

1 Philip J. Giles, State Bar #30340
2 **ALLEN, JONES & GILES, PLC**
3 1850 N. Central Avenue, Suite 1025
4 Phoenix, Arizona 85004
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8 Attorneys for Kearney Electric, Inc.

9 **UNITED STATES BANKRUPTCY COURT**

10 **DISTRICT OF ARIZONA**

11 In Re:

Chapter 11

12 LEGACY CARES, INC, an Arizona non-
13 profit corporation.

Case No. 2:23-bk-02832-DPC

14 Debtor.

**DECLARATION OF STEPHEN
KAWULOK**

15 I, Stephen Kawulok, hereby declare under penalty of perjury as follows:

16 1. I am over 18 years of age and a resident of the State of Arizona.

17 2. I am a Senior Project Manager with Kearney Electric, Inc. ("Kearney").

18 3. At all relevant times, I was the assigned Project Manager for the Legacy
19 Cares, LLC sports complex project ("Legacy Cares Project").

20 4. As Project Manager, I am familiar with and have personal knowledge
21 regarding all change orders submitted by Kearney to Okland in connection with the
22 Legacy Cares Project.

23 5. Attached hereto as **Exhibit 8** is a summary I prepared of all change orders
24 submitted by Kearney to Okland Construction Company, Inc. ("Okland"), through the
25 course of the Legacy Cares Project. I prepared this summary after reviewing each of the
26 change orders identified in the summary, which are maintained in Kearney's business
records with supporting documentation.

6. At no time during my tenure as the Project Manager for the Legacy Cares
Project did Okland reject any of the change orders identified in Exhibit 8. Additionally,

{00490250}

1 at no time did I receive notice from Okland that Legacy Cares, Inc. or Mark Taylor
2 rejected any of the change orders identified in Exhibit 8. While Okland and Mark
3 Taylor may have been critical of certain change orders, neither I nor Kearney were
4 notified of any of the change orders having been rejected.

5 7. I have reviewed the Declaration of Robert Fisher submitted by Okland
6 with its *Opposition to Kearney Electric, Inc.'s Motion for Summary Judgment* and
7 determined that Exhibit B to the Declaration of Robert Fisher is incomplete. To provide
8 a complete and accurate record to the Bankruptcy Court, attached hereto as **Exhibit 9** is
9 a full, complete, true and correct copy of the email chain between Okland and Kearney
10 regarding Kearney's change orders and the amount due to Kearney. At all times, this
11 email chain has been maintained within Kearney's business records.

12 Executed this 19th day of July, 2024 in Phoenix, Arizona.

13
14 
15 _____
16 Stephen Kawulok

17 [Certificate of Service on following page]
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1 **E-FILED** on July 19, 2024 with the U.S.
2 Bankruptcy Court and copies served via ECF
3 notice on all parties that have appeared in the case.

3 **COPY** sent by e-mail on the same date to:

4 Chad L. Schexnayder
5 James L. Csontos
6 JENNINGS HAUG KELEHER
7 MCLEOD WATERFALL LLP
8 2800 N. Central Avenue, Suite 1800
9 Phoenix, AZ 85004-1049
10 cls@jkwlawyers.com
11 jlc@jkwlawyers.com
12 *Attorneys for Okland Construction Company, Inc.*

9 David J. Jordan
10 Tanner B. Camp
11 FOLEY & LARDNER LLP
12 95 S. State Street, Suite 2500
13 Salt Lake City, UT 84111
14 djordan@foley.com
15 tcamp@foley.com
16 docket@jhkmlaw.com
17 *Pro Hac Vice Attorneys for Okland*
18 *Construction Company, Inc.*

14 /s/ Misty Vasquez

Exhibit 8

Project Name: Legacy Sports Park - Bldg. A, B, C	Original Contract	\$853,000
Job Number: 4141	Executed Change Orders	\$13,217,108
	Revised Contract Amount	\$14,067,539
	Pending Change Orders	\$2,036,118.63

COR#	Description	Amount	Date Submitted
25.1	FB-46.1 & S1 Fixture Relocation	\$40,000.00	08/06/2021
32	KEI RFI #29, ICON #179 - Ground Columns	\$113,040.00	8/6/2021
33	KEI RFI #31, ICON #203	\$8,800.00	8/6/2021
36	KEI RFI #34, ICON #244 - HR to PNL HEAS11	\$5,660.00	8/6/2021
44	FB 66 Bldg. C Restaurant Changes	\$111,500.00	10/14/2022
53	Bldg. A HVAC Controls TM	\$25,294.68	11/22/2021
54	FB 72.1 Gate Revisions	\$48,120.00	11/22/2021
55	RFI 439 - 3 Pole Remote GFI Breakers	\$13,964.85	11/23/2021
57	RFI 421 Video Displays Bldg. C	\$11,298.39	11/27/2021
58	ASI-003.1 Bldg. C Kitchen Heat Lamps	\$5,400.84	11/27/2021
59	Metro Fire Delays - Bldg. B	\$40,428.25	11/29/2021
60	RFI 576 Bldg. C Grab N Go TV Power	\$6,496.56	11/29/2021
61	FB 81 Blast Chiller	\$25,977.83	12/1/2021
62	ASI-003.1 Glycol Chillers	\$17,996.24	12/1/2021
64	RFI 499 Swap RTU 4 and 8	\$5,861.75	12/2/2021
65	RFI 533 RTU Duct and Smoke Detectors	\$14,217.45	12/2/2021
66	RFI 551/FB 69 Amphitheater Stage	\$54,848.34	12/2/2021
67	FB 75 & 75.1 Display Changes	\$771,833.95	12/1/2021
68	ASI 007-Pickle Ball Fire Sprinkler	\$3,077.11	12/15/2021
69	RFI 532 Panel LEBS12	\$8,024.78	12/15/2021
70	RFI 564 MAU 1 Power Requirements	\$2,839.48	12/15/2021
75	TM TRU SW Bldg. B Reroute	\$8,077.31	12/17/2022
76	TM TRU NW Bldg. B	\$4,033.06	12/17/2022
77	Pickle Ball Scoreboard Relocation	\$7,449.30	12/19/2021
80	Miller Way Bldg. C Alt Fixtures	\$6,448.36	12/18/2021
81	Metro Temp TCO Fire Alarm	\$16,809.04	12/20/2021
82	Extension Cord Theft	\$2,798.00	12/20/2021
83	Friday 12/31/2021 Holiday OT 103563.78	\$103,563.78	1/6/2021

COR#	Description	Amount	Date Submitted
84	Saturday 01/01/2022 New Years Day OT 40869.72	\$40,869.72	1/6/2022
86	RFI 643 Add Monitoring of additional Fire Risers	\$30,101.25	1/8/2022
87	ASI 17 Changes	\$38,489.00	1/8/2022
88	ASI - 19 Changes	\$15,330.00	1/8/2022
89	ASI 12	\$7,055.00	1/8/2022
91	Relocate RGB lighting In GOAT	\$17,905.09	1/11/2022
92	FB 75.2	\$65,505.00	1/12/2022
93	RFI 655 Dry Storage 190C Electrical Changes	\$10,490.00	1/12/2022
94	GOAT Pizza Oven Contactor TM	\$4,842.33	1/20/2022
95	Added Water Softener In 132C TM	\$2,965.75	1/20/2022
96	Booster Pump Rough-In Relocation TM	\$771.17	1/20/2022
98	GOAT Beer Cooler Condenser Upsize TM	\$4,113.91	1/20/2022
99	GOAT Hood Controls Rework TM	\$17,578.61	1/20/2022
100	Replacing Painted Receptacles in GOAT TM	\$4,503.10	1/20/2022
101	Radio Room Window Rough-In Change TM	\$3,993.77	1/20/2022
102	GOAT Booth Wall Rough-In Relocation TM	\$5,838.01	1/20/2022
103	Added Recirculation Pump for Water Heaters TM	\$906.54	1/20/2022
105	GOAT CO2 Control Panel Connections Work TM	\$1,083.10	1/20/2022
106	GOAT Desk Rough-In Relocation TM	\$1,107.66	1/20/2022
107	GOAT Dishwasher Power Requirements Changes TM	\$4,197.39	1/20/2022
108	GOAT Kitchen Hood Shutdown Controls TM	\$474.38	1/21/2022
109	GOAT Cooler and Freezer Condensing Unit TM	\$14,246.65	1/20/2022
110	ASI 13 Grab N Go Revisions	\$4,390.00	1/21/2022
111	ASI 6 Medical Wing Work - X-Ray Machine Work	\$28,593.42	1/21/2022
112	ASI 001 Relocate Soda Machines	\$8,835.72	1/21/2022
113	FB 68	\$27,831.81	1/21/2022
114	FB 82 and 82.1 Add 30KVA XFMR Baseball Restrooms	\$15,130.45	1/21/2022

COR#	Description	Amount	Date Submitted
115	Metro Added Scope due to Damages and COM Added Strobes in C	\$9,548.73	1/21/2022
116	RFI 562 - TVRP Relocation	\$6,239.59	1/24/2022
117	RFI 599 add 2" at Maintenance	\$1,314.18	1/24/2022
118	RFI 602 Security Room 115A:	\$8,426.51	1/24/2022
119	RFI 629 Exhaust Fan 13	\$2,737.69	1/26/2022
120	RFI 637 Fire Bell Add	\$4,706.00	1/26/2022
121	RFI 683 Power for Preaction	\$7,030.55	1/26/2022
124	RFI 644 152A Telecom AV Rack Power	\$3,545.54	1/26/2022
125	RFI 691 Baseball Restroom Sewage Ejector	\$2,509.96	1/26/2022
125.1	RFI 696 Bldg. ABC Access Control	\$22,686.48	1/26/2022
126	ASI 15 Frozen Drink Condenser	\$6,154.66	1/26/2022
128	ASI 26 VIP Parking Cart Chargers	\$6,472.85	1/26/2022
130	Grab N Go Soap Warmer Change TM	\$1,113.77	2/4/2022
131	Bldg. C Grab N Go Oven Swap T&M	\$1,035.45	2/4/2022
132	Pizza Oven in GOAT TM	\$5,476.26	2/4/2022
133	GOAT Drinking Fountain Power	\$2,210.79	2/4/2022
134	Canopy Fixture Demo and Repair TM	\$2,621.47	2/4/2022
135	Elevator Fire Damper Power	\$1,798.35	2/4/2022
136	Elevator T Stat Power Add TN	\$915.24	2/4/2022
137	Pickleball Air Curtain Power Upsize	\$4,757.90	2/4/2022
138	ASI 18 Fresh Oil Disconnect Relocation	\$966.33	2/4/2022
139	RFI 630 Bldg. C GOAT MAU Changes	\$11,739.89	2/4/2022
141	Great lawn Conduit Re-Work - incorrect Survey.	\$16,819.88	2/4/2022
142	RFI 727 Power Requirements for Condensate Pumps 162C	\$1,923.54	2/4/2022
143	GOAT Restroom EM Lighting Swap	\$896.07	2/14/2022
144	Bldg. B ASI 16 Executive Office Rework TM	\$4,875.89	2/14/2022
145	Bldg. C GOAT Chandelier Recircuiting	\$1,671.72	2/25/2022
147	RFI 740 Added Flagpole Light	\$1,382.43	2/25/2022
148	RFI 698 Bldg. AB Louver Power	\$8,119.32	3/18/2022
149.1	Added Exit Signs and Egress Lighting	\$12,673.05	2/25/2022
150	Cable Tray Labor Deduct	(\$80,556.52)	2/15/2022

COR#	Description	Amount	Date Submitted
150.1	Bldg. A Added Exits and Egress Fixture	\$13,126.14	2/25/2022
151	Bldg. C GOAT ASI 32 Added Coke Pump Receipts	\$2,942.43	2/25/2022
152	Bldg. B - Rework, Shot Clocks Install, 104 Damages	\$4,042.41	3/18/2022
153	RFI 788 Hydro Tub Sump Pump Power	\$5,259.20	3/1/2022
155	Bldg. A P24 Fixture Rework and Receipt Adds	\$1,068.85	3/18/2022
156	Damaged M4 Fixture Replace	\$4,090.98	3/18/2022
157	ASI 15 Frozen Drink Condenser	\$6,039.50	3/18/2022
158	ASI 34 Data Rack Receipt Swap	\$9,674.64	3/18/2022
159	Bldg. B Added Exit Signs	\$3,713.36	3/18/2022
160	RFI 774 Comm Add Exit Bldg. A 105A	\$2,412.44	3/18/2022
161	Hydro Tub control Box	\$1,943.23	3/18/2022
162	RFI 703 GOAT Air Curtain	\$9,068.33	3/18/2022
163	RFI 779 Voltage Change	\$2,343.92	3/18/2022
164	RFI 754 Kitchen Hood Circuitry	\$851.30	3/18/2022
166	RFI 783 GOAT Kitchen Lamps	\$731.70	3/29/2022
167	RFI 769 Upsize Condenser at Maintenance	\$1,736.78	3/24/2022
168	ASI 39 Add F8 Lighting	\$5,041.69	3/29/2022
169	Maintenance Bldg. Add Freezer Bug Eye Light	\$534.02	3/29/2022
170	RFI 738 Power to Bldg. A North Directory Sign	\$15,491.05	3/29/2022
172	RFI 766 Bldg. B Merchandise Air Curtain Breaker Add	\$4,366.74	3/29/2022
173	Install Two Exits in AB Concessions	\$1,396.01	
176	PVC Deduct Area 5 Bldg. A	(\$2,577.84)	6/15/2022
Total		\$2,036,118.63	

Exhibit 9

From: Todd Smith <Todd.Smith@okland.com>
Sent: Tuesday, December 6, 2022 7:55 AM
To: Mike Kearney <mkearney@Kearneyaz.com>
Cc: JGC@bowwlaw.com; Rob Fisher <Rob.Fisher@okland.com>; Jordan Schell <Jordan.Schell@okland.com>; Tim Conde <tim.conde@okland.com>
Subject: RE: Kearney Electrtic

Mike,

Thanks for getting back with me. This email below was sent to a oakland.com address as opposed to okland.com so it was not received by Joe.

Per the attached email that was sent out by Joe. We do not agree with the final amount owed, due to a previously agreed to CO amount of \$1,625,000.

If payment comes, as we are hoping, we will work towards resolving the delta.

Thanks

Todd Smith | M 602.320.0586

From: Mike Kearney <mkearney@Kearneyaz.com>
Sent: Tuesday, November 29, 2022 2:48 PM
To: Todd Smith <Todd.Smith@okland.com>
Cc: JGC@bowwlaw.com
Subject: Kearney Electrtic

Todd,

Thanksgiving was very peaceful, I hope yours was also.

The attached email to Joe on October 31st was our recap of billings, with backup from Oakland attached.

We previously reduced our change order amount by \$189,281.00.

Best regards

Mike Kearney

From: Mike Kearney <mkearney@Kearneyaz.com>
Sent: Tuesday, November 29, 2022 12:31 PM
To: Mike Kearney <mkearney@Kearneyaz.com>
Subject: FW: Kearney

From: Mike Kearney
Sent: Monday, October 31, 2022 2:08 PM
To: Carol Kearney <carol_ Kearney@me.com>
Subject: FW: Kearney

From: Mike Kearney <mkearney@kearneyaz.com>
Sent: Monday, October 31, 2022 2:07 PM
To: joe.kranz@oakland.com
Cc: Michael J Kearney (mjkearney@kearneyaz.com) <mjkearney@kearneyaz.com>; Kurt Linsenmayer <klinsenmayer@Kearneyaz.com>; Stephen Kawulok <skawulok@Kearneyaz.com>; bhubbard@kearneyaz.com; Greg Frost <gfrost@Kearneyaz.com>
Subject: Kearney

Hi Joe,
Thank you for the response. Reviewing our files we identified a discrepancy in amounts. Below is our recap reconciling outstanding balances.

The attached pdf file supports our contract value.

Current approved contract.....	\$14,067,539	see
Oakland signed supplements attached		
All open change order requests.....	\$2,039,281.69	*
Pending Revised contract.....	\$16,106,820.69	
Paid to Date.....	\$12,936,856	
Balance.....	\$3,169,964.69	

*Disregard previous unproductive discussions & Legacy input

If funding is secured and payment is forthcoming Kearney will accept \$1,850,00.00 to cover all outstanding change order work.

This is a reduction of \$189,281.

That would reduce the balance to \$2,980,683.00

We look forward to resolution.

Mike Kearney

This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit <http://www.mimecast.com>

Greg Cahill

From: Todd Smith <Todd.Smith@okland.com>
Sent: Wednesday, November 23, 2022 12:17 PM
To: mkearney@Kearneyaz.com
Cc: mjkearney@kearneyaz.com; gfrost@Kearneyaz.com; skawulok@Kearneyaz.com; klinsenmayer@Kearneyaz.com; bhubbard@Kearneyaz.com; guywbluff@gmail.com; Jordan Schell; Rob Fisher; Tim Conde
Subject: RE: RE: Kearney settlement

Mike,

I am following up on the email below from Joe regarding the final settlement for the Legacy Sports Complex. As you know, Legacy is working on a potential refinancing transaction that could result in Legacy paying outstanding amounts. They have asked us to provide final numbers as they work toward that deal.

If you could please confirm today that the amount shown below is the amount Kearney will accept as full and final payment should Legacy pay Okland the amount Legacy owes (and pay by 1/31/2022), we would appreciate it.

Thanks

.....
Todd Smith | M 602.320.0586

-----Original Message-----

From: Joe Kranz <Joe.Kranz@okland.com>
Sent: Thursday, October 27, 2022 1:08 PM
To: mkearney@Kearneyaz.com
Cc: mjkearney@kearneyaz.com; gfrost@Kearneyaz.com; skawulok@Kearneyaz.com; klinsenmayer@Kearneyaz.com; bhubbard@Kearneyaz.com; guywbluff@gmail.com
Subject: RE: Kearney settlement

Mike,

These numbers don't seem correct, per previous negotiations with Kearney, here is the summary:

Current approved contract.....	\$13,981,810	
All open change order requests.....	\$1,625,000	(per previous discussions with Kearney, note Legacy agrees with \$900,000 only)
Pending Revised contract.....	\$15,606,810	
Paid to Date.....	\$12,936,856	
Balance.....	\$2,669,954	
Requested Settlement Credit if paid by 1/31/23.....	\$ 69,954	
Final Payment Amount.....	\$2,600,000	if paid by 1/31/23, if not settlement will be void

Please confirm the above as soon as possible.

Thanks,

Joe

Joe Kranz | Project Director

OKLAND CONSTRUCTION
1700 N. McClintock Dr. | Tempe, AZ 85281

O 480.990.3330 M 480.825.0289

www.okland.com | @oklandconst | LinkedIn

-----Original Message-----

From: Mike Kearney <mkearney@Kearneyaz.com>

Sent: Thursday, October 27, 2022 12:32 PM

To: Joe Kranz <Joe.Kranz@okland.com>

Cc: Michael J. Kearney <mjkearney@kearneyaz.com>; Greg Frost <gfrost@Kearneyaz.com>; Stephen Kawulok <skawulok@Kearneyaz.com>; Kurt Linsenmayer <klinsenmayer@Kearneyaz.com>; Brandon Hubbard <bhubbard@Kearneyaz.com>; Guy Bluff <guywbluff@gmail.com>

Subject: Kearney settlement

Joe,

Thank you for the final settlement request.

The amount is all inclusive of retention, outstanding payment requests, and all signed and approved change orders.

Amount due: \$3,144,794.69

This does not include our request for extended general conditions of
\$368,898.15

Mike Kearney CEO