



AIA® Document A133™ – 2009

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

AS AMENDED BY THE UNIVERSITY OF KANSAS, AUGUST 30, 2011; and The Kansas University Endowment Association on November 20, 2013; Revision #4

AGREEMENT made as of the day of in the year Two-Thousand, Fourteen

BETWEEN the Owner:

The Kansas University Endowment Association
P.O. Box 928
Lawrence, KS 66044-0928

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

for the following Project:
(Name, address, and project number)

KU Endowment Template
KU Project #xxx-xxxxx

The Architect:
(Name, legal status and address)

The Owner's Designated Representative:

The University of Kansas, Office of Design & Construction Management
1515 St. Andrews Drive
Lawrence, KS 66047

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

xxxx, President
(Address noted above)

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

xxxx, Principal

ADDITIONS AND DELETIONS:

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

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

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

Init.

(Address noted above)

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

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

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's best efforts, 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; to perform the Work in an expeditious and economical manner consistent with the Owner's interests; and to furnish the Construction Manager's services and perform the Work with the skill and care of a Construction Manager and general contractor with experience in projects similar to the Project. The Owner agrees to furnish or approve, in a timely manner, information reasonably required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, the General Conditions of the Contract for Construction, A201-2007 (as amended) shall apply only as specifically provided in this Agreement. For the Construction Phase, those general conditions are

Init.

incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

§ 1.4 "Contractor" and "Construction Manager" are used interchangeably in this Agreement, and in other affiliated contract documents.

§ 1.5 "Architect" means the prime design consultant for the Project, whether an architect or engineer.

§ 1.6 "Owner" means The Kansas University Endowment Association (KU Endowment), and, for all duties and obligations Architect owes to the Owner, includes the University of Kansas (KU). Owner hereby delegates authority to the University of Kansas, Office of Design and Construction Management (DCM) to serve as the "Owner's Representative" under this Agreement, provided that DCM shall have no authority, except with prior written approval and unanimous consent of the Negotiating Committee, to: (1) approve any changes to the original Architectural Program identified in Article 1.1; (2) approve any changes or expenses that result in total costs that would exceed the total project funding as identified in the approved architectural program; or (3) amend this Agreement. KU Endowment has sole authority, following consultation with the Negotiating Committee, to:

(1) terminate or suspend this Agreement; (2) declare a Default under this Agreement; or (3) commence or mediate any claim or dispute pursuant to Article 9.

§ 1.7 "Procurement Negotiating Committee" (PNC, or "Negotiating Committee") shall consist of three members and shall be composed of: (1) the KU Endowment Senior Vice-President for Property Management, or designee, (2) the Director of DCM, or designee and (3) the KU Chancellor, Dean, Director or Department head of the primary building occupant group, as identified by the KU Chancellor, or designee.

§ 1.7.1 The PNC shall have sole authority to act on the Owner's behalf to interview and select firms, negotiate fees, approve contracts and to approve changes to the project scope or total project funding.

§ 1.7.2 DCM shall consult with and secure written approval from the PNC prior to awarding contracts or approving individual change order items or contract amendments which exceed \$125,000 in cost.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree in writing, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

The Construction Manager agrees it will assign to the Project the employees listed in Exhibit 2.0, to serve in the indicated roles, with their time charged to the project at the indicated rate for each role's services.

The Construction Manager must obtain the Owner's written consent before re-assigning any of these individuals away from the Project prior to Substantial Completion.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§2.1.1.1 Construction Management Plan

The Construction Manager shall prepare a Construction Management Plan for the Project based on the Owner's schedule, cost, and design requirements for the Project. The Construction Manager shall then develop various alternatives for sequencing of the Project and recommendations for the various bid packages. The Construction Management Plan shall be reviewed and approved by the Owner and Architect before its implementation.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner

Init.

and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; 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.

§ 2.1.3 Preliminary Project Schedule. The Construction Manager must, within **thirty (30)** days after execution of this Agreement, prepare and submit for the Owner and Architect's review a Preliminary Project Schedule. The Preliminary Project Schedule will identify all major design and construction milestones required to meet the Project completion date.

§ 2.1.3.1 Master Project Schedule. When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and update on a monthly basis a Master Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; preparation and processing of shop drawings and samples; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner showing portions of the Project having occupancy priority and the proposed date of Substantial Completion.

§ 2.1.4 Phased Construction

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

§2.1.4.1 Revisions to the Construction Management Plan

During the Design Phase, the Construction Manager shall make recommendations to the Owner regarding revisions to the Construction Management Plan. Revisions approved by the Owner shall be incorporated into the Construction Management Plan and accepted by the Owner.

§ 2.1.5 Preliminary Cost Estimates

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

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

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager must use its best efforts to develop qualified bidders' interest in the Project and shall develop, for review by the Owner and Architect, a list of proposed subcontractors and suppliers to invite to bid on this Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If

the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

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

§2.1.8.1 Project Pre-Construction Meetings

The Construction Manager shall, during the pre-construction phase, conduct periodic Project meetings attended by the Owner, Architect and its consultants, and others to facilitate the exchange of information concerning the Project. The Construction Manager shall prepare and distribute minutes of these meetings to attendees.

§2.1.8.2 Review of Design Documents

The Construction Manager shall review the design documents for clarity, consistency, constructability and coordination among elements of the design. The Construction Manager shall provide to the Owner written comments of the review. By performing this review the Construction Manager assumes no responsibility or liability for the Project design.

§2.1.8.3 Approvals by Regulatory Agencies

The Construction Manager shall monitor transmittal of documents to regulatory agencies for review and shall advise the Owner of potential problems in completing such reviews.

§2.1.8.4 Cost/Benefit Analysis

The Construction Manager shall prepare and distribute to the Owner and Architect cost/benefit analyses for major construction components.

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

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

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.4.1 The Construction Manager shall not include line item contingency amounts, also known as 'exposure holds', in the itemized Cost of the Work, in addition to the overall contingency amount included in each Guaranteed Maximum Price proposal.

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

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

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

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

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

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon (i) the issuance of a State permit for any part of the Work, and (ii) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect.

For each bid package, after receipt of bids, the Construction Manager must evaluate the bids, determine the lowest responsible bidder and award a subcontract to the lowest responsible bidder. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

The Construction Manager may self-perform any bid package if it submits a sealed proposal to Owner, along with the other sealed bids for each such package, and is the lowest responsible bidder for that package. The Owner will open all bids and determine the lowest responsible bidder for each package on which the Construction Manager submits a proposal.

The Construction Manager may submit a written request to self-perform limited, selected packages of work without submitting a competitive self-perform bid, if it substantiates that this will improve the execution or cost-effectiveness of the Work, and if the Owner provides written approval of the CM's request.

The Construction Manager's self-perform packages of Work shall be considered a Subcontract Cost of the Work for purposes of calculating Construction Manager's Fee under paragraph 5.1.1.

§ 2.3.2.2 [not used]

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

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

§ 2.3.2.5 The Construction Manager shall schedule and conduct weekly meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect within 5 days after the meeting.

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

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

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

Init.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

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

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

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and the Owner-approved Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

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

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services

under the Owner's control and reasonably required by the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

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

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

§ 3.3 Architect

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

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Lump sum fee of xxxx Thousand, xxx-Hundred Dollars (\$xxx,xxx.00).

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments

(Paragraphs deleted)

of the Construction Manager's invoices for Preconstruction services are due, absent extenuating circumstances, within 30 days after the Architect receives the invoice.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1, the Cost of General Conditions as defined in Section 5.1.6, plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

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

In consideration of the performance of the Contract, the Owner agrees to pay the Construction Manager a Fee equal to xxxxx percent (x.xx%) of the Cost of the Work used to establish the Guaranteed Maximum Price.

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

To be negotiated.

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

To be negotiated.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed rates established on Exhibit 5.1.4 or the standard rate paid at the place of the Project, whichever is less.

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
None.		

§ 5.1.6 **General Conditions.** The project costs identified in Exhibit 5.1.6 as "General Conditions" will be billed each month during construction as a separate element of cost at rates established in Exhibit 5.1.6. Upon execution of the Guaranteed Maximum Price Amendment, the Construction Manager and Owner will establish a guaranteed maximum amount to be charged for general conditions costs against the Guaranteed Maximum Price.

§ 5.2 **Guaranteed Maximum Price**

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

§ 5.2.1.1 The Guaranteed Maximum Price for this project shall be the total Cost of the Work, including the cost of any work that is being completed by subcontractors or vendors who will be directly contracted to the Owner or to the University of Kansas, but who will be under the direct supervision of the Construction Manager. The Construction Manager's Fee shall apply to the cost of the work of those separately-contracted subcontractors or vendors, to compensate the Construction Manager for the services necessary to coordinate and supervise their work as if they were directly contracted to the CM.

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

§ 5.2.3 All savings (including, but not limited to, any remaining contingency) shall accrue to the Owner.

§ 5.2.3.1 Upon Substantial Completion of each package or phase of work, the Construction Manager shall return to the Owner all unspent contingencies and allowances for that package or phase of work, by deduct Change Order or contract Amendment, unless approved otherwise by Owner.

§ 5.3 **Changes in the Work**

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

Init.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.2.2 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.2.2.3 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts. Except for changes that affect the Contract Time, all changes will be priced without general conditions unless mutually agreed upon by Construction Manager and Owner. Adjustments to subcontracts shall be based on the cost of the scope change plus a fee as set forth in the General Conditions.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

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

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

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

§ 6.2 Labor Costs

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

§ 6.2.2 [not used].

§ 6.2.3 [not used].

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

§ 6.2.5 [not used]

§ 6.3 Trade Work and Subcontract Costs

The approved price for any trade packages awarded to and performed by Construction Manager. Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

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

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

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

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

§ 6.5.1 Costs of 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 Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers or by a Construction Manager, and that are provided by the Construction Manager at the site and costs of transportation, installation, dismantling and removal. The total rental cost of any rental equipment shall not exceed 100% of the fair market value of such equipment at the time of its commitment to the Project. "Fair Market Value" shall be indicated on **Exhibit 5.1.4**, and shall be confirmed by provision of competitive pricing from other vendors by the CM, when requested by Owner.

Equipment purchased and charged to the Project as a Cost of the Work, or for which the rental charges equal 100% of the fair market value, shall become the property of the Owner, if requested. Purchased equipment Owner elects to keep will be delivered in clean condition and stored at a location to be identified by Owner. Purchased equipment Owner elects not to keep will be removed from the site at the end of the construction, and an appropriate credit shall be given to the Owner for the fair market value of the equipment at the time it was last used on the Project.

Any lease/purchase rental agreements must be disclosed to the Owner. If the Construction Manager purchases equipment under a lease/purchase arrangement whereby rental payments are charged to Owner as a Cost of the Work, an appropriate credit shall be given to the Owner for the fair market value of the equipment at the time it was last used on the Project. For Construction Manager-owned equipment, the Construction Manager shall maintain daily equipment usage reports and use those reports to determine the most economical billing rate (hourly, weekly, monthly) to the Owner.

§ 6.5.2.1 Items not customarily owned by construction workers or by a Construction Manager and which are legitimate project rental charges or costs are generally defined to include, but are not be limited to, the following: generators, pumps, cranes, heavy equipment/vehicles (trucks, backhoes, loaders, etc.), and similar large equipment; consumable supplies for rented or owned equipment, such as saw blades, drill bits, driver bits, pencils/markers, fuel, batteries, gloves and similar items; and safety equipment, such as respirator cartridges, disposable air filter masks, disposable hearing protection, fire extinguishers, warning barriers and similar items.

§ 6.5.2.2 Items which are considered to be customarily owned by construction workers or by a Construction Manager and which are not legitimate project rental charges or costs are generally defined to include, but are not be limited to, the following: small hand tools and power tools (including hammers, saws, drills, screwdrivers, chisels, tape measures, tool belts, flashlights, etc.), transits/surveying equipment, shovels, rakes, brooms, personal safety items (hard hats, safety vests, safety goggles, reusable respirators and hearing protection or noise-canceling headphones), boots, clothing and similar items typically owned by each tradesman, or by each construction company for the use of their workers.

§ 6.5.3 [not used].

§ 6.5.4 [not used].

§ 6.5.5 [not used].

Init.

§ 6.5.6 [not used].

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. This subsection also includes (i) Construction Manager's premiums for performance and payment bonds, and for the statutory Public Works bond; (ii) premiums for Subcontractor and Supplier Default Insurance and subcontractor performance and payment bonds, if any; and (iii) any insurance deductible for which the Construction Manager is liable. The cost of bonds and insurance shall not exceed the rates or amounts listed in the attached **Exhibit 6.6.1**, unless otherwise approved in writing by Owner.

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

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

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

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

§ 6.6.6 [not used].

§ 6.6.7 [not used].

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

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

§ 6.7 Other Costs and Emergencies

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

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

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

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

§ 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Labor, material, and equipment costs and any other costs incurred which are backcharged to subcontractors or material suppliers.

§ 6.9 Discounts, Rebates and Refunds

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

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

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of 10% in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is 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 Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals,

purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

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

No Change.

§ 7.1.3 Provided that a properly-completed and undisputed Application for Payment is received by the Architect not later than the last day of a month, the Owner shall, absent extenuating circumstances, make payment of the certified amount to the Construction Manager within 30 days after the Owner's receipt of the Application. If an Application for Payment is received by the Architect after the application date fixed above, payment shall, absent extenuating circumstances, be made by the Owner not later than thirty (30) days after the Owner receives the certified Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall make available, if requested, payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

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

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocatable 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 may be included as provided in the A201 General Conditions;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage under § 7.1.11. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

- .4 Subtract retainage under § 7.1.11 from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.8.1 The Owner shall instruct the subcontractors and vendors who will be contracted directly to the Owner/University of Kansas to submit a copy of their monthly payment applications directly to the Construction Manager, for initial review and approval by the CM, who will then forward the approved payment applications to the Architect for review and approval. Architect will then submit the approved payment applications for the Owner's separately-contracted subcontractors or vendors to the Owner for payment directly from the Owner/KU to the subcontractor/vendor, for the amounts approved by the CM and Architect.

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

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

§ 7.1.11 **Retainage:** The Owner and Construction Manager anticipate the Work will be constructed in phases, which will be developed and identified during the pre-construction phase. The Construction Manager's applications for payment will reflect the work activities and values in each phase, and retainage will be tracked separately by phase. The Owner has determined that retainage at the rate of five percent (5%) is required to ensure performance of this Agreement.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when:

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the completion of all Work, subject to adjustment as the result of any subsequent audit.

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 60 days after delivery of the final accounting to the Architect and to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's

reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

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

§ 7.2.4 If subsequent to final payment, and at the Owner’s request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager’s Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds (prior to the start of the construction phase) as set forth below and in Article 11 of AIA Document A201–2007.

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

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Performance, Payment, and Public Works (KSA § 60-1111) bonds	Guaranteed Maximum Price, as adjusted by Change Order

See A201 § 11.1.1 for the coverages and minimum limits of the Construction Manager’s insurance.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007.

§ 9.2 For any Claim arising from this Agreement, the method of binding dispute resolution shall be as follows:

(Paragraphs deleted)

Litigation in Douglas County, Kansas District Court.

§ 9.3 Initial Decision Maker

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

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

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience

Init.

and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

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

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

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

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above.

§ 10.3 Suspension

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

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

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

§ 11.5 Hazardous Materials

§ 11.5.1 The term "hazardous materials" includes, but is not limited to, asbestos, lead paint, and toxic waste.

§ 11.5.2 No cutting, handling, removal or other disposition of hazardous materials shall be performed by the Contractor or any subcontractor under this Contract. All such work shall be performed at Owner's expense by a specialized contractor licensed for the work under separate contract directly with the Owner.

§ 11.5.3 If during the performance of the Work, the presence of hazardous materials are discovered or suspected, the Contractor/Construction Manager shall cease work involving such materials and shall immediately notify the Owner and arrangements shall be made by the Owner for complete legal removal and disposition of hazardous materials.

§ 11.5.4 Radon, microbials and other environmental pollutants. Owner acknowledges, that (i) radon gas has been identified as a national health problem, (ii) mold, fungi, bacteria and other microbials commonly exist in structures and will exist in structures as a result of rain, humidity, and other moisture in the structure and on materials during the normal construction process and as a result of the use of wood and other materials that commonly have mold, fungi, bacteria and other microbials at the time of delivery to the jobsite; (iii) owner has the opportunity to become informed about radon, microbials or other environmental pollutants and the potential health risks of radon, microbials and other environmental pollutants; (iv) Contractor does not claim or possess any special expertise in the measurement of reduction of radon, microbials or other environmental pollutants, nor has it provided any advice to Owner as acceptable levels or possible health hazards of radon, microbials or other environmental pollutants; (v) Contractor has not made any investigation to determine whether there is radon, microbials, or other environmental pollutants in the structure or affecting the property, and has not made any analysis or verification of the extent of any environmental or health hazard, if any, that may affect the property or any residents of the property. Any testing desired or required with respect to radon, microbials and other environmental pollutants shall be at the Owner's expense.

§ 11.6 GMP Line Item Prices

Any pricing, estimates, or allowances contained in the Contract Documents or otherwise provided by the Construction Manager with respect to the amount of any particular line items included within the Guaranteed Maximum Price shall not constitute a warranty, representation, or obligation of the Construction Manager to complete the Work associated with such line items for the specified amount, and the Construction Manager shall have the right to allocate any difference between the estimated and actual cost of performing the Work associated with any line item to any other line item(s).

§ 11.7 CM-Provided Services for Separate Contractors

The Construction Manager is not required to furnish free of charge to Owner's separate contractors and material suppliers, general/special condition items such as, but not limited to, unloading, temporary electrical service, vertical/horizontal transportation, trash removal, clean-up, insurance, equipment temporary barricades and protection, etc. However, the Construction Manager shall cooperate with the Owner's separate contractors and material suppliers to the extent that such cooperation does not materially interfere with the performance of the Work.

Init.

§ 11.8 Liquidated Damages.

The Owner will suffer financial loss that will be difficult, if not impossible, to ascertain if the Project is not substantially complete on or before the expiration of the Contract Time for that phase. The Construction Manager (and its Surety, if any) shall be liable for and shall pay to the Owner liquidated damages (and not a penalty) for each calendar day of delay from the expiration of the Contract Time for each phase until the Work on is Substantially Complete. The liquidated damages amount will be established in each contract Amendment that establishes the Guaranteed Maximum Price of the Work.

§ 11.9 Owner Audits

§ 11.9.1 The Owner reserves the right to audit project-related costs, utilizing either Owner personnel and resources or the services of an outside consultant. The Construction Manager shall cooperate and assist the Owner with such audits, as requested by the Owner, without additional compensation. The Construction Manager's assistance may include the review and analysis of Contractor, subcontractor or supplier costs. The Construction Manager shall comply with the Owner's audit guidelines for capital improvement construction projects, which the Owner shall provide.

§ 11.9.2 The project costs which are subject to audit include the following:

- 1) Reimbursable expenses to the Architect and the Architect's consultants.
- 2) Construction Manager's General Conditions costs and reimbursable expenses.
- 3) Work by the Contractor, subcontractors or suppliers which was not competitively bid.
- 4) Change Orders.
- 5) Allowances.
- 6) Unit Prices.
- 7) Work done on a time and materials, or cost-plus basis.

§ 11.10 Strategic Sourcing The Construction Manager shall comply with the Owner's strategic sourcing guidelines for capital improvement construction projects, which the Owner shall provide. The Construction Manager shall incorporate the Owner's strategic sourcing requirements into the bidding documents for the Work, in order to maximize the cost benefit to the Owner.

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 **AIA Document A201–2007, General Conditions of the Contract for Construction**, as amended by the Owner.
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
Not Used
- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
Not Used
- .5 Other documents which are attached and incorporated into this Agreement:

Exhibit 2.0, CM Project Personnel & Hourly Rates

Init.

Exhibit 5.1.4, CM-Owned Equipment Rental Rates

Exhibit 5.1.6, General Conditions Costs

Exhibit 6.6.1, Bonds & Insurance Costs

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

The Kansas University Endowment Association

Official Name of Firm

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

Dale Seufferling, President
(Printed name and title)

(Printed name and title)

(Date Signed)

(Date Signed)

Init.

Additions and Deletions Report for AIA[®] Document A133[™] – 2009

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:04:31 on 03/02/2015.

PAGE 1

AS AMENDED BY THE UNIVERSITY OF KANSAS, AUGUST 30, 2011; and The Kansas University Endowment Association on November 20, 2013; Revision #4

AGREEMENT made as of the day of in the year Two-Thousand, Fourteen
(In words, indicate day, month and year.)

...

~~(Name, legal status and address)~~

The Kansas University Endowment Association
P.O. Box 928
Lawrence, KS 66044-0928

...

~~(Name and address or location)~~ (Name, address, and project number)

KU Endowment Template
KU Project #xxx-xxxxx

...

~~(Name, address and other information)~~

The University of Kansas, Office of Design & Construction Management
1515 St. Andrews Drive
Lawrence, KS 66047

...

xxx, President
(Address noted above)

...

xxx, Principal
(Address noted above)

PAGE 2

TABLE OF ARTICLES

...

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's best efforts, 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; and to furnish the Construction Manager's services and perform the Work with the skill and care of a Construction Manager and general contractor with experience in projects similar to the Project. The Owner agrees to furnish or approve, in a timely manner, information reasonably required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

...

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

§ 1.4 "Contractor" and "Construction Manager" are used interchangeably in this Agreement, and in other affiliated contract documents.

§ 1.5 "Architect" means the prime design consultant for the Project, whether an architect or engineer.

§ 1.6 "Owner" means The Kansas University Endowment Association (KU Endowment), and, for all duties and obligations Architect owes to the Owner, includes the University of Kansas (KU). Owner hereby delegates authority to the University of Kansas, Office of Design and Construction Management (DCM) to serve as the "Owner's Representative" under this Agreement, provided that DCM shall have no authority, except with prior written approval and unanimous consent of the Negotiating Committee, to: (1) approve any changes to the original Architectural Program identified in Article 1.1; (2) approve any changes or expenses that result in total costs that would exceed the total project funding as identified in the approved architectural program; or (3) amend this Agreement. KU Endowment has sole authority, following consultation with the Negotiating Committee, to: (1) terminate or suspend this Agreement; (2) declare a Default under this Agreement; or (3) commence or mediate any claim or dispute pursuant to Article 9.

§ 1.7 "Procurement Negotiating Committee" (PNC, or "Negotiating Committee") shall consist of three members and shall be composed of: (1) the KU Endowment Senior Vice-President for Property Management, or designee, (2) the Director of DCM, or designee and (3) the KU Chancellor, Dean, Director or Department head of the primary building occupant group, as identified by the KU Chancellor, or designee.

§ 1.7.1 The PNC shall have sole authority to act on the Owner's behalf to interview and select firms, negotiate fees, approve contracts and to approve changes to the project scope or total project funding.

§ 1.7.2 DCM shall consult with and secure written approval from the PNC prior to awarding contracts or approving individual change order items or contract amendments which exceed \$125,000 in cost.

PAGE 3

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may ~~agree~~, agree in writing, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

The Construction Manager agrees it will assign to the Project the employees listed in Exhibit 2.0, to serve in the indicated roles, with their time charged to the project at the indicated rate for each role's services.

The Construction Manager must obtain the Owner's written consent before re-assigning any of these individuals away from the Project prior to Substantial Completion.

...

§2.1.1.1 Construction Management Plan

The Construction Manager shall prepare a Construction Management Plan for the Project based on the Owner's schedule, cost, and design requirements for the Project. The Construction Manager shall then develop various alternatives for sequencing of the Project and recommendations for the various bid packages. The Construction Management Plan shall be reviewed and approved by the Owner and Architect before its implementation.

PAGE 4

~~§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. **Preliminary Project Schedule.** The Construction Manager must, within **thirty (30)** days after execution of this Agreement, prepare and submit for the Owner and Architect's review a Preliminary Project Schedule. The Preliminary Project Schedule will identify all major design and construction milestones required to meet the Project completion date.~~

§ 2.1.3.1 Master Project Schedule. When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and update on a monthly basis a Master Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; preparation and processing of shop drawings and samples; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner showing portions of the Project having occupancy priority and the proposed date of Substantial Completion.

...

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

§2.1.4.1 Revisions to the Construction Management Plan

During the Design Phase, the Construction Manager shall make recommendations to the Owner regarding revisions to the Construction Management Plan. Revisions approved by the Owner shall be incorporated into the Construction Management Plan and accepted by the Owner.

...

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

...

The Construction Manager ~~shall develop bidders' interest in the~~ must use its best efforts to develop qualified bidders' interest in the Project and shall develop, for review by the Owner and Architect, a list of proposed subcontractors and suppliers to invite to bid on this Project.

PAGE 5

§2.1.8.1 Project Pre-Construction Meetings

The Construction Manager shall, during the pre-construction phase, conduct periodic Project meetings attended by the Owner, Architect and its consultants, and others to facilitate the exchange of information concerning the Project. The Construction Manager shall prepare and distribute minutes of these meetings to attendees.

§2.1.8.2 Review of Design Documents

The Construction Manager shall review the design documents for clarity, consistency, constructability and coordination among elements of the design. The Construction Manager shall provide to the Owner written comments of the review. By performing this review the Construction Manager assumes no responsibility or liability for the Project design.

§2.1.8.3 Approvals by Regulatory Agencies

The Construction Manager shall monitor transmittal of documents to regulatory agencies for review and shall advise the Owner of potential problems in completing such reviews.

§2.1.8.4 Cost/Benefit Analysis

The Construction Manager shall prepare and distribute to the Owner and Architect cost/benefit analyses for major construction components.

...

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

PAGE 6

§ 2.2.4.1 The Construction Manager shall not include line item contingency amounts, also known as 'exposure holds', in the itemized Cost of the Work, in addition to the overall contingency amount included in each Guaranteed Maximum Price proposal.

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

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

...

§ 2.3.1.2 The Construction Phase shall commence upon (i) the issuance of a State permit for any part of the Work, and (ii) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

PAGE 7

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. ~~The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted.~~

For each bid package, after receipt of bids, the Construction Manager must evaluate the bids, determine the lowest responsible bidder and award a subcontract to the lowest responsible bidder. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

The Construction Manager may self-perform any bid package if it submits a sealed proposal to Owner, along with the other sealed bids for each such package, and is the lowest responsible bidder for that package. The Owner will open all bids and determine the lowest responsible bidder for each package on which the Construction Manager submits a proposal.

The Construction Manager may submit a written request to self-perform limited, selected packages of work without submitting a competitive self-perform bid, if it substantiates that this will improve the execution or cost-effectiveness of the Work, and if the Owner provides written approval of the CM's request.

The Construction Manager's self-perform packages of Work shall be considered a Subcontract Cost of the Work for purposes of calculating Construction Manager's Fee under paragraph 5.1.1.

~~§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner. [not used]~~

...

§ 2.3.2.5 The Construction Manager shall schedule and conduct weekly meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and ~~Architect~~ Architect within 5 days after the meeting.

...

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather,

portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The Construction Manager must provide to the Owner's Designated Representative a copy of the daily logs at the end of each work week.

PAGE 8

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

...

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

...

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

PAGE 9

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103TM-2007, ~~B101TM-2007,~~ Standard Form of Agreement Between Owner and Architect, ~~including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement, as amended by the Owner.~~ The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

...

Lump sum fee of xxxx Thousand, xxx-Hundred Dollars (\$xxx,xxx.00).

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

...

§ 4.2.2 ~~Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)~~

—%—of the Construction Manager's invoices for Preconstruction services are due, absent extenuating circumstances, within 30 days after the Architect receives the invoice.

...

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current ~~funds.~~ funds for the Construction Manager's performance of the

Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 as defined in Section 6.1.1, the Cost of General Conditions as defined in Section 5.1.6, plus the Construction Manager's Fee.

PAGE 10

In consideration of the performance of the Contract, the Owner agrees to pay the Construction Manager a Fee equal to xxxxx percent (x.xx%) of the Cost of the Work used to establish the Guaranteed Maximum Price.

...

To be negotiated.

...

To be negotiated.

...

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed percent (—%) of rates established on Exhibit 5.1.4 or the standard rate paid at the place of the Project.Project, whichever is less.

...

None.

§ 5.1.6 General Conditions. The project costs identified in Exhibit 5.1.6 as "General Conditions" will be billed each month during construction as a separate element of cost at rates established in Exhibit 5.1.6. Upon execution of the Guaranteed Maximum Price Amendment, the Construction Manager and Owner will establish a guaranteed maximum amount to be charged for general conditions costs against the Guaranteed Maximum Price.

...

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

§ 5.2.1.1 The Guaranteed Maximum Price for this project shall be the total Cost of the Work, including the cost of any work that is being completed by subcontractors or vendors who will be directly contracted to the Owner or to the University of Kansas, but who will be under the direct supervision of the Construction Manager. The Construction Manager's Fee shall apply to the cost of the work of those separately-contracted subcontractors or vendors, to compensate the Construction Manager for the services necessary to coordinate and supervise their work as if they were directly contracted to the CM.

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

§ 5.2.3 All savings (including, but not limited to, any remaining contingency) shall accrue to the Owner.

§ 5.2.3.1 Upon Substantial Completion of each package or phase of work, the Construction Manager shall return to the Owner all unspent contingencies and allowances for that package or phase of work, by deduct Change Order or contract Amendment, unless approved otherwise by Owner.

...

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General

Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the ~~Work.~~Work that affect critical-path work activities.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section ~~7.3.3~~7.2.2 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section ~~7.3.3.3~~ of AIA Document A201–2007 ~~and the term "costs" as used in Section 7.3.7-7.2.2.3~~ of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts. Except for changes that affect the Contract Time, all changes will be priced without general conditions unless mutually agreed upon by Construction Manager and Owner. Adjustments to subcontracts shall be based on the cost of the scope change plus a fee as set forth in the General Conditions.

PAGE 11

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

§ 6.2.2 ~~Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval. (If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)~~[not used].

§ 6.2.3 ~~Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~[not used].

...

§ 6.2.5 ~~Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.~~[not used]

§ 6.3 Trade Work and Subcontract Costs

The approved price for any trade packages awarded to and performed by Construction Manager. Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

PAGE 12

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers ~~or by a Construction Manager, and that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager owned equipment and quantities of equipment shall be subject to the Owner's prior approval.~~rental equipment shall not exceed 100% of the fair market value of such equipment at the time of its commitment to the Project. "Fair Market Value" shall be indicated on Exhibit 5.1.4, and shall be confirmed by provision of competitive pricing from other vendors by the CM, when requested by Owner.

Equipment purchased and charged to the Project as a Cost of the Work, or for which the rental charges equal 100% of the fair market value, shall become the property of the Owner, if requested. Purchased equipment Owner elects to keep will be delivered in clean condition and stored at a location to be identified by Owner. Purchased equipment

Owner elects not to keep will be removed from the site at the end of the construction, and an appropriate credit shall be given to the Owner for the fair market value of the equipment at the time it was last used on the Project.

Any lease/purchase rental agreements must be disclosed to the Owner. If the Construction Manager purchases equipment under a lease/purchase arrangement whereby rental payments are charged to Owner as a Cost of the Work, an appropriate credit shall be given to the Owner for the fair market value of the equipment at the time it was last used on the Project. For Construction Manager-owned equipment, the Construction Manager shall maintain daily equipment usage reports and use those reports to determine the most economical billing rate (hourly, weekly, monthly) to the Owner.

§ 6.5.2.1 Items not customarily owned by construction workers or by a Construction Manager and which are legitimate project rental charges or costs are generally defined to include, but are not be limited to, the following: generators, pumps, cranes, heavy equipment/vehicles (trucks, backhoes, loaders, etc.), and similar large equipment; consumable supplies for rented or owned equipment, such as saw blades, drill bits, driver bits, pencils/markers, fuel, batteries, gloves and similar items; and safety equipment, such as respirator cartridges, disposable air filter masks, disposable hearing protection, fire extinguishers, warning barriers and similar items.

§ 6.5.2.2 Items which are considered to be customarily owned by construction workers or by a Construction Manager and which are not legitimate project rental charges or costs are generally defined to include, but are not be limited to, the following: small hand tools and power tools (including hammers, saws, drills, screwdrivers, chisels, tape measures, tool belts, flashlights, etc.), transits/surveying equipment, shovels, rakes, brooms, personal safety items (hard hats, safety vests, safety goggles, reusable respirators and hearing protection or noise-canceling headphones), boots, clothing and similar items typically owned by each tradesman, or by each construction company for the use of their workers.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.[not used].

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.[not used].

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.[not used].

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.[not used].

PAGE 13

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. This subsection also includes (i) Construction Manager's premiums for performance and payment bonds, and for the statutory Public Works bond; (ii) premiums for Subcontractor and Supplier Default Insurance and subcontractor performance and payment bonds, if any; and (iii) any insurance deductible for which the Construction Manager is liable. The cost of bonds and insurance shall not exceed the rates or amounts listed in the attached **Exhibit 6.6.1**, unless otherwise approved in writing by Owner.

...

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

~~§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval. [not used].~~

~~§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents. [not used].~~

PAGE 14

~~.8 Costs for services incurred during the Preconstruction Phase, Labor, material, and equipment costs and any other costs incurred which are backcharged to subcontractors or material suppliers.~~

...

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ~~ten percent~~ 10% in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is 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 Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, ~~2.3.2.2~~ and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections ~~2.3.2.1, 2.3.2.2~~ 2.3.2.1 and 2.3.2.3.

PAGE 15

No Change.

§ 7.1.3 Provided that ~~an a properly-completed and undisputed~~ Application for Payment is received by the Architect not later than the last day of a month, the Owner ~~shall~~ shall, absent extenuating circumstances, make payment of the certified amount to the Construction Manager ~~not later than the day of the month, within 30 days after the Owner's receipt of the Application.~~ If an Application for Payment is received by the Architect after the application date fixed above, payment ~~shall~~ shall, absent extenuating circumstances, be made by the Owner not later than ~~()~~ thirty (30) days after the Owner receives the certified Application for Payment. ~~(Federal, state or local laws may require payment within a certain period of time.)~~

§ 7.1.4 With each Application for Payment, the Construction Manager shall ~~submit~~ make available, if requested, payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

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

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

...

- .1 Take that portion of the Guaranteed Maximum Price properly ~~allocable~~ allocatable 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 values; pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall may be included as provided in Section 7.3.9 of AIA Document A201-2007; the A201 General Conditions;

...

- .3 Add the Construction Manager's Fee, less retainage of ~~percent (—%)~~ under § 7.1.11. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ~~percent (—%)~~ under § 7.1.11 from that portion of the Work that the Construction Manager self-performs;

PAGE 16

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on ~~Subcontracts, subcontracts,~~ and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.8.1 The Owner shall instruct the subcontractors and vendors who will be contracted directly to the Owner/University of Kansas to submit a copy of their monthly payment applications directly to the Construction Manager, for initial review and approval by the CM, who will then forward the approved payment applications to the Architect for review and approval. Architect will then submit the approved payment applications for the Owner's separately-contracted subcontractors or vendors to the Owner for payment directly from the Owner/KU to the subcontractor/vendor, for the amounts approved by the CM and Architect.

...

§ 7.1.11 Retainage: The Owner and Construction Manager anticipate the Work will be constructed in phases, which will be developed and identified during the pre-construction phase. The Construction Manager's applications for payment will reflect the work activities and values in each phase, and retainage will be tracked separately by phase. The Owner has determined that retainage at the rate of five percent (5%) is required to ensure performance of this Agreement.

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager ~~when~~when:

...

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

completion of all Work, subject to adjustment as the result of any subsequent audit.

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within ~~30-60~~ days after delivery of the final accounting to the Architect and to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

PAGE 17

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

...

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds (prior to the start of the construction phase) as set forth below and in Article 11 of AIA Document A201-2007.

...

Performance, Payment, and Public Works Guaranteed Maximum Price, as adjusted by Change Order
(KSA § 60-1111) bonds

See A201 § 11.1.1 for the coverages and minimum limits of the Construction Manager's insurance.

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

§ 9.2 For any Claim ~~subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, arising from this Agreement,~~ the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

— Arbitration pursuant to Section 15.4 of AIA Document A201-2007

— Litigation in a court of competent jurisdiction

— Other: *(Specify)*

Litigation in Douglas County, Kansas District Court.

PAGE 18

.1 Take the Cost of the Work and Cost of General Conditions incurred by the Construction Manager to the date of termination;

...

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed ~~Maximum~~ Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

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

PAGE 19

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

...

§ 11.5 ~~Other provisions:~~ **Hazardous Materials**

§ 11.5.1 The term "hazardous materials" includes, but is not limited to, asbestos, lead paint, and toxic waste.

§ 11.5.2 No cutting, handling, removal or other disposition of hazardous materials shall be performed by the Contractor or any subcontractor under this Contract. All such work shall be performed at Owner's expense by a specialized contractor licensed for the work under separate contract directly with the Owner.

§ 11.5.3 If during the performance of the Work, the presence of hazardous materials are discovered or suspected, the Contractor/Construction Manager shall cease work involving such materials and shall immediately notify the Owner and arrangements shall be made by the Owner for complete legal removal and disposition of hazardous materials.

§ 11.5.4 Radon, microbials and other environmental pollutants. Owner acknowledges, that (i) radon gas has been identified as a national health problem, (ii) mold, fungi, bacteria and other microbials commonly exist in structures and will exist in structures as a result of rain, humidity, and other moisture in the structure and on materials during the normal construction process and as a result of the use of wood and other materials that commonly have mold, fungi, bacteria and other microbials at the time of delivery to the jobsite; (iii) owner has the opportunity to become informed about radon, microbials or other environmental pollutants and the potential health risks of radon, microbials and other environmental pollutants; (iv) Contractor does not claim or possess any special expertise in the measurement of reduction of radon, microbials or other environmental pollutants, nor has it provided any advice to Owner as acceptable levels or possible health hazards of radon, microbials or other environmental pollutants; (v) Contractor has not made any investigation to determine whether there is radon, microbials, or other environmental pollutants in the structure or affecting the property, and has not made any analysis or verification of the extent of any environmental or health hazard, if any, that may affect the property or any residents of the property. Any testing desired or required with respect to radon, microbials and other environmental pollutants shall be at the Owner's expense.

§ 11.6 **GMP Line Item Prices**

Any pricing, estimates, or allowances contained in the Contract Documents or otherwise provided by the Construction Manager with respect to the amount of any particular line items included within the Guaranteed Maximum Price shall not constitute a warranty, representation, or obligation of the Construction Manager to complete the Work associated with such line items for the specified amount, and the Construction Manager shall have the right to allocate any difference between the estimated and actual cost of performing the Work associated with any line item to any other line item(s).

§ 11.7 **CM-Provided Services for Separate Contractors**

The Construction Manager is not required to furnish free of charge to Owner's separate contractors and material suppliers, general/special condition items such as, but not limited to, unloading, temporary electrical service, vertical/horizontal transportation, trash removal, clean-up, insurance, equipment temporary barricades and protection,

etc. However, the Construction Manager shall cooperate with the Owner's separate contractors and material suppliers to the extent that such cooperation does not materially interfere with the performance of the Work.

§ 11.8 Liquidated Damages.

The Owner will suffer financial loss that will be difficult, if not impossible, to ascertain if the Project is not substantially complete on or before the expiration of the Contract Time for that phase. The Construction Manager (and its Surety, if any) shall be liable for and shall pay to the Owner liquidated damages (and not a penalty) for each calendar day of delay from the expiration of the Contract Time for each phase until the Work on is Substantially Complete. The liquidated damages amount will be established in each contract Amendment that establishes the Guaranteed Maximum Price of the Work.

§ 11.9 Owner Audits

§ 11.9.1 The Owner reserves the right to audit project-related costs, utilizing either Owner personnel and resources or the services of an outside consultant. The Construction Manager shall cooperate and assist the Owner with such audits, as requested by the Owner, without additional compensation. The Construction Manager's assistance may include the review and analysis of Contractor, subcontractor or supplier costs. The Construction Manager shall comply with the Owner's audit guidelines for capital improvement construction projects, which the Owner shall provide.

§ 11.9.2 The project costs which are subject to audit include the following:

- 1) Reimbursable expenses to the Architect and the Architect's consultants.
- 2) Construction Manager's General Conditions costs and reimbursable expenses.
- 3) Work by the Contractor, subcontractors or suppliers which was not competitively bid.
- 4) Change Orders.
- 5) Allowances.
- 6) Unit Prices.
- 7) Work done on a time and materials, or cost-plus basis.

§ 11.10 Strategic Sourcing The Construction Manager shall comply with the Owner's strategic sourcing guidelines for capital improvement construction projects, which the Owner shall provide. The Construction Manager shall incorporate the Owner's strategic sourcing requirements into the bidding documents for the Work, in order to maximize the cost benefit to the Owner.

PAGE 20

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

...

Not Used

...

Not Used

.5 Other documents: documents which are attached and incorporated into this Agreement:

Exhibit 2.0, CM Project Personnel & Hourly Rates

Exhibit 5.1.4, CM-Owned Equipment Rental Rates

(List other documents, if any, forming part of the Agreement.) Exhibit 5.1.6, General Conditions Costs

Exhibit 6.6.1, Bonds & Insurance Costs

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

The Kansas University Endowment Association

Official Name of Firm

PAGE 21

Dale Seuferling, President

...

(Date Signed)

(Date Signed)



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Steven A. Scannell, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:04:31 on 03/02/2015 under Order No. 1259189603_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)