14.2.7** In the event of a Claim against the Design-Builder, 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 Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 14.2.8** 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.

§ 14.3 Mediation

§ 14.3.1 [Intentionally deleted.]

§ 14.3.2 [Intentionally deleted.]

§ 14.3.3 [Intentionally deleted.]

§ 14.4 Arbitration

§ 14.4.1 [Intentionally deleted.]

§ 14.4.1.1 [Intentionally deleted.]

§ 14.4.2 [Intentionally deleted.]

§ 14.4.3 [Intentionally deleted.]

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 [Intentionally deleted.]

§ 14.4.4.2 [Intentionally deleted.]

§ 14.4.4.3 [Intentionally deleted.]

**ARTICLE 15 MISCELLANEOUS PROVISIONS**

**§ 15.1 Governing Law**

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

**§ 15.2 Successors and Assigns**

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

**§ 15.3 Written Notice**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

**§ 15.4 Rights and Remedies**

**§ 15.4.1** Duties and obligations imposed by the Design-Build 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.

**§ 15.4.2** No action or failure to act by the Owner or Design-Builder 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 in writing.

**§ 15.5 Tests and Inspections**

**§ 15.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder 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 Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

**§ 15.5.2** If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

**§ 15.5.3** If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

**§ 15.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

**§ 15.5.5** If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

**§ 15.5.6** Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

**§ 15.6 Confidential Information**

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

**§ 15.6.1** A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

**§ 15.7 Capitalization**

Terms capitalized in the Contract 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.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build 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.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 [Intentionally deleted.]
- .5 [Intentionally deleted.]
- .6 Other:

N/A

*[Signature Page Follows Directly]*

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

**OWNER:**

**DESIGN-BUILDER:**

**CITY OF LEAVENWORTH, KANSAS**

**SANDS CONSTRUCTION, LLC**

By:  
*(Table deleted)*  
Printed Name:  
Title:

By:  
Printed Name:  
Title:

**ATTEST:**

By:  
Sarah Bodensteiner, CMC  
City Clerk

# AIA<sup>®</sup> Document A141<sup>™</sup> - 2014

## Exhibit A

### *Design-Build Amendment*

This Amendment is incorporated into the accompanying AIA Document A141<sup>™</sup>-2014, Standard Form of Agreement Between Owner and Design-Builder dated the \_\_\_\_ day of \_\_\_\_\_ in the year 2023 (the "Agreement")  
*(In words, indicate day, month and year.)*

**for the following PROJECT:**

*(Name and location or address)*

Design Build, Parks & Recreation Administration Office Relocation  
Leavenworth Community Center  
123 S Esplanade St, Leavenworth, KS 66048

**THE OWNER:**

*(Name, legal status and address)*

City of Leavenworth, Kansas  
100 N. 5th Street  
Leavenworth, Kansas 66048

**THE DESIGN-BUILDER:**

*(Name, legal status and address)*

Sands Construction, LLC  
1284 Eisenhower Rd  
Leavenworth, KS 66048

The Owner and Design-Builder hereby amend the Agreement as follows.

#### TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

#### ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

*(Check the appropriate box.)*

[ « » ] Stipulated Sum, in accordance with Section A.1.2 below

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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

[ « » ] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

[ « » ] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

*(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)*

**§ A.1.2 Stipulated Sum**

**§ A.1.2.1** The Stipulated Sum shall be « » (\$ « »), subject to authorized adjustments as provided in the Design-Build Documents.

**§ A.1.2.2** The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)*

« »

**§ A.1.2.3** Unit prices, if any:

*(Identify item, state the unit price, and state any applicable quantity limitations.)*

Item	Units and Limitations	Price per Unit (\$0.00)
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**§ A.1.3 Cost of the Work Plus Design-Builder's Fee**

**§ A.1.3.1** The Cost of the Work is as defined in Article A.5, Cost of the Work.

**§ A.1.3.2** The Design-Builder's Fee:

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

« »

**§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price**

**§ A.1.4.1** The Cost of the Work is as defined in Article A.5, Cost of the Work.

**§ A.1.4.2** The Design-Builder's Fee:

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

« »

**§ A.1.4.3** Guaranteed Maximum Price

**§ A.1.4.3.1** The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed « » (\$ « »), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

*(Insert specific provisions if the Design-Builder is to participate in any savings.)*

« »

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

*(Provide information below or reference an attachment.)*

« »

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)*

« »

§ A.1.4.3.4 Unit Prices, if any:

*(Identify item, state the unit price, and state any applicable quantity limitations.)*

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

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« »

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ A.1.5.1.3 The parties acknowledge and agree that Owner's City Commission regularly meets only twice per month, and that such limited meeting schedule shall be deemed an extenuating circumstance for purposes of K.S.A. 16-1901, et seq, as amended. Subject to extenuating circumstances, as described in K.S.A. 16-1901 et seq., amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

*(Insert rate of monthly or annual interest agreed upon.)*

Eighteen percent (18%) per annum

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

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10%) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)*
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)*



See Sec. 9.3.1.3 of the Agreement.

**§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee**

**§ A.1.5.3.1** Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

**§ A.1.5.3.2** Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design-Builder's Fee, less retainage of ten percent (10%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of ten percent (10%) from that portion of the Work that the Design-Builder self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

**§ A.1.5.3.3** The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms. See Sec. 9.3.1.3 of the Agreement.

**§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

**§ A.1.5.4.1** Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price 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 Design-Builder on account of that portion of the Work for which the Design-Builder 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.

**§ A.1.5.4.2** Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .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. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .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 Design-Builder's Fee, less retainage of ten percent (10%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder'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;
- .4 Subtract retainage of ten percent (10%) from that portion of the Work that the Design-Builder self-performs;

- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms. See Sec. 9.3.1.3 of the Agreement.

**§ A.1.5.5 Final Payment**

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

**ARTICLE A.2 CONTRACT TIME**

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than « » ( « » ) days from the date of this Amendment, or as follows:

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

The Owner will suffer financial damages if the Project is not Substantially Complete on the date(s) set forth above. The Design-Builder (and its surety) shall pay to Owner sums hereinafter stipulated as fixed, agreed, and stipulated liquidated damages (and not as a penalty) for each calendar day of delay until there is Substantial Completion of the entire Work: \$ \_\_\_\_\_ per day. Owner and Design-Builder further acknowledge that (i) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, and (ii) the amount specified above is a reasonable approximation of, and is not plainly or grossly disproportionate to, the amount of damages Owner is likely to suffer.

**Portion of Work**

**Substantial Completion Date**

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

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

« »

**ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ A.3.1.2 The Specifications:

*(Either list the specifications here or refer to an exhibit attached to this Amendment.)*

« »

Section	Title	Date	Pages
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§ A.3.1.3 The Drawings:

*(Either list the drawings here or refer to an exhibit attached to this Amendment.)*

« »

Number	Title	Date
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§ A.3.1.4 The Sustainability Plan, if any:

*(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)*

Title	Date	Pages
-------	------	-------

*Other identifying information:*

« »

§ A.3.1.5 Allowances and Contingencies:

*(Identify any agreed upon allowances and contingencies, including a statement of their basis.)*

.1 Allowances

« »

.2 Contingencies

« »

§ A.3.1.6 Design-Builder's assumptions and clarifications:

« »

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

« »

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

« »

**ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**

§ A.4.1 The Design-Builder's key personnel are identified below:

*(Identify name, title and contact information.)*

.1 Superintendent

« »

.2 Project Manager

« »

.3 Others

« »

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

*(List name, discipline, address and other information.)*

« »

**ARTICLE A.5 COST OF THE WORK**

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

*(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below 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.)*

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
-----------------	------------------------------	---------------	---------------------

§ A.5.1.1.3 Wages and salaries of the Design-Builder'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.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder 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 Section A.5.1.1.

§ A.5.1.1.5 [Intentionally deleted.]

§ A.5.1.2 Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

**§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ A.5.1.3.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ A.5.1.3.2** Costs of materials described in the preceding Section A.5.1.3.1 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 Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ A.5.1.4.1** Costs of transportation, 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 Design-Builder 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 Design-Builder shall mean fair market value.

**§ A.5.1.4.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

**§ A.5.1.4.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ A.5.1.4.4** Costs of document reproductions and postage and parcel delivery charges.

**§ A.5.1.4.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

**§ A.5.1.5 Miscellaneous Costs**

**§ A.5.1.5.1** Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

**§ A.5.1.5.2** The Design-Builder acknowledges that the Project is tax-exempt and Owner shall not be responsible for any sales, consumer, use and similar taxes, for the Work provided by the Design-Builder. Any assessed tax because of Design-Builder oversight shall be at Design-Builder's cost.

**§ A.5.1.5.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

**§ A.5.1.5.4** Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

**§ A.5.1.5.5** Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

**§ A.5.1.5.6** With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 [Intentionally deleted.]

§ A.5.1.5.9 [Intentionally deleted.]

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

#### § A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 [Intentionally deleted.]

#### § A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder 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 consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

#### § A.5.2 Costs Not to Be Reimbursed as Part of this Contract

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

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors 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;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

#### § A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder 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 Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### § A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

#### § A.5.5 Accounting Records

The Design-Builder 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 the 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 shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

#### § A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder'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 Work in an expeditious and economical manner consistent with the Owner's interests.

#### § A.5.5 Additional Terms

§ A.5.5.1 Notwithstanding anything in the Contract Documents to the contrary, the parties agree that when changes in the Work (Change Order, Change Directive, etc.) require additional compensation to the Design-Builder, subcontractor(s), or sub-subcontractor(s), fees for overhead, profit, insurance, bonds, etc., shall be the sum of the following:

- (a) For Work performed by the Design-Builder's own forces pursuant to a lump sum bid, the Design-Builder's self-perform Work shall be treated as a Subcontract for purposes of computing Design-Builder's overall Fee. For changes in the Work, Design-Builder shall be entitled to the fee for such changes as set forth in subsection (b) below and the Design-Builder shall also be entitled to a fee to the Design-Builder shall not exceed the percentage of the Design-Builder's Fee (\_\_\_\_%) and
- (b) For Work performed by a subcontractor and sub-subcontractor, the fee to the Design-Builder shall not exceed the percentage of the Design-Builder's Fee (\_\_\_\_%) and increase in Design-Builder's insurance, bond cost, and subcontractor default insurance pursuant to the rates set forth in Section

A.5.1.5.1 above, established under the Agreement on the Actual Cost of the Work, and any fee or premium paid to the subcontractor or sub-subcontractor (to be included as part of the Cost of the Work (as described in Article A.5 of this Amendment) shall not exceed ten percent (10%) of the Actual Cost of the Work performed by such subcontractor or sub-subcontractor, and such fee or premium shall include and be on account of all other direct and indirect costs, including but not limited to Project overhead, profit, bonds, insurance, superintendent compensation, Project manager compensation, vehicles, utilities, printing/reproduction, office equipment, mobile offices, phones, computers, as-built modifications, site cleaning and safety, and all efforts made in coordinating pricing, material procurement, and installation.

As used herein, the term "Actual Cost of the Work" shall mean and include the direct cost of labor, materials and equipment necessary to install the changes in the Work. Such labor costs shall be computed using the hourly rates (including company paid employee benefits) of personnel involved in physically installing the changes in the Work. Material costs are the actual invoiced costs of materials as delivered to the site without mark-up for overhead, profit, or any other addition. Equipment costs shall be computed using the industry standard hourly rate for the equipment necessary to physically install the changes in the Work without mark-up for overhead, profit, or any other addition. All other direct and in-direct costs are not part of the Actual Cost of The Work.

§ A.5.5.2 The Design-Builder shall maintain good Project site cleanup standards at all times as an integral part of the Work. Daily cleanup of work, lay-down, access and personnel areas is mandatory and must be performed to ensure a Project site free of hazards. Notwithstanding anything to the contrary in the Contract Documents, the Design-Builder agrees to perform regular sweeps of the Project site with Rare Earth Magnets (K&J Magnetics, Inc. – Model BY0X08-N52, equal or better as a measurement of pull force), as required to ensure a Project site free of hazards. These Project site cleanup activities must be documented on daily reports and submitted to the Owner monthly.

§ A.5.5.3 As a requirement of attaining Substantial Completion status, the Design-Builder shall notify the Owner in writing when all construction debris has been eliminated from the Project site. As an additional requirement of attaining Substantial Completion status, the Design-Builder shall notify the Owner in writing when all hazards and metal objects, including, but not limited to, nails, screws, sheet metal shards, razor blades, bolts, washers, wire, etc., on and within 100 feet of the Project site have been removed and that no metal objects exist within the Project site as a result of the Work or any previous activity, whether the responsibility of the Design-Builder or not. Upon Substantial Completion of the Project, the Owner will invite the Design-Builder to participate in a contract compliance verification survey of the Project site. If any metal objects are found by the Owner through use of the magnets identified above, equal or less, each metal object found will result in a deduct of \$100.00 to the final Contract Amount.

§ A.5.5.7 Notwithstanding anything to the contrary in the Contract Documents, the requirements necessary for achieving Substantial Completion for all or part of a Project are as follows:

- (a) The Design-Builder shall submit the Design-Builder's detailed list of anticipated punch list items to the Owner and notify the Owner that the Project is available for consideration of Substantial Completion status.
- (b) All scope of Work as originally defined by base bid/guaranteed maximum price proposal/amendment, plus any accepted alternates and all post bid scope changes, shall be complete.
- (c) All areas affected by the Project shall be available for the Owner's use and must allow all intended purposes of the Project site to be afforded to the Owner.
- (d) All areas affected by the Project shall be clean and free of sharp metal objects and/or hazards as required by the Contract Documents.
- (e) A Temporary Certificate of Occupancy, if required, shall be secured by the Design-Builder from the authority having jurisdiction.

When the Design-Builder has met the requirements identified in subparagraphs (a) through (e) above, the Owner will (a) establish the date of Substantial Completion, (b) formalize this through the execution of the appropriate documents, and (c) begin the process of developing the Owner's punch list for the Project. Punch list items shall be completed as coordinated with the Owner at times when these activities will not infringe on, nor interfere with, the ability of the Owner to fully utilize areas of the Project for planned activities. The date of Substantial Completion shall be the date used to determine if, and to what extent, Liquidated Damages are assessed to the Design-Builder.



§ A.5.5.8 Notwithstanding anything herein or in the Agreement to the contrary, in a facility occupied by anyone other than the Design-Builder's employees, contractors, subcontractors, and Owner's Project representatives or construction contractors, the Design-Builder must provide personnel and materials required by the jurisdiction having authority to staff and document a fire watch of the entire facility for any duration construction activities require the fire alarm system be placed in test mode.

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

**OWNER:**

**DESIGN-BUILDER:**

**CITY OF LEAVENWORTH, KANSAS**

**SANDS CONSTRUCTION, LLC**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Sarah Bodensteiner, CMC  
City Clerk

# AIA® Document A141® – 2014 Exhibit B

## **Insurance and Bonds**

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

Design Build, Parks & Recreation Administration Office Relocation  
Leavenworth Community Center  
123 S Esplanade St, Leavenworth, KS 66048

**THE OWNER:**  
(Name, legal status and address)

City of Leavenworth, Kansas  
100 N. 5th Street  
Leavenworth, Kansas 66048

**THE DESIGN-BUILDER:**  
(Name, legal status and address)

Sands Construction, LLC  
1284 Eisenhower Rd  
Leavenworth, KS 66048

### **THE AGREEMENT**

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the "Agreement"), dated the 25 day of September in the year 2023.  
(In words, indicate day, month and year.)

### **TABLE OF ARTICLES**

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

### **ARTICLE B.1 GENERAL**

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

### **ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS**

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

**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.

*(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

N/A

§ B.2.1.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than One Million Dollars (\$1,000,000.00).

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below: Certificate of Insurance Attached, Sands Construction., LLC.

One Million Dollars (\$1,000,000.00) for each of Bodily Injury by Accident (each accident), bodily injury by disease (each employee)

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) in the aggregate. The Architect has Professional Liability Coverage as stated on the attached Certificate of Insurance.

§ B.2.1.7 Pollution Insurance, Intentionally Deleted.

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) in the aggregate. The Architect has Professional Liability Insurance as reflected on the attachment Certificate of Insurance.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work;

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(2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

**§ B.2.2 Performance Bond and Payment Bond**

The Design-Builder shall provide surety bonds as follows:  
*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
Payment and Performance Bonds	100% of the Contract Sum/GMP
Kansas Statutory Bond	100% of the Contract Sum/GMP

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**ARTICLE B.3 OWNER'S INSURANCE AND PROPERTY INSURANCE**

**§ B.3.1 Owner's Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Any insurance maintained by Owner is non-contributing.

**§ B.3.2 Property Insurance**

§ B.3.2.1 Intentionally Deleted.

§ B.3.2.1.1 Intentionally Deleted

§ B.3.2.1.2 Intentionally Deleted.

§ B.3.2.1.3 Intentionally deleted.

§ B.3.2.1.4 Intentionally deleted. The General Contractor provided our Certificate of Insurance with more than adequate coverages, which is attached.

§ B.3.2.2 Boiler and Machinery Insurance. Intentionally deleted.

§ B.3.2.3 Intentionally deleted.

§ B.3.2.4 Loss of Use Insurance. At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

§ B.3.2.5 Intentionally deleted.

§ B.3.2.6 Intentionally deleted.

§ B.3.2.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate

Init.

agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ B.3.2.8 Intentionally deleted

§ B.3.2.9 Intentionally deleted.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers.

#### ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

N/A

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

**OWNER:**

**CITY OF LEAVENWORTH, KANSAS**

By:  
Printed Name:  
Title:

**DESIGN-BUILDER:**

**SANDS CONSTRUCTION, LLC**

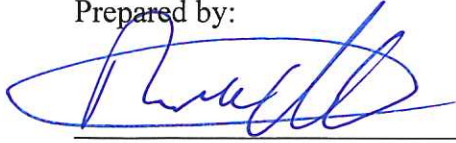
By:  
Printed Name: **STEVE SANDS**  
Title: **Owner**

**ATTEST:**

By:  
Sarah Bodensteiner, CMC  
City Clerk

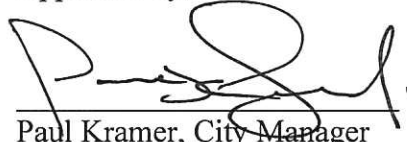
**Policy Report No. 11-2023**  
**Bomb Robot Replacement**  
October 10, 2023

Prepared by:



Patrick R. Kitchens, Police Chief

Approved by:



Paul Kramer, City Manager

**ISSUE:**

The Police Department is requesting the city commission pre-approve a sole source purchase of a new bomb robot from ICOR Technologies in the amount of \$222,009.60.

**STAFF RECOMMENDATION:**

Staff recommends approval.

**BACKGROUND:**

The Police Department operates a 3-person bomb unit that has various equipment, including a bomb robot, necessary to mitigate hazardous devices. Our current bomb robot (Jimmy) is 21 years old and has reached the end of its lifecycle. We are having difficulty getting parts and technical support to keep it functioning.

**BUDGET IMPACT:**

The City Commission allocated \$230,000 in the 2024 Capital Improvement Budget to acquire a new bomb robot. A new bomb robot takes 32-36 weeks to build. We are seeking pre-approval to proceed with ordering a new robot so our vendor can begin. We will not allocate any money until 2024 when the robot is complete.

If authorized to proceed now, we anticipate receiving the new robot in the middle of May of 2024.

We anticipate receiving federal funds through the Mid-American Regional Council to offset the cost of the new robot in the amount of \$105,000.

**Commission Action**

Pre-Approve the purchase of a new bomb robot from ICOR Technologies in 2024 in the amount of \$222,009.60.

To Ted Glass  
Leavenworth City Police Department (KS)  
601 S 3rd St.  
Leavenworth, KS 66048

QUOTE NO.: QUO-07902-X5Z1-1  
EFFECTIVE FROM: 9/24/2023  
EFFECTIVE TO: 12/24/2023

Tel:  
Fax:  
Mobile: 913-547-2170  
Email: tglass@firstcity.org

CURRENCY: US Dollar  
SHIPPING METHOD: Ground  
SHIPPING TERMS: FOB ORIGIN, PREPAY AND ADD  
\*DELIVERY DATE: 32 - 36 Weeks ARO  
PAYMENT TERMS: 1% 10 DAYS, NET 30  
GSA Contract No.: GS-07F-0430V

QTY	P/N	DESCRIPTION	\$/UNIT	% DISC.	LINE TOTAL
1.0	FLEX-111	<p>CALIBER® FLEX w/ COFDM IP Radios &amp; Dual PAN Disrupter Mount</p> <p>System Includes: Multi-Function Command &amp; Control Unit (CCU) with 15" capacitive touch screen, 3D real time position avatar, Picture-in-picture (PIP), Pre-set configuration controls. • Walk along, handheld game pad controller with advanced multi axis control • Wireless COFDM IP Radio System • 360° Rotating Claw mounted to a 5 axis Robotic Arm with 5 axes of movement including: turret, shoulder, elbow, wrist &amp; rotate • 1 x Color Claw camera with LED light • 2 x Disrupter/Weapon cameras with LED lights • 1 x Color Pan-Tilt-Zoom (PTZ) Camera with 30x Zoom and 360° Continuous Rotation with LED light, mounted on a motorized telescoping mast • 1 x Front-Drive Color/IR camera • 1x Rear-Drive Color/IR camera • Disruptor Mounting bracket for 2 recoilless disrupters, with LIDAR distance measuring device and 4 green lasers • 1 x Claw-Mounted 24V DC Firing Circuit • 2 x 24V DC Firing Circuit on Disrupter Mount • 2 x Deck-mounted 24V DC Firing Circuit s • 2 x 24V DC Battery Packs (1x onboard; 1x spare) &amp; 1x 24V DC 110 Battery Charger • 12 V DC/110 Battery Charger • Rubber tracks with front and rear flippers • 2-way audio • 500' Hard-Wire Tether • 2 year warranty</p>	\$192,474.31		\$192,474.31
1.0	10004	<p>MK3/ T5 / FLEX Claw Kit - 2ND Generation</p> <p>The 2nd generation claw attachment kit includes specially designed tools to augment the capabilities of the CALIBER® T5, FLEX and MK3 robots. Kit includes: key holder, camera extension, box cutters, chemical sampler tube, clothes cutter, extension poles, tire deflator, window breaker, finger extension with porcelain tips, cutting hook, utility shears with ceramic blades, Cutabiner®, multiple effectors and hook &amp; line accessories.</p>	\$5,081.83		\$5,081.83
1.0	13365	<p>Claw Auxiliary Camera - FLEX</p> <p>Increase your situational awareness while using your manipulator with the addition of the Claw Auxiliary Camera for your CALIBER® FLEX. This ultra-versatile mount has a fully adjustable folding arm that connects a camera to the claw housing. Fully configurable to provide the best viewing angle while using tools from the optional CALIBER® Claw Attachment Kit (PN: 10004). Note: Available for the CALIBER® FLEX only.</p>	\$2,047.39		\$2,047.39
1.0	13902	<p>FLEX Bulkhead Truck Kit</p> <p>External truck brackets and 32ft (10m) internal cabling for mounting RF system outside command truck for FLEX (Client installs)</p>	\$2,027.85		\$2,027.85
1.0	CAL-XR1	<p>X-Ray Bracket</p> <p>X-ray mounting bracket for use with 14" x 17" PSP Imaging Plate and Golden Engineering XR-200 or XR-300 Sources. (Please call for other systems)</p>	\$1,275.34		\$1,275.34
1.0	13371	<p>DUKE PRO- FOR FLEX</p> <p>Duke Pro, 2-Channel Shock Tube Initiator with Mount for CALIBER® Flex</p>	\$1,671.14		\$1,671.14

1.0	14595	K101 – IP24 DISRUPTER UNIT (ACME thread) IP24/Wildcat disrupter unit 12Ga, 24in barrel with ACME (coarse) thread breech. ACME threads prevent the breech from locking when fired. Comes with the push lock breech K4340PL, Push lock breech reduces parts, maintenance, and error. Includes the components to fire the disrupter and perform maintenance (initiators, stand, and laser are NOT included) Fires all the same rounds as the PAN disrupter.	\$2,990.46	\$2,990.46
1.0	CAL-K1000-ACME	T3 Recoil Reduction Kit (ACME) 20mm (12ga) T3 Recoil Reduction Kit manufactured by IDEAL Products, Inc. (K1000-ACME)	\$2,570.23	\$2,570.23
1.0	13899	FLEX Basic Spare Parts Kit Essential items to maintain and repair your CALIBER® FLEX robot	\$5,643.76	\$5,643.76
1.0	CAL-TTC-FLEX	CALIBER® FLEX ROBOT ONSITE TRAINING at Customer Location 2-Day Operation, Maintenance and Troubleshooting course of the CALIBER® FLEX, includes travel and accommodations for ICOR Technician. (CANADA and CONUS and one robot only) Consists of hands-on instruction for up to ten operators, and a classroom presentation for unlimited participants.	\$5,277.29	\$5,277.29
1.0	S&H	SHIPPING AND HANDLING	\$950.00	\$950.00
			<b>TOTAL</b>	<b>\$222,009.60</b>

This is a quotation on the goods named, subject to the conditions noted below:

Unless otherwise provided: This quote is in US Dollars; shipping terms are EX WORKS for domestic and international shipments; all prices are exclusive of shipping costs, insurance, custom clearance and any applicable Taxes of any kind; all price quotations are valid for 90 days. Published list prices are subject to change without notice. Due to a policy of continuous product improvement, ICOR reserves the right to change specifications and appearance without notice. Please reference the invoice number on your cheque and remit to ICOR Technology Inc. 935 Ages Drive, Ottawa, Ontario K1G 6L3 Canada. The CALIBER® Robot (including the MK3, T5, Mini, and MK4) contains up to 35% US-source materials and are ITAR export license free and not subject to AECA or EAR regulations. The CALIBER® Robot is a Controlled Good, and requires an Export Permit for international shipping in accordance with the *Export and Import Permits Act (R.S.C., 1985, c. E-19)*. Failure to perform due to the action or inaction of the Government of Canada will be considered Force Majeure, and, ICOR is not responsible for any penalties, fees, liquidated damages, etc. Some or all of the quoted items are eligible for purchase through GSA's Cooperative Purchasing Program and 1122 Program for State and Local Law Enforcement. Please consult with your purchasing department to determine the optimal purchasing vehicle and notify your ICOR Sales Representative to make any changes necessary. ICOR's GSA Contract Number is: GS-07F-0430V

**DISCLAIMER REGARDING DISRUPTER MOUNT CONFIGURATIONS:** ICOR Technology is a robot manufacturer and do not make disrupters. The end-user must consult with the disrupter manufacturer for complete instructions on loading, operation, maintenance and firing procedures. ICOR recommends that the end-user takes disrupter training from the manufacture before firing the weapon off of the robot. USE AT OWN RISK. ANY POTENTIAL DAMAGES TO THE ROBOT AS A RESULT OF USING A DISRUPTER ARE NOT COVERED UNDER WARRANTY. AS PER ICOR 'S LIMITED WARRANTY, WARNING AND LIMITATION OF LIABILITY DOCUMENT, ICOR SHALL BE HELD HARMLESS TO ANY LOSS OR INJURY AS RESULT OF USING DISRUPTERS ON THE ROBOT.

**\*NOTICE OF COVID-19 MANUFACTURING AND SHIPPING DELAY**

The COVID-19 pandemic has posed unprecedented problems to the worldwide supply chain network, causing delays in the delivery of critical components needed to build CALIBER® robots. ICOR's top priority is to build and deliver robots according to the order acknowledgement's timelines; nevertheless, we cannot be held liable for delays caused by restricted air cargo capacity and overburdened global logistics networks.

To accept this quotation, sign here and return:

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Additional Available Accessories:**

0.0	13903	FLEX - Arm Extension Kit Increases FLEX vertical reach up to 105" (267cm) for inspection of overhead compartments on buses, trains, and planes; or for under vehicle retrieval.	\$7,515.24	\$0.00
0.0	13901	FLEX Auxiliary Pole Camera Extendable Camera Pole mounts into FLEX weapon arm to add up to 74" (188 cm) of vertical surveillance.	\$1,905.69	\$0.00
0.0	13910	RF Extender - CALIBER® FLEX Increase the operating range of the RF wireless system for the CALIBER® FLEX.	\$3,474.21	\$0.00
0.0	13900	FLEX Quick Release FLIR Camera FLIR Thermal Imaging Camera for the FLEX CALIBER® Robot ; Mounts to the Quick Release PTZ Mast (zoom not available); Wide Field of View (H49° x V39°) with an effective detection range up to 230m (750ft)	\$8,536.50	\$0.00
0.0	CAL-CCUSTND	Folding CCU Stand - T5, MK3, MK4 & FLEX	\$361.59	\$0.00



**Policy Report**  
**Leavenworth Convention and Visitors Bureau – Semi-Annual Report**  
**October 10, 2023**

Prepared By:



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Kristi Lee  
CVB Manager

Reviewed By:



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Penny Holler  
Assistant City Manager

Reviewed By:



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Paul Kramer  
City Manager

**BACKGROUND:**

Leavenworth Convention and Visitors Bureau (CVB) Manager Kristi Lee will provide an update of activities and operations of the CVB.



Leavenworth, Kansas



CONVENTION AND VISITORS BUREAU

# CVB Report 4th Qtr/Fall

Oct. 10, 2023

[VisitLeavenworthKS.com](http://VisitLeavenworthKS.com)



# DISCUSSION POINTS

- National Tourism Industry
- State of Kansas Tourism Industry
- City of Leavenworth Tourism Industry



# National Tourism Industry Updates

Travel accounted for \$1.2 Trillion in Direct spending in 2022. Travel supported nearly 15 million American workers and directly employed 8 million. Travel spending generated nearly \$160 billion in total tax revenue, including \$84 billion in state and local tax revenue in 2022.

Artificial Intelligence (AI) has been making significant strides in the travel industry, providing a more seamless experience for travelers. AI is being used to drive quicker customer service, personalized recommendations, flight forecasting and others. AI can answer questions, share information, and perform other tasks to create individualized travel experiences. Where will it go next?

The travel forecast looks bullish into the future according to Longwoods Int'l. 66% of travelers are planning to visit friends and family this fall, and 53% are planning a fall road trip. Despite potential headwinds, travelers are still making plans and continue to adapt to new technologies with 17% having used Chat GPT (AI) to assist with their travel plans.



# Kansas State Tourism

**EVERY NEW RESIDENT AND EVERY NEW BUSINESS STARTS WITH A VISIT.**

*Tourism is the welcome committee for capital investment.*

## TOURISM'S ECONOMIC IMPACT



**33.7 million** visitors.

**\$11.2 B** total economic impact of tourism in Kansas a **20% increase** over 2020.

**\$7 B** direct visitor spending.

**60,300 direct jobs** and **24,200 jobs** supported from indirect and induced impacts, totaling more than **84,400 Kansas jobs**. The tourism industry supports one out of every 22 jobs in the state.

Employment supported by visitor activity rose **7.5%** in 2021.

Visitor spending, visitor supported jobs, and business sales generated **\$1.3 B** in government revenues. State and local taxes alone tallied **\$700 M** in 2021.

Spending grew across all sectors, with the strongest growth in categories hardest hit during the pandemic: lodging and recreation. Lodging spending **increased by 42%** after a fall of over half in 2020, bringing it back to **81% of pre-pandemic levels**.

Recreational spending grew by nearly a third in 2021, bringing it back to **93% of pre-pandemic levels**.

Retail and food and beverage spending surpassed pre-pandemic levels. Food and beverage spending increased by nearly **\$400 M to reach \$1.8 B** — which is **\$5 M** more than was spent by visitors in 2019. Retail spending by visitors is nearly **\$30 M more** than pre-pandemic levels.

Each household in Kansas would need to be taxed an additional **\$413** to replace the taxes generated by visitor activity in Kansas and received by state and local governments in 2021.

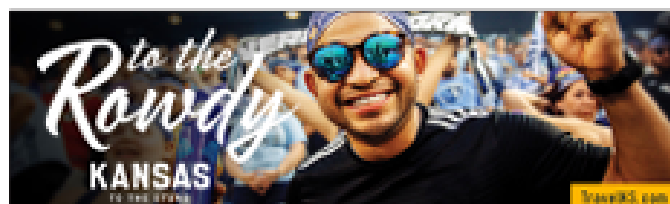
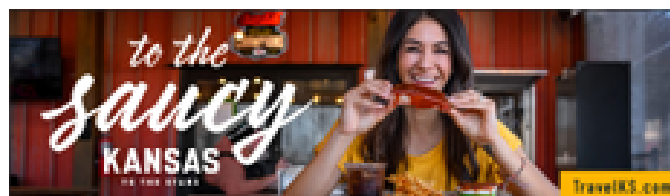
# KANSAS TOURISM ACCOMPLISHMENTS IN 2022

- + First out-of-state campaign in years generating over 244 million impressions, increasing TravelKS.com traffic by 48% and pageviews by 44%.
- + Regional branding introduced, giving Kansans a new way to show pride in our state
- + 2022 Kansas Day video had increased views of 62% YOY and estimated reach up 44% YOY
- + 4 new Story Series videos released with 4.2 million impressions, 1.6 million views
  - + Mountain bike video won Destination Video of the Year from North American Travel Journalists Association
- + Awarded over \$2.3 Million in grants to 34 communities
  - + Marketing Grants – \$87,707 to 15 communities; 2022 award amount up 242% over 2019
  - + ADG – \$251,513 to 11 projects; 2022 award amount up 234% over 2019
  - + TASK – \$1.96 M to 8 projects
- + Hosted first in-person media event since 2019 and doubled media attendance. Content created by attendees had 156,000 impressions, 60,000 views and 15,200 engagements.
- + Increased TravelKS.com pageviews by 8.9%, sessions by 13%, and users by 14% YOY
  - + Launched redesigned State Park and regional pages
- + 440 registered Agritourism businesses, almost 78% increase YOY

- + Distributed 350,000 travel guides
- + Increased KANSAS! Magazine subscribers by 6.4%
- + KANSAS! Magazine awards from the International Regional Magazine Association (IRMA)
  - + Gold award for Historic Feature: "200 years of the Santa Fe Trail"
  - + One silver award, two bronze awards, and finalist for Magazine of the Year
- + Hosted the Heartland Byways Conference in Leavenworth, the only national byways conference



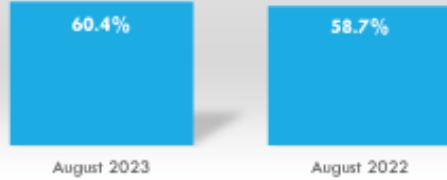
## BILLBOARDS PLACED IN 2022



# 2023 State of Kansas Hotel Report

## Occupancy %

■ Occupancy Change 3.0%



## Occupancy % YTD

■ Occupancy Change 4.8%



## Average Daily Rate

■ ADR Change 4.9%



## Average Daily Rate YTD

■ ADR Change 6.6%



## RevPAR

■ RevPAR Change 8.0%



## RevPAR YTD

■ RevPAR Change 11.8%



# Leavenworth Stats

## Visitor Days by Length of Stay



50 miles+

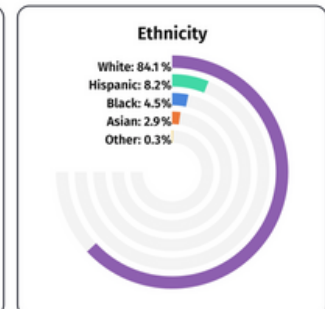
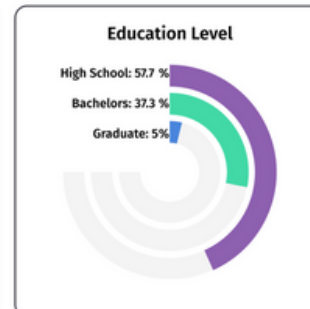
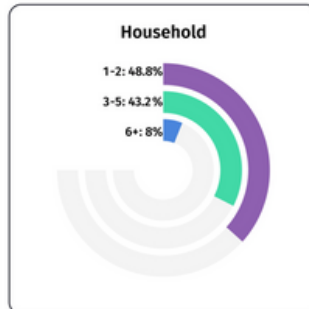
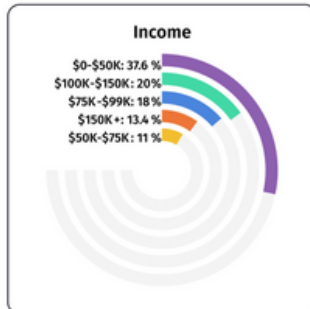
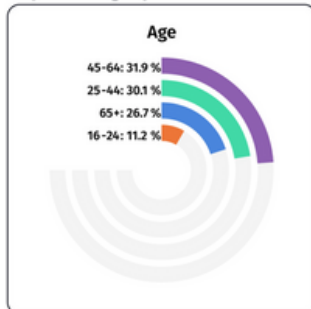


- Day Trip 38.2%
- 2 Days 12.1%
- 3 Days 10.1%
- 4 Days 7.9%
- 5 Days 6.7%
- 6+ Days 25.1%

## Top Cities

City	Trips
Manhattan, KS	9,437
Wichita, KS	5,148
Topeka, KS	3,688
Saint Louis, MO	2,493
Paola, KS	2,447
Harrisonville, MO	2,429
Chicago, IL	2,335
Omaha, NE	2,253
Warrensburg, MO	2,106
Springfield, MO	2,082
Ottawa, KS	1,692

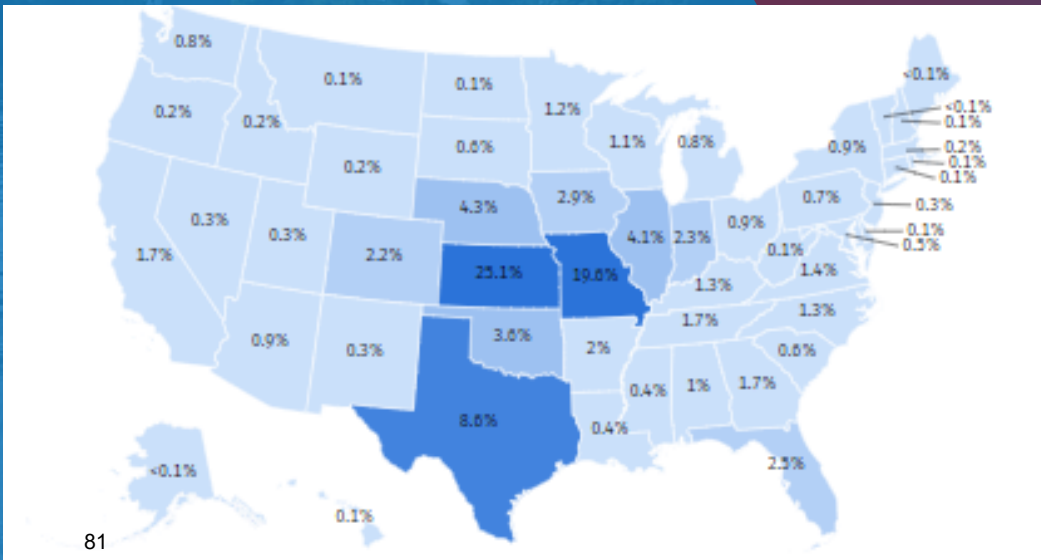
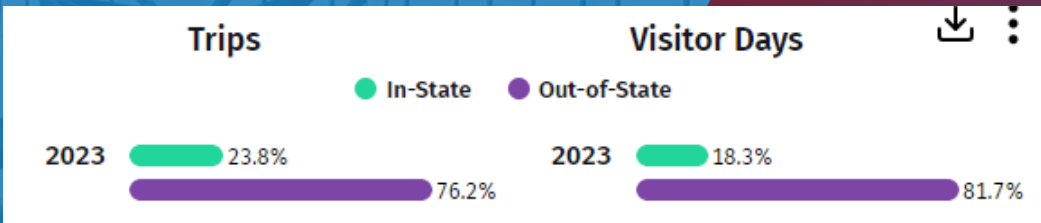
## Top Demographics





# Leavenworth Stats

Estimated visitors to Leavenworth, 50+ miles



## Top POI in Leavenworth

### Top POIs

POI	Trips
Leavenworth KS	255,028
Leavenworth Downtown Area	58,076
Universtiy of Saint Mary	12,527
Fairfield Inn and Suites Leavenorth	8,782
Home2 Suites by Hilton Leavenworth	8,170
Leavenworth National Cemetery	7,079
Chapel of the Veterans	5,935
Holiday Inn Express	5,234
Leavenworth Landing	4,620
Hampton Inn Leavenworth KS	3,903
Great Life Golf and Fitness	3,637

# Leavenworth Stats

**Jan 1 - Sept 30**

	Leavenworth	State
<b>Occupancy</b>	68.0%	58.3%
<b>RevPar</b>	\$79.17	\$59.45
<b>Average Daily Rate</b>	\$116.43	\$101.94
<b>TGT Funds</b>	\$527,476.92	collected thru Sept



**Occupancy**



**RevPar**



**Average Daily Rate**



**TGT Funds**



**Website Jan-Oct 2023**

72,309 Unique users  
143,472 Page views

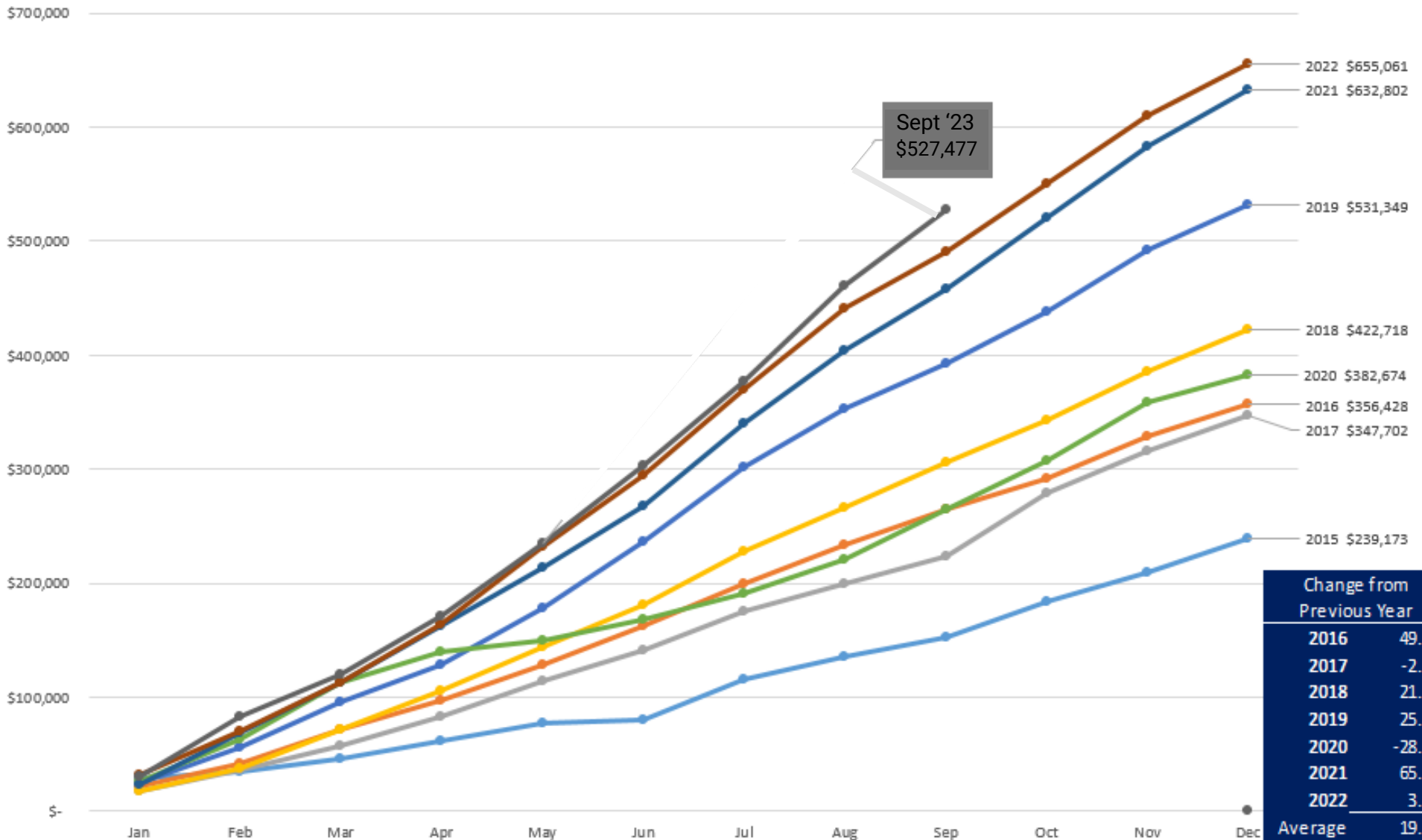


**Top Pages Visited**

Calendar of Events, Home page,  
USP, USDB, Attractions page



### Transient Guest Tax by Year



Change from Previous Year	
2016	49.0%
2017	-2.4%
2018	21.6%
2019	25.7%
2020	-28.0%
2021	65.4%
2022	3.5%
<b>Average</b>	<b>19.2%</b>
<b>YTD - 2023</b>	<b>1.2%</b>

# Leavenworth Updates

The CVB hired Katherine Criscione on May 18th as the Tourism P/T Clerk. She brings a wealth of information and experience with her from working at our local Home Depot for 10 years. Welcome aboard !

The CVB is proud to have helped with the itineraries and assisting our Sister City of Wagga Wagga Australia during their visit to Leavenworth on Aug. 22-27. Kate Perve and Haylee Burkinshaw enjoyed their time here and went on to explore NV and CA.

The CVB also worked with our Brotherhood City of Omihachiman Japan. High School students from the William Vories Christian School visited us on July 16th for the day. They enjoyed fellowship with the First Presbyterian Church and a visit to the CW Parker Carousel Museum.



# LEAVENWORTH STATS

## Visitor Guidebooks

Distributed 12,382 visitor guidebooks. They are distributed through travel centers, local delivery, hotels, trade-shows, direct inquires, on line inquires, walk ins, and RFCC lobby.

219 Direct individual requests, 537 welcome bags, and 3,295 mailed to Visitor Centers.

## Print advertising

Placed 24 print ads with a distribution of 3.3 million in publications

## On-Line Advertising

8 Banner ads, SEM meeting campaign, with impressions of over 717,689.

## E-NewsEvents Calendar

Emailed to over 1,219 subscribers twice a month with an average open rate of 30%

## Stakeholders E-Newsletter

Emailed to over 102 subscribers once a month with an average open rate of 52.3%

## Social Media

Facebook, Twitter, Pinterest, and Instagram have over 8,706 followers. A 7.5% increase over last year at this same time.

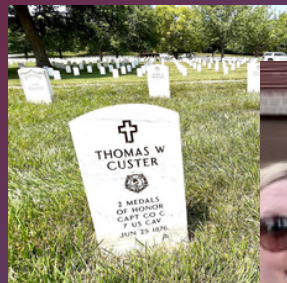
Stats from boosting our bi-monthly events guide on FB . 6,399 Reached and 461 CTR to website.



## Billboards and more

We are running a holiday campaign Nov 27 - Dec. 24 along I-70 and Hwy 7. The campaign will have an impression rate of 1.4 million views.





Leavenworth CVB continues to work with and support marketing campaigns with our partners. Main Street and the CVB worked together on a TV commercial that was aired during the summer Zip Trips with channel Fox 4 News. We had 18 businesses partner with us to make three different videos that included attractions and business. We will continue to look at ways we can work together in the future.

Leavenworth hosted six travel writers this year. Cami Mayer, Roaming the Midwest; Jamie Ward, Cornfields & High Heels; Roxie Yonkey, Roxie on the Road; Charlene Scott, Roadrunner Journeys; Michelle Marine, Simplify Live Love; Jill Robbins. If you get chance please look them up and check out their articles on visiting Leavenworth.

Kansas City Regional Destination Alliance has completed a program of work for approx. \$13,700 in 2023. KC Trips marketing committee hired a social media influencer in the summer to visit all the members. She had over 110,000 views on her postings. @ThroughBecsSpecs KCRDA also held a 12 weeks of Summer campaign which had a FB reach of 11,577 post reach and returned 109 likes to the page.

# 2023 UPDATES

## TGT GRANTS: Aug 1, 2023

The Tourism Grant review committee met on August 11th and determined the amounts for the grant applications for the Aug. 1, 2023 round.

LCBS - \$4600, Vintage Homes Tour and Women in History events.

Leavenworth Charm Hunt - \$4520

Kansas Miss Volunteer Pageant - \$3030

## Group Tours

2/15/23	Lawrence Lifelong Rec	15 People
4/20/23	DaNang Vietnam Veterans Tour	100-125 people
4/27/23	Travel Master NWA	40-50 people
5/17/23	Kansas State Bank of Overbrook	40-50 people
7/5/23	Jo. County P&R camp	20 kids
7/20/23	N KCK P&R	40-50 people
8/30/23	McAdams Golden Group	40+ people
9/8/23	2 - Assoc. of Churches	38 people
9/8/23	2- Navy Veterans Tour Groups	77 people
10/16/23	US Sierra Navy Veterans Tour	80+ people
11/8/23	Travel Cat Tours	50+ people
2024	Mayflower Tours	12 nights, 250+ people

## Trade Shows and Conferences 2023

March 27-30	Select Traveler Conference Branson, MO
April 22	PAIR Day, Ft Lvn
June 8-11	Midwest Travel Network Conference KCK
June 23-27	Military Reunion Network Conference Buffalo, NY
July 18-20	Destination Int'l Annual Conference Dallas, TX
Aug 19	PAIR Day, Ft Lvn
Sept 27-30	Small Market Meetings Cedar Rapids, IA
Oct 16-19	Kansas Tourism Conference Dodge City, KS
Nov 6-9	Boomers In Groups Cincinnati, OH

## Calendar of Events

Oct 12	Veterans Plaque Ceremony
Oct 13	Haunted Speakeasy at Karma Cakes
Oct 14	Howl at the Moon Rapid Response
Oct 21-22	Fort Lvn Haunted Walking Tour
Oct 21	Bags, Brews, & Pop Corn Hole Tourn.
Oct 21	Streets of Glory Car Show

# Thank You!

**HAPPY HALLOWEEN!**



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