UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CASE NO. 23-00193-01-CR-W-JAM

UNITED STATES OF AMERICA

v.

SKINNER TANK COMPANY,

Defendant.

DEFERRED PROSECUTION AGREEMENT

Defendant Skinner Tank Company (the "Company"), by its undersigned representatives, and the United States Attorney's Office for the Western District of Missouri (the "Office"), enter into this deferred prosecution agreement (the "Agreement"), the terms and conditions of which are as follows:

Criminal Information and Acceptance of Responsibility

1. The Company acknowledges and agrees that the Office will file the attached one count criminal Information in the United States District Court for the Western District of Missouri charging the Company with Willful Violation of the Occupational Safety and Health Act Causing Death to an Employee, in violation of 29 U.S.C. § 666(e). In so doing, the Company: (a) knowingly waives its rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); (b) knowingly waives any right to a Preliminary Hearing under Federal Rule of Criminal Procedure 5.1; and (c) knowingly waives for purposes of this Agreement and any charges by the United States arising out of the conduct described in the

attached Statement of Facts any objection with respect to venue and consents to the filing of the Information, as provided under the terms of this Agreement, in the United States District Court for the Western District of Missouri.

2. The Company admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as charged in the Information, and as set forth in the Statement of Facts attached hereto as Attachment A and incorporated by reference into this Agreement, and that the allegations described in the Information and the facts described in Attachment A are true and accurate. Should the Office pursue the prosecution that is deferred by this Agreement, the Company stipulates to the admissibility of the Statement of Facts in any proceeding, including any trial, guilty plea, or sentencing proceeding, and will not contradict anything in the Statement of Facts at any such proceeding.

3. The Company agrees to remediate the conduct described in the Criminal Information and Statement of Facts by entering into this Agreement.

<u>Term of the Agreement</u>

4. This Agreement is effective for a period beginning on the date on which the Information is filed and ending three (3) years from the later of the date on which the Information is filed and the date on which the independent compliance monitor (the "Monitor") is retained by the Company, as described in Paragraphs 7–9 below (the "Term"). The Company agrees, however, that, in the event the Office determines, in its sole discretion, that the Company has knowingly violated any provision of this Agreement, an extension or extensions of the term of the Agreement may be imposed by the Office, in its sole discretion, for up to a total additional time period of one year, without prejudice to the Office's right to proceed as provided in

Paragraphs 12–15 below. Any extension of the Agreement extends all terms of this Agreement, including the terms of the monitorship in Attachment C, for an equivalent period. Conversely, in the event the Office finds, in its sole discretion, that there exists a change in circumstances sufficient to eliminate the need for the monitorship in Attachment C, and that the other provisions of this Agreement have been satisfied, the Term of the Agreement may be terminated early.

Payment of Monetary Penalty

5. Skinner Tank shall pay a fine and monetary payments totaling, $ 370,660, to be paid as follows:

(a) The Company agrees to pay a monetary penalty in the amount of $ 175,000 to the United States Treasury within ten (10) days of the filing of the Information. The Company and the Office agree that this fine is appropriate given the facts and circumstances of this case. The $175,000 penalty is final and shall not be refunded. Furthermore, nothing in this Agreement shall be deemed an agreement by the Office that $175,000 is the maximum penalty that may be imposed in any future prosecution, and the Office is not precluded from arguing in any future prosecution that the Court should impose a higher fine, although the Office agrees that under those circumstances, it will recommend to the Court that any amount paid under this Agreement should be offset against any fine the Court imposes as part of a future judgment. The Company acknowledges that no United States tax deduction may be sought in connection with the payment of any part of this $175,000 penalty.

(b) The Company shall accept the citations issued by the Occupational Safety and Health Administration (OSHA) in Inspection No. 1438020 and pay penalties to the Department of Labor in the amount of $195,660 pursuant to the following Stipulation and Settlement

Agreement resolving the pending administrative action before the Occupational Safety and Health Review Commission: Secretary of Labor v. Skinner Tank Company, Inc., OSHRC Docket No., 20-0620. A Violation Summary and the Stipulation and Settlement Agreement are contained in Attachment E.

Conditional Release from Liability

6. Subject to Paragraphs 12–15 (Breach of Agreement), the Office agrees, except as provided herein, that it will not bring any criminal or civil case against the Company and/or any present or former officer, director, employee, shareholder, agent, consultant, contractor, or subcontractor of the Company relating to any of the conduct described in the Statement of Facts, attached hereto as Attachment A, or the criminal Information filed pursuant to this Agreement. The Office, however, may use any information related to the conduct described in the attached Statement of Facts against the Company: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code. This Agreement does not provide any protection against prosecution for any future conduct by the Company and/or any present or former officer, director, employee, shareholder, agent, consultant, contractor, or subcontractor of the Company.

Independent Compliance Monitor

7. The Company has already retained and the Office has approved Lancaster Safety Consulting, Inc., to serve as the Monitor. The Company agrees to retain the Monitor for the term specified in Paragraph 9. The Monitor's duties and authority, and the obligations of the

Company with respect to the Monitor and the Office, are set forth in Attachment C, which is incorporated by reference into this Agreement.

8. The Monitor's term shall be three (3) years from the date on which the Monitor is retained by the Company, subject to extension or early termination as described in Paragraph 4. The Monitor's powers, duties, and responsibilities, as well as additional circumstances that may support an extension of the Monitor's term, are set forth in Attachment C. The Company agrees that it will not employ or be affiliated with the Monitor or the Monitor's firm for a period of not less than two (2) years from the date on which the Monitor's term expires. Nor will the Company discuss with the Monitor or the Monitor's firm the possibility of further employment or affiliation during the Monitor's term.

9. If the Company can demonstrate retention of a Monitor and compliance with the requirements in accordance with the terms of this agreement, as addressed in Attachment C, prior to the date this agreement comes into effect, the Company may receive up to two (2) years credit towards the three (3) years of independent compliance monitoring required by this agreement. It shall be in the sole discretion of the Office, in consultation with the Department of Labor, whether the Company's compliance and Monitor program satisfies the conditions of this agreement, and to determine the amount of credit to be granted.

Deferred Prosecution

10. In consideration of the Company's entry into this Agreement and its commitment to accept and acknowledge responsibility for the conduct detailed in the Criminal Information and Statement of Facts at Attachment A, and to comply with the terms of this Agreement, the Office agrees that any prosecution of the Company for the conduct set forth in the attached Statement of Facts, and for the conduct that the Company disclosed to the Office prior to the

signing of this Agreement, be and hereby is deferred for the Term of this Agreement. To the extent there is conduct disclosed by the Company that the parties have specifically discussed and agreed is not covered by this Agreement, such conduct will not be exempt from further prosecution and is not within the scope of or relevant to this Agreement.

11. The Office further agrees that if the Company fully complies with all of its obligations under this Agreement, the Office will not continue the criminal prosecution against the Company described in Paragraph 1 and, at the conclusion of the Term, this Agreement shall expire. Within six (6) months of the Agreement's expiration, the Office shall seek dismissal with prejudice of the criminal Information filed against the Company described in Paragraph 1, and agrees not to file charges in the future against the Company based on the conduct described in this Agreement and Attachment A.

Breach of the Agreement

12. If, during the Term of this Agreement, the Company (a) commits any felony under U.S. federal law; (b) provides in connection with this Agreement deliberately false, incomplete, or misleading information; (c) fails to implement a compliance program as set forth in Paragraphs 7–9 (Independent Compliance Monitor) of this Agreement and Attachment C; or (d) otherwise fails specifically to perform or to fulfill completely each of the Company's obligations under the Agreement, regardless of whether the Office becomes aware of such a breach after the Term of the Agreement is complete, the Company shall thereafter be subject to prosecution for any federal criminal violation of which the Office has knowledge, including, but not limited to, the charges in the Information described in Paragraph 1, which may be pursued by the Office in the U.S. District Court for the Western District of Missouri or any other appropriate venue. Determination of whether the Company has breached the Agreement and whether to

pursue prosecution of the Company shall be in the Office's sole discretion. Any such prosecution may be premised on information provided by the Company. Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the Office prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Company, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, the Company agrees that the statute of limitations as to any violation of 29 U.S.C. § 666(e) that occurs during the Term will be tolled from the date upon which the violation occurs until the date upon which the Office is made aware of the violation.

13. In the event the Office determines that the Company has breached this Agreement, the Office agrees to provide the Company with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, the Company shall have the opportunity to respond to the Office in writing to explain the nature and circumstances of such breach, as well as the actions the Company has taken to address and remediate the situation, which explanation the Office shall consider in determining whether to pursue prosecution of the Company.

14. In the event that the Office determines that the Company has breached this Agreement: (a) all statements made by or on behalf of the Company to the Office or to the Court, including the attached Statement of Facts, and any testimony given by the Company before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or

subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Office against the Company; and (b) the Company shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of the Company prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer, or employee, or any person acting on behalf of, or at the direction of, the Company, will be imputed to the Company for the purpose of determining whether the Company has violated any provision of this Agreement shall be in the sole discretion of the Office.

15. The Company acknowledges that the Office has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if the Company breaches this Agreement and this matter proceeds to judgment. The Company further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

Public Statements by Company

16. The Company expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents, or any other person authorized to speak for the Company make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Company set forth above or the facts described in the attached Statement of Facts. Any such contradictory statement shall, subject to cure rights of the Company described below, constitute a breach of this Agreement, and the Company thereafter shall be subject to prosecution as set forth in Paragraphs 12–15 of this Agreement. The decision whether any

public statement by any such person contradicting a fact contained in the Statement of Facts will be imputed to the Company for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of the Office. If the Office determines that a public statement by any such person contradicts in whole or in part a statement contained in the Statement of Facts, the Office shall so notify the Company, and the Company may avoid a breach of this Agreement by publicly repudiating such statement(s) within five (5) business days after notification. In cases other than those brought by a Department or Agency of the United States, the Company shall be permitted to raise defenses and to assert affirmative claims in other proceedings relating to the matters set forth in the Statement of Facts provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the Statement of Facts. This Paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of the Company in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of the Company.

Limitations on Binding Effect of Agreement

17. This Agreement is binding on the Company and the Office but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local, or foreign law enforcement or regulatory agencies, or any other authorities, although the Office will bring the cooperation of the Company and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by the Company.

Sales or Mergers

18. In the event the Company sells, merges, or transfers all, or substantially all of its business operations as they exist as of the date of this Agreement, it shall include in any such

sales, merger, or transfer, a provision binding the purchaser or successor to the terms of this Agreement.

Notice

19. Any notice to the Office under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to Chief, Fraud and Corruption Unit, United States Attorney's Office for the Western District of Missouri, 400 E. 9th Street, Suite 5510, Kansas City, Missouri 64106. Any notice to the Company under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to Larry Skinner, Skinner Tank Company, 1001 W. Chicago Street, Yale, Oklahoma 74085. Notice shall be effective upon actual receipt by the Office or the Company.

Complete Agreement

20. This Agreement sets forth all the terms of the agreement between the Company and the Office. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Office, the attorneys for the Company and a duly authorized representative of the Company.

AGREED:

FOR SKINNER TANK COMPANY:

Date: 8-8-23 By: ______________________
Larry Skinner
Skinner Tank Company, Inc.

Date: 8/18/23 By: ______________________
David Bell
Wyrsch Hobbs & Mirakian P.C.

Date: 8/10/23 By: ______________________
S. Owen Griffin
Troppito Miller Griffin, LLC

FOR THE DEPARTMENT OF JUSTICE:

Date: **08/22/2023** By: Kathleen D. Mahoney
Kate Mahoney
Chief, Fraud and Corruption Unit

Date: **08/22/2023** By: ______________________
Paul Becker
Assistant United States Attorney
USAO Western District of Missouri

COMPANY OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside counsel for Skinner Tank Company (the "Company"). I understand the terms of this Agreement and voluntarily agree, on behalf of the Company, to each of its terms. Before signing this Agreement, I consulted outside counsel for the Company. Counsel fully advised me of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with the Board of Directors of the Company. I have ~~advised and caused~~ Offered outside counsel for the Company to advise the Board of Directors (If requested) fully of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement.

By AB w/permission 8/18/23

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of the Company, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the President for the Company and that I have been duly authorized by the Company to execute this Agreement on behalf of the Company.

Date: 8-8-23

Skinner Tank Company, Inc.

By: [signature]
Larry Skinner
President

CERTIFICATE OF COUNSEL

I am counsel for Skinner Tank Company (the "Company") in the matter covered by this Agreement. In connection with such representation, I have examined relevant Company documents and have discussed the terms of this Agreement with the Company ~~Board of Directors.~~ President Based on our review of the foregoing materials and discussions, I am of the opinion that the representative of the Company has been duly authorized to enter into this Agreement on behalf of the Company and that this Agreement has been duly and validly authorized, executed, and delivered on behalf of the Company and is a valid and binding obligation of the Company. Further, I have carefully reviewed the terms of this Agreement with th~~e Board of Directors and~~ President the ~~Presidentn~~ of the Company. I have fully advised him ~~them~~ of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions and of the consequences of entering into this Agreement. To my knowledge, the decision of the Company to enter into this Agreement, based on the authorization of the ~~Board of Directors~~ President, is an informed and voluntary one.

Date: 8/18/23

By: [signature]
David Bell
Wyrsch Hobbs & Mirakian P.C.
Counsel for Skinner Tank Company, Inc.

ATTACHMENT A

STATEMENT OF FACTS

1. The following Statement of Facts is incorporated by reference as part of the Deferred Prosecution Agreement (the "Agreement") between the United States Attorney's Office for the Western District of Missouri (the "Office") and Skinner Tank Company ("Skinner Tank"). Skinner Tank hereby agrees and stipulates that the following information is true and accurate. Skinner Tank admits, accepts, and acknowledges that it is responsible for the acts of its officers, directors, employees, and agents as set forth below. Should the Office pursue the prosecution that is deferred by this Agreement, Skinner Tank agrees that it will neither contest the admissibility of, nor contradict, this Statement of Facts in any such proceeding. The following facts establish beyond a reasonable doubt the charges set forth in the criminal Information attached to this Agreement:

2. Skinner Tank is a for-profit privately held company that is incorporated in Oklahoma. Skinner Tank is headquartered in Yale, Oklahoma. The sole owner is Larry Skinner. Larry Skinner's son, Brad Skinner, is the company's safety director.

3. Skinner Tank has been in operation since 1972 and focuses on the construction of steel tanks for petroleum, water, fertilizers, food stuffs, and asphalt.

4. Skinner Tank has a Safety and Health Programs handbook. Only Larry and Brad Skinner have the authority to alter the handbook.

5. Skinner's Fall Protection Policy, as outlined in its handbook, requires employees working "from heights 6 feet or greater . . . to wear full body harnesses with fall arrest systems (lanyards with shock absorbing attachments) unless protected by a guardrail." Moreover, "[a]ll

personal fall arrest systems shall meet the requirement outlined in the OSHA Standard 29 CFR 1926.502."

6. The handbook also includes a separate fall protection policy for roof installations, written by Brad Skinner, entitled Fall Protection Plan for Roof Installation of a Steel Storage Tank ("Roof Plan").

7. The Roof Plan adopts a system of "safety monitoring" instead of conventional fall protection (i.e., full body harness with fall arrest system). It specifically states: "Where conventional fall protection is infeasible or creates a greater hazard at the leading edge and during initial connecting activity, we plan to do this work using a safety monitoring system and expose only a minimum number of employees for the time necessary to actually accomplish the job." The Roof Plan explains what Skinner Tank considers a "safety monitoring system" – essentially, one employee is responsible for verbally warning other employees when they get too close to an unprotected edge or "are acting in an unsafe manner".

8. The Roof Plan outlines several means of fall protection – personal fall arrest system, safety net system, guardrail system, scaffolds, vehicle mounted platforms, and crane-suspended personnel platforms – and explains why each type creates a "greater hazard". Regarding the personal fall arrest system, the main concept is that employees on the roof need to be able to "move freely without encumbrance", and being tied off would prevent an employee from doing so. The policy specifically states "if these workers are attached to lanyards, more fall potential would result than from not using such a device."

9. Training on the Roof Plan is given on-site by a foreman, who have discretion over what subjects and how to train employees.

10. Skinner Tank admits that the Roof Plan failed to comply with applicable OSHA regulations at all times relevant to this matter.

11. On October 14, 2019, Skinner Tank was engaged in the construction of a fifty-six-foot-tall soybean storage tank at 900 SW Lower Lake Road in St. Joseph, Missouri ("the worksite"). By October 14, 2019, Skinner Tank had erected the body of the storage tank and was in the process of installing the low-sloped roof. The roof is installed by attaching I-beams in a spoke pattern to a pole anchored in the concrete base of the storage tank. The crew then adds flat steel sheets on top of the I-beams and welds them into place to complete the roof. Using a crane, Skinner Tank hoisted the steel roofing to the employees who would receive the sheet on the roof of the tank.

12. On October 14, 2019, all of the I-beams had been installed, so the employees were in the process of laying down the roof. One employee was operating the crane while another employee would clamp the steel roofing sheets to the crane. Skinner Tank employees Tony Wilson and Billy Barrett were on the roof, more than 50 feet above the ground, to "land" the sheet, which consists of guiding the sheet into place so it could be welded down. Another employee stood on the scaffolding surrounding the tank to signal to the crane operator below. While engaged in this work, Tony Wilson fell more than 50 feet to the ground, sustaining fatal injuries resulting in his death.

13. At the time of his fall, Tony Wilson and Billy Barrett were not using any form of fall protection. Skinner Tank failed to enforce fall protection regulations promulgated by the Occupational Safety and Health Administration ("OSHA"). Moreover, on the day of Wilson's death, there was no specific individual designated as the safety monitor, as required by Skinner Tank's Roof Plan. All three employees working on the roof that day were at one time responsible

for monitoring and would "switch off" the duty among themselves. Skinner Tank admits that even if employees had been following its so-called "safety monitoring system", that system failed to comply with OSHA regulations and was not an adequate method to protect employees from falling.

14. OSHA regulation 29 CFR § 1926.105(a) provides in pertinent part:

> Safety nets shall be provided when workplaces are more than 25 feet above the ground or water surface, or other surfaces where the use of ladders, scaffolds, catch platforms, temporary floors, safety lines, or safety belts is impractical.

15. OSHA regulation 29 CFR § 1926.21(b)(2) provides in pertinent part:

> The employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury.

16. Skinner Tank knew that 29 CFR § 1926.105(a) and 29 CFR § 1926.21(b)(2) applied to the work the company's employees were performing on the storage tank. Despite this knowledge, it did not require the fall protection and requisite training covered by these standards. Skinner Tank acknowledges its justification for allowing employees to eschew traditional fall protection was not accurate when written and admits that had its employees been attached to lanyards, they would have been properly protected from falls.

17. Skinner Tank required its employees working on the storage tank, including Tony Wilson, to work at heights in excess of 25 feet above the ground without the use of proper fall protection, thereby exposing its employees to the risk of death or serious personal injury. Skinner Tank failed to enforce the use of fall protection by the following knowing and willful actions or omissions:

a. Skinner Tank failed to use any of the required methods of fall protection enumerated in the standard;

b. Skinner Tank failed to adequately instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to fall prevention;

c. Skinner Tank provided inaccurate safety information to its employees, telling them that wearing fall protection while laying the roof was actually a greater hazard than merely monitoring each other; and

d. Skinner Tank failed to properly implement and enforce their own so-called safety monitoring system, requiring one individual to be designated as a safety monitor.

18. Skinner Tank, as a business entity, willfully violated 29 CFR § 1926.105(a) and 29 CFR § 1926.21(b)(2). These regulations were prescribed pursuant to the Occupational Safety and Health Act (the "Act"), 29 U.S.C. § 655, are standards, rules, or orders promulgated pursuant to section 655 of the Act, and were applicable to the activities Skinner Tank employees were performing at the worksite at the time of Tony Wilson's death.

19. Skinner Tank's violation of 29 CFR § 1926.105(a) and 29 CFR § 1926.21(b)(2) caused the death of Tony Wilson.

20. On or about October 14, 2019, in the Western District Missouri, Skinner Tank Company was an employer who willfully violated standards and rules promulgated by OSHA pursuant to Section 655 of Title 29, and willfully violated regulations prescribed pursuant to Chapter 17 of Title 29, Code of Federal Regulations, Sections 1926.105(a) and 1926.21(b)(2), as described above.

ATTACHMENT B

CERTIFICATE OF CORPORATE RESOLUTIONS

WHEREAS, Skinner Tank Company (the "Company") has been engaged in discussions with the United States Department of Justice, Criminal Division (the "Office") regarding issues arising in relation to the death of an employee caused by the Company's willful violation of the Occupation Safety and Health Act; and

WHEREAS, in order to resolve such discussions, it is proposed that the Company enter into a certain agreement with the Office; and

WHEREAS, the Company President, Larry Skinner, together with outside counsel for the Company, have advised the Board of Directors of the Company of its rights, possible defenses, the Sentencing Guidelines' provisions, and the consequences of entering into such agreement with the Office;

Therefore, the Board of Directors has RESOLVED that:

1. The Company (a) acknowledges the filing of the Information charging the Company with Willful Violation of the Occupational Safety and Health Act Causing Death to an Employee, in violation of 29 U.S.C. § 666(e); (b) waives indictment on such charges and enters into a deferred prosecution agreement with the Office; and (c) agrees to accept a monetary penalty against Company totaling $175,000.00, and to pay such penalty to the United States Treasury with respect to the conduct described in the Information;

2. The Company accepts the terms and conditions of this Agreement, including, but not limited to, (a) a knowing waiver of its rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); and (b) a knowing waiver for purposes of this Agreement and any

charges by the United States arising out of the conduct described in the attached Statement of Facts of any objection with respect to venue and consents to the filing of the Information, as provided under the terms of this Agreement, in the United States District Court for the Western District of Missouri; and (c) a knowing waiver of any defenses based on the statute of limitations for any prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the Office prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement;

3. The Company President, Larry Skinner, is hereby authorized, empowered and directed, on behalf of the Company, to execute the Deferred Prosecution Agreement substantially in such form as reviewed by this Board of Directors at this meeting with such changes as the Company President, Larry Skinner, may approve;

4. The Company President, Larry Skinner, is hereby authorized, empowered and directed to take any and all actions as may be necessary or appropriate and to approve the forms, terms or provisions of any agreement or other documents as may be necessary or appropriate, to carry out and effectuate the purpose and intent of the foregoing resolutions; and

5. All of the actions of the Company President, Larry Skinner, which actions would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of the Company.

Date: 8.8.2023

By: Dana Couch

Corporate Secretary
Skinner Tank Company, Inc.

ATTACHMENT C

SKINNER TANK COMPLIANCE REQUIREMENTS

1. Skinner Tank shall not use its former "Fall Protection Plan for Roof Installation of a Steel Storage Tank" in effect in October of 2019 and shall comply with all applicable OSHA standards and regulations. Skinner Tank has already retained the services of Lancaster Safety Consulting, Inc., a qualified third-party who is acceptable to OSHA to assist Skinner Tank in creating and implementing a comprehensive fall protection program, including training, inspection, enforcement, and discipline procedures for the program. This comprehensive fall protection program was put into place in November of 2019 . Skinner Tank has provided a copy of the fall protection program to OSHA. Skinner Tank shall retain this third-party consultant for a period of one year following Skinner Tank's signing of this Agreement for purposes of periodically monitoring, auditing, and evaluating the effectiveness of Skinner Tank's program. Skinner Tank will share the results of the periodic monitoring, auditing and evaluating with OSHA within 10 days of their occurring.

2. Within 60 days of the execution of this Agreement, Skinner Tank shall retain the services of a qualified third-party who is acceptable to OSHA to conduct a comprehensive safety and health audit of Skinner Tank's safety and health programs. The audit shall provide findings and recommendations. The audit is to be completed within six months of the execution of this Agreement, and shall include a written report that shall be submitted to OSHA no later than 30 days after its completion.

3. During the term of this Agreement, Skinner Tank shall have the third-party auditor discussed in paragraph (1) conduct periodic unannounced safety inspections of its worksites and record the results of such inspections. The unannounced safety inspections shall occur at least

once a month. The audit results must be put into writing and Skinner Tank shall retain them for a period of three years.

4. During the term of this Agreement, Skinner Tank shall provide to OSHA, any report issued by any property, liability, or workers compensation insurance carrier resulting from a safety inspection, accident investigation, or risk assessment of any of Skinner Tank's worksites. Reports shall be provided to OSHA within 20 days of receipt.

5. During the term of this Agreement, Skinner Tank shall provide to OSHA a report of all fall related near miss accidents and accidents resulting in injury or illness.

6. Prior to commencement of work at a new worksite, Skinner Tank shall conduct a safety meeting with employees addressing issues related to health and safety that will be present at the worksite, such as, but not limited to, fall hazards and protection, any site-specific hazards, etc. Such meetings shall be documented as to content and identify the person conducting the meeting, time and date of the meeting, and persons in attendance. Skinner Tank shall retain the documentation records for two years from the date of the meeting and produce to OSHA upon request.

7. Within 45 days of the execution of this Agreement, Skinner Tank's current managers, supervisors, and foreman shall complete the OSHA 30-hour construction course. For three years following Skinner Tank signing this Agreement, any new managers, supervisors, and foremen shall complete this training before assuming supervisory responsibilities.

8. Within 30 days of signing this Agreement, Skinner Tank's current managers, supervisors, foreman, and employees shall complete the appropriate fall protection course. For three years following Skinner Tank signing this Agreement, any new employees, managers,

supervisors, and foremen shall complete this training before undertaking any activities requiring fall protection.

9. Skinner Tank shall certify to OSHA that the training described in the two preceding paragraphs has been completed within 10 days of completion. Skinner Tank shall maintain records of all training completed.

10. Each current employee and each new employee shall be advised of their right, without fear of retaliation or discipline, to refuse to work under dangerous conditions and to report dangerous conditions or other safety hazards.

ATTACHMENT D

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. Skinner Tank Company, Defendant.	Case No. **COUNT ONE:** *Willful Violation of OSHA Regulation Causing Death* 29 U.S.C. § 666(e) NMT 6 Months Imprisonment NMT $500,000 Fine Class B Misdemeanor

INFORMATION

THE UNITED STATES ATTORNEY CHARGES THAT:

COUNT ONE
29 U.S.C. § 666
(Willful Violation of OSHA Regulation Causing Death)

On or about October 14, 2019, in the Western District Missouri, Skinner Tank Company was an employer who willfully violated standards and rules promulgated by the Occupational Safety and Health Administration (OSHA) pursuant to Section 655 of Title 29, and willfully violated regulations prescribed pursuant to Chapter 17 of Title 29, Code of Federal Regulations, Sections 1926.105(a) and 1926.21(b)(2), and said violations caused the death of Tony Wilson.

All in violation of Title 29, United States Code, Section 666(e).

Respectfully submitted,

Teresa A. Moore
United States Attorney

By ____________________________
Paul Becker
Assistant United States Attorney

Dated: ____________________

ATTACHMENT E

VIOLATION SUMMARY

<table>
<tr><th>ITEM</th><th>STANDARD</th><th>DESCRIPTION</th><th>PENALTY</th><th>MISC.</th></tr>
<tr><td>1-1</td><td>1910.178(l)(1)(i)</td><td>Skinner did not ensure each powered industrial truck operator was properly trained and evaluated</td><td>$13,494</td><td></td></tr>
<tr><td>1-2</td><td>1926.20(b)(3)</td><td>Skinner allowed employees to work with defective equipment (specifically in regard to the broken hook attached to Wilson's harness)</td><td>$13,494</td><td></td></tr>
<tr><td>1-3</td><td>1926.451(e)(1)</td><td>Skinner failed to provide a sufficient means for employees to get from the scaffold to the point of access</td><td>$6,747</td><td>Reclassified to "other than serious"</td></tr>
<tr><td>1-4</td><td>1926.1402(b)</td><td>Skinner used a crane without ensuring the ground was sufficiently graded</td><td rowspan="2">$13,494</td><td rowspan="2">Withdrawal of Citation 1, Items 6 and 7</td></tr>
<tr><td>1-5</td><td>1926.1412(d)(1)(x)</td><td>Skinner allowed employees to work near the crane without a competent person ensuring the stability of the ground on which the crane sat</td></tr>
<tr><td>1-8</td><td>1926.1422</td><td>Skinner failed to post hand signal charts near the crane</td><td rowspan="2">$13,494</td><td></td></tr>
<tr><td>1-9</td><td>1926.1425(c)(3)</td><td>Skinner failed to ensure a qualified rigger was handling materials</td><td></td></tr>
<tr><td>1-10</td><td>1926.1427(a)(1)(i)</td><td>Skinner failed to ensure the crane operator was licensed</td><td></td><td>Grouped with Item 1-1</td></tr>
</table>

ITEM	STANDARD	DESCRIPTION	PENALTY	MISC.
1-11	1926.1428(a)	Skinner failed to train employees to work as signalers to direct the crane operator		Grouped with Items 1-8 and 1-9
2-1	1926.21(b)(2)	Skinner failed to properly instruct its employees on means necessary to protect themselves and prevent fall hazards	$134,937	
2-2	1926.105(a)	Skinner failed to provide employees fall protection and fall protection devices, such as personal fall arrest systems, catch platform, scaffolding systems, or a safety net systems		
TOTAL SERIOUS VIOLATIONS:			$60,723	
TOTAL WILLFUL VIOLATIONS:			$134,937	
TOTAL PENALTIES:			**$195,660**	

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,
Complainant,

v.

SKINNER TANK COMPANY,
Respondent.

OSHRC DOCKET NO. 22-0630

STIPULATION AND SETTLEMENT AGREEMENT

The Secretary of Labor, United States Department of Labor, hereinafter referred to as the "Secretary," and Skinner Tank Company, hereinafter referred to as "Respondent," stipulate and agree as follows:

1. Based on a reevaluation of the evidence and a reconsideration of the statutory factors on which the proposed penalties are determined, the Secretary hereby amends Citations 1 and 2 as follows:

Citation/ Item	Proposed Penalties	Amended Penalties	Other Amendments
1/1	$13,494	$13,494	Citation 1, Items 1 and 10, shall be grouped for penalty purposes. Both items will remain "serious" as issued.
1/2	$13,494	$13,494	Citation 1, Item 2 shall remain "serious" as issued.
1/3	$13,494	$6,747	Citation 1, Item 3 shall be reclassified as "other than serious".
1/4	$13,494	$13,494	Citation 1, Items 4 and 5 shall be combined for penalty purposes. Both items will remain "serious" as issued.
1/5	$13,494		

1/6	$13,494	$0	Citation 1, Item 6 shall be withdrawn.
1/7	$13,494	$0	Citation 1, Item 7 shall be withdrawn.
1/8	$13,494	$13,494	Citation 1, Items 8, 9, and 11, shall be combined for penalty purposes. All three items will remain "serious" as issued.
1/9	$13,494		
1/10	$13,494	N/A	Citation 1, Items 1 and 10, shall be grouped for penalty purposes. Both items will remain "serious" as issued.
1/11	$13,494	N/A	Citation 1, Items 8, 9, and 11, shall be combined for penalty purposes. All three items will remain "serious" as issued.
2/1	$134,937	$134,937	Citation 2, Items 1 and 2, shall be combined for penalty purposes. Both items will remain "willful" as issued.
2/2	$134,937		

The Citations and Notifications of Penalty are deemed amended accordingly.

2. Respondent hereby withdraws its notice of contest to the citations and the proposed penalties, as amended herein. In support of its withdrawal, Respondent states:

(a) The abatement of all Items for Citations 1 and 2 will be accomplished within thirty (30) calendar days from Respondent signing this Agreement, which shall be the final abatement date for said Items. Respondent will comply with all applicable abatement verification provisions of 29 C.F.R. § 1903.19, including but not limited to, all certification, documentation, and posting requirements. Abatement certification shall be accomplished within ten (10) calendar days after the abatement date by e-mailing a letter to Karena Lorek, Area Director, Kansas City Area Office of the Occupational Safety and Health Administration, at OSHAKansasCity@dol.gov, stating that abatement has been completed, the date and method of abatement, and that affected employees have been informed of the abatement. Any required abatement documentation shall be submitted along with the abatement certification.

(b) In addition to (a), above, Respondent agrees this Citation is being settled as part of a global settlement that includes (i) the captioned case and (ii) a criminal referral related to the captioned case, *United States of America v. Skinner Tank*, which is being resolved in a Deferred Prosecution Agreement. Respondent has agreed to the additional settlement terms set forth in Attachment C of the Deferred Prosecution Agreement, which is incorporated herein by reference. Nothing in this paragraph 2(b) shall be deemed to lessen or modify Respondent's duties and obligations under the Occupational Safety and Health Act or the standards and regulations promulgated thereunder.

(c) Affected employees are not represented by an authorized employee representative, and, therefore, a copy of this Stipulation and Settlement Agreement will be posted at Respondent's workplace on August 28, 2023, at 1001 W Chicago Avenue, Yale, Oklahoma 74085, where it may be viewed by employees. The Agreement will remain posted until it becomes an Order Terminating Proceedings of the Commission;

(d) Within thirty (30) calendar days from Respondent signing this Agreement, Respondent shall tender payment of $195,660, the total amended penalty, to the Secretary's representative at the Kansas City Area OSHA Office. Alternatively, Respondent may tender its payment electronically at www.pay.gov. The parties agree that any unpaid balance under this Agreement is a debt owing to the United States and is subject to the Debt Collection Act of 1982 (Public Law 97-365) and the Debt Collection Improvement Act of 1996, 31 U.S.C. §§ 3701-3719.

3. Respondent agrees that this Agreement, and the terms hereof, including the Citations, proposed penalties, as amended, and other settlement terms shall become a final order of the Commission and shall be enforceable under section 11(b) of the Act. Respondent will not oppose the entry of such an order by the U.S. Court of Appeals, nor will it interpose any defense to such order alleging any infirmities concerning the Citations related to this inspection, or the terms of this Agreement. The Secretary agrees that if OSHA reaches a preliminary determination that Respondent may not be in compliance with this Agreement, OSHA shall first notify Respondent in writing directed to the attention of Respondent's President Larry Skinner. Respondent will have ten (10) calendar days from receipt of OSHA's notification to provide a written response to Karena Lorek, Area Director, Kansas City Area OSHA Office. Within ten (10) calendar days after OSHA's receipt of Respondent's written response, the parties will enter good faith discussions in an attempt to resolve the issue. If the parties are unable to resolve the issue within ten (10) calendar days of entering into such discussions, the Secretary shall proceed with any course of action the Secretary deems appropriate, including enforcement under 11(b) of the Act.

4. The Secretary and Respondent agree that based on the foregoing representations of Respondent, an Order Terminating Proceedings of the Commission may be entered of record. Respondent withdraws its notice of contest and agrees that the citations and penalties (as set forth and amended herein by this Agreement) shall become a final order of the Commission on the same date that the Order Terminating Proceeding becomes a final order, as set forth in the Notice of Docketing issued by the Executive Secretary of the Commission.

5. Further, each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding, including but not limited to,

attorney's fees, costs, and other expenses which may be available under the Equal Access to Justice Act (5 U.S.C. § 504), as amended.

Dated this 24th day of August, 2023.

Seema Nanda
Solicitor of Labor

Christine Z. Heri
Regional Solicitor

Evert H. Van Wijk
Associate Regional Solicitor

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Attorneys for Respondent

NOTICE TO EMPLOYEES AND EMPLOYEE REPRESENTATIVES

The attached Stipulation and Settlement Agreement has been entered into by the parties hereto. The parties will file a joint Notification of Settlement to the Occupational Safety and Health Review Commission requesting an Order Terminating Proceeding. The Agreement will remain posted until the Court issues an Order Terminating Proceedings of the Commission or for 14 days from signing. If you have any comments on the Stipulation and Settlement Agreement, you may submit them within 14 days of service or posting to:

Judge Brian A. Duncan
Occupational Safety and Health Review Commission
U.S. Customs House
721 19th Street, Room 407
Denver, Colorado 80202-2517

A copy of such comments should also be sent to:

Evert H. Van Wijk
Associate Regional Solicitor
U.S. Department of Labor
2300 Main Street, Suite 10100
Kansas City, Missouri 64108

Posted this 28th day of August, 2023.