

Funding Agreement

THIS AGREEMENT is made and entered into on this ____ day of February, 2019, by and between Sedgwick County, Kansas ("County") and Sedgwick County Fair Association, Inc. ("FAIR" or "Contractor").

WHEREAS, FAIR (a non-profit organization) conducts the Sedgwick County Fair annually in Sedgwick County, Kansas;

WHEREAS, FAIR has submitted a one-time funding request to County for a project which will benefit residents of the Sedgwick County, Kansas and is for a public purpose;

WHEREAS, said funding is for replacement of Building 2, a wooden structure on the fair grounds; and

WHEREAS, the County wishes to provide funding for the project and the terms and conditions which County will provide said funding are stated herein.

NOW, THEREFORE, in consideration of the mutual conditions, covenants and promises contained herein, the parties hereto agree as follows:

1. PURPOSE. FAIR operates the annual Sedgwick County Fair each July in Cheney, Kansas. The fair includes 4H activities, commercial and food vendors, local bands and other entertainment. Building 2 on fair grounds is in need of being replaced and County agrees to provide to FAIR funds in the amount of \$100,000 in the manner set out herein for purposes of demolishing Building 2 and replacing the building with a metal building having a steel structure.

2. INDEPENDENT CONTRACTOR. FAIR and County agree that services rendered under this Agreement are rendered by FAIR as an independent contractor, and not as an officer, agency, agent or employee of County. County supplies funding to FAIR under this agreement to support the project described in paragraph one (1) above.

3. TERM. The term of this Agreement shall commence upon execution by both Parties (the date first indicated above) and shall continue in full force and effect until terminated pursuant to provisions hereof or upon the mutual agreement of the Parties which shall not be unreasonably withheld.

4. COMPENSATION. In consideration for the services provided by FAIR for residents of Sedgwick County as described in paragraph 1 above, County shall cause a one-time payment to be made to FAIR in the amount of One Hundred Thousand dollars (\$100,000.00) for the project.

FAIR agrees that billings and payments under this Agreement shall be processed in accordance with established budgeting, purchasing, and accounting procedures of County. Billing shall be supported with documentation required by County. Payments shall be made to FAIR only for the project described in paragraph one (1) of this Agreement. County reserves the right to disallow and/or recoup funds which if County reasonably believes that County funds

were not used for the project described in paragraph one (1) above. Payment shall be mailed to FAIR's address as follows:

Sedgwick County Fair Association, Inc.
Attn: Steve Gegen, Treasurer
P.O. Box 460
Cheney, Kansas 67025

5. INSPECTION/AUDIT OF FACILITIES AND RECORDS OF CONTRACTOR. County shall have the right of inspection of Contractor's facilities and records at any time during Contractor's regular business hours, and at any other time after providing Contractor twenty-four (24) hours notice. This shall include the right to monitor and inspect Contractor's programs, and the right to inspect all books containing any type of participant data or financial documentation pertinent to funding provided by Sedgwick County. All documentation and financial records pertinent to this Agreement shall be maintained by Contractor for a minimum of four (4) years. Additionally, Contractor shall annually submit to County appropriate financial documentation/records audited concerning use of the County's expense. It is understood that the Contractor's financial matters are currently audited annually by a firm of certified public accountants pursuant to a policy established by the Contractor's governing body.

6. OPEN TO PUBLIC. Services rendered by Contractor, which are funded by Sedgwick County tax levies, shall be open to the general public, pursuant to any admission charges as may be determined by the Contractor from time to time.

7. AUTHORITY. Each person executing this Agreement on behalf of the parties to this Agreement represents and warrants that he is duly authorized by that party to bind the party for which he is signing.

8. SIGN(S)/DECAL(S). FAIR agrees to install a plaque next to the overhead and walkthrough doors recognizing Sedgwick County, Kansas for making this improvement possible through financial support.

9. TERMINATION.

A. For Cause. In the event of any breach of the terms or conditions of this Agreement by Contractor, or in the event of any proceedings by or against Contractor in bankruptcy or insolvency or for appointment of receiver or trustee or any general assignment for the benefit of creditors, County may, in addition to any other remedy provided it by law or in equity or other right reserved to it elsewhere in this Agreement, without any liability to Contractor on account thereof, by written notice, terminate immediately all or any part of this Agreement and Contractor shall be liable to pay to County any excess cost or other damages caused by Contractor as a result thereof.

B. For Convenience. County shall have the right to terminate this Agreement for convenience in whole, or from time to time, in part, upon thirty (30) days' written notice. Upon receipt of such termination notice, Association shall not incur any new obligations and shall cancel as many outstanding obligations as reasonably possible.

C. Due to Reduction in Funds. It is understood that funding may cease or be reduced at any time. In the event that adequate funds are not available to meet the obligations hereunder, either party reserves the right to terminate this Agreement upon thirty (30) days' written notice.

10. INCORPORATION OF DOCUMENTS. Appendix A (Sedgwick County Mandatory Contractual Provisions Attachment) is attached hereto and made a part of this Agreement as if fully set forth herein.

IN WITNESS WHEREOF, County and FAIR have executed this Agreement as of the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS


ATTEST:

KELLY B. ARNOLD, County Clerk

DAVID T. DENNIS, Chairman
Commissioner, Third District

PETER F. MEITZNER, Chair Pro Tem
Commissioner, First District

APPROVED AS TO FORM:



KAREN L. POWELL
Deputy County Counselor

MICHAEL B. O'DONNELL, II
Commissioner, Second District

LACEY D. CRUSE
Commissioner, Fourth District

JAMES M. HOWELL
Commissioner, Fifth District

SEDGWICK COUNTY FAIR
ASSOCIATION, INC.



BRET J. ALBERS, President

APPENDIX A
SEDGWICK COUNTY MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement in which this attachment is incorporated.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the Chief Financial Officer, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, County may terminate this Agreement at the end of its current fiscal year. County agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to County under the Agreement. County will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon termination of the Agreement by County, title to any such equipment shall revert to Contractor at the end of County's current fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the County or the Contractor.
4. **Disclaimer of Liability:** County shall not hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has consented to a jury trial to resolve any disputes that may arise hereunder. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any Agreement and/or this Contractual Provisions Attachment will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. County is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, County shall provide to the Contractor a certificate of tax exemption. County makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance:** County shall not be required to purchase any insurance against loss or damage to any personal property to which this Agreement relates, nor shall this Agreement require the County to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the County and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the County. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any County employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the County.
11. **Confidentiality.** Contractor may have access to private or confidential data maintained by County to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the County promptly at the request of County in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by County, shall destroy or render such data or material unreadable.
12. **Cash Basis and Budget Laws.** The right of the County to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the County cumulatively total \$5,000 or less during the County's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall

be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the County in relation to this Agreement prohibits the County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the County in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify County within the same five (5) business days, with the County reserving the same right to terminate for breach as set forth herein.

15. **HIPAA Compliance.** Contractor agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); the Genetic Information Nondiscrimination Act of 2008 ("GINA"); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended (collectively referred to as "HIPAA"), to the extent that the Contractor uses, discloses or has access to protected health information as defined by HIPAA. Under the final Omnibus Rule effective March 2013, Contractor may be required to enter into a Business Associate Agreement pursuant to HIPAA.
16. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
17. **Tax Set-Off.** If, at any time prior to or during the term of any executed agreement, Contractor is delinquent in the payment of real and/or personal property taxes to Sedgwick County, and the delinquency exists at the time payment is due under the agreement, County will offset said delinquent taxes by the amount of the payment due under the agreement and will continue to do so until the delinquency is satisfied, pursuant to K.S.A. 79-2012.