

AIA[®] Document A133[®] – 2019

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, July 15, 2021
changes tracked to Apr. 22, 2021 draft

AGREEMENT made as of the Twenty Third day of May in the year Two Thousand and Twenty Three
(*In words, indicate day, month, and year.*)

BETWEEN the Owner:

The University of Kansas
Lawrence,

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

Turner Construction Company
1220 Washington Street, Suite 100
Kansas City, Missouri, 64105

for the following Project:
(*Name, location, and detailed description*)

11th and Mississippi Gateway Project
KU Project Number Lz_U-11338, A-014692

The Architect:
(*Name, legal status, address, and other information*)

HNTB Corporation
715 Kirk Drive
Kansas City, Missouri 64105
Company Phone No.: 816-472-1201

The Owner and Construction Manager agree as follows.

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™–2017, 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.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

| Not applicable.

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

| Not applicable.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

Init.

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§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Anderson Family Football Complex 2023 Construction Documentation

- February 1, 2023 Start of Schematic Design
- March 28, 2023 Design Package A - Construction Document Package

Anderson Family Football Complex 2024 Construction Schematic Design

- February 1, 2023 Start of Schematic Design
- May 2, 2023 Schematic Design Package

Design Development

- August 3, 2023 Design Development Package

Construction Documents

- September 12, 2023 Design Package E – Construction Document Package

Enabling

Documentation

- April 26, 2023 Design Package B - Enabling Construction Document Package

Stadium & Conference Center

Schematic Design

- February 1, 2023 Start of Schematic Design
- May 2, 2023 Schematic Design Package

Design Development

- June 15, 2023 Design Package C – Steel and Precast Bid Only Document
- June 26, 2023 Design Package D – Long Lead MEP Equipment
- September 12, 2023 Design Package E – Temp Conditions and Early Release Scopes
- September 12, 2023 Design Development Package

Construction Document

- December 22, 2023 Design Package F – Exterior Envelope and MEPF
- December 22, 2023 50% Construction Document Package
- March 28, 2024 Design Package G – Construction Document Package

.2 Construction commencement date:

May, 2023

.3 Substantial Completion date or dates:

August 1, 2025

.4 Other milestone dates:

It is understood there will be phasing and early procurement packages within this project.

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

Not Applicable.

§ 1.1.6

(Paragraphs deleted)

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[not used]

(Paragraph deleted)

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

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

Facilities Planning and Development
1246 West Campus Road, Room 30
Lawrence, Kansas 66045

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

Nations Group
7144 East Stetson Drive
Suite 410
Scottsdale, Arizona 85251

§ 1.1.10 The Owner shall retain the following consultants and contractors:

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

.1 Geotechnical Engineer:

Geotechnology
5055 Antioch Road
Overland Park, KS 66203
Phone #: 913-438-1900

.2 Surveyor:

JEO Consulting Group, Inc.
2033 Becker Drive, Suite 201
Lawrence, Kansas 66047
Phone #: 785-330-5666

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

TBD

§ 1.1.11 The Architect's representative:

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

Brian Berg
HNTB Corporation
715 Kirk Drive
Kansas City, Missouri 64105 Mobile #: 816-835-9739

Email: brberg@hntb.com

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Josh Jones, Principal in Charge
Turner Construction Company
1220 Washington Street, Suite 100
Kansas City, Missouri, 64105 Mobile #: 816-564-0280
Email: jbjones@tcco.com

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

Refer to Exhibit 3.0

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 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 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 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. 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. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 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; and to perform the Work in an

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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.

§ 2.3 "Contractor" and "Construction Manager" are used interchangeably in this Agreement, and in other affiliated Contract Documents.

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

§ 2.5 "Owner" means The University of Kansas (KU). Owner hereby delegates authority to the KU Office of Facilities Planning & Development (FPD) to serve as the "Owner's Representative" under this Agreement, provided that FPD shall have no authority, except with prior written approval of the Negotiating Committee, to: (1) approve any changes to the original architectural program; (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.

§ 2.6 "Procurement Negotiating Committee" (PNC, or "Negotiating Committee") shall consist of three members and shall be composed of: (1) the Director of Facilities for the Board of Regents, or their designee, (2) the Director of FPD, or their designee and (3) one or two other persons designated by the KU Chancellor, or their designee.

§ 2.6.1 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.

§ 2.6.2 FPD 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.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, 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 3.0, 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.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant

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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.

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

§ 3.1.3 Consultation

§ 3.1.3.1 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.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; 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. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Architect shall provide electronic copies of the Instruments of Service to the Construction Manager, at no additional expense to the Owner or Construction Manager, for the Construction Manager's use in developing BIM models, shop drawings and other documents directly supporting construction of the Work. The Architect may require the Construction Manager to execute a reasonable liability waiver for the use of those documents, with a copy of the executed document to be provided to the Owner. The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the development, use, transmission, and exchange of digital data for the Project.

§ 3.1.4 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.

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and update on a monthly basis 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; 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..

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, 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.

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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.

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 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 with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, 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 exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 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.

§ 3.1.11.2 [not used]

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

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 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.

§ 3.1.13 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.

(Paragraphs deleted)

§3.1.14. Other Preconstruction Services

§ 3.1.14.11 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.

§3.1.14.1 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.

§3.1.14.1 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.

§3.1.14.1 Cost/Benefit Analysis

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

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 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 and Architect's review, and the Owner's 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 3.2.4, the Cost of General Conditions, and the Construction Manager's Fee.

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

§ 3.2.3 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 3.2.2, 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, contingencies, the Cost of General Conditions, 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.

§ 3.2.4 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 a Cost of the Work but not included in a Change Order.

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§ 3.2.4.1 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.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or 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.

§ 3.2.6 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 a GMP is established, with the information and assumptions upon which it is based.

§ 3.2.7 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 commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize the Architect to provide revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager as they are released by the Architect. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 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.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201-2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 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 Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 3.3.2 Administration

§ 3.3.2.1 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 its receipt of bids obtained in accordance with the process required by K.S.A. § 76-7, 132, the Construction Manager must evaluate the bids, determine the lowest responsible bidder, award a subcontract to that lowest responsible bidder, and make a public announcement identifying each firm selected.

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'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.

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.

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.

The Construction Manager shall schedule and conduct 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.

§ 3.3.2.2 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 a submittal schedule in accordance with Section 3.10 of A201-2017.

§ 3.3.2.3 Monthly Report

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.

§ 3.3.2.4 Daily Logs

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.

§ 3.3.2.5 Cost Control

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 3.3.2.3 above.

§ 3.3.2.6 Professional Services

Section 3.12.10 of A201-2017 shall apply to both the Preconstruction and Construction Phases.

§ 3.3.2.7 Hazardous Materials

Section 10.3 of A201-2017 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 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.

§ 4.1.2 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

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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..

§ 4.1.3 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 Article 7, (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.

§ 4.1.4 **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.

§ 4.1.4.1 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.

§ 4.1.4.2 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.

§ 4.1.4.3 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.

§ 4.1.5 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.

§ 4.1.6 [not used].

§ 4.2 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 A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **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.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B101™-2017, Standard Form of Agreement Between Owner and Architect, as amended by the Owner. The Owner shall provide the Construction Manager with a copy of the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

Exhibit 3.0

§ 5.1.2

(Paragraphs deleted)

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.

(Paragraph deleted)

§ 5.1.3 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.

§ 5.2 Payments

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

§ 5.2.2 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 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7, the Cost of General Conditions as defined in Section 6.1.7, plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(Paragraph deleted)

The Owner agrees to pay the Construction Manager a Fee outlined in Exhibit 3.0 of (i) the Cost of the Work, (ii) the costs of General Conditions, and (iii) and the cost included in the GMP for of any work that is being completed by subcontractors or vendors who will be directly contracted to the Owner, but who will work under the direct supervision of the Construction Manager

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

to be negotiated

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

shall be as provided in Article 7 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed the rates established on Exhibit 3.0 or the standard rental rate paid at the place of the Project, whichever is less.

§ 6.1.6 Unit Prices, if any:

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

§ 6.1.7

(Paragraphs deleted)

General Conditions: The project costs identified on Exhibit 6.1.7 as "General Conditions" will be billed each month during construction as a separate element of cost at rates established on Exhibit 6.1.7. 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

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.2.1 The Guaranteed Maximum Price shall include the cost of any work that is being completed by subcontractors or vendors who will be directly contracted to the Owner, 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 Construction Manager.

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

§ 6.2.3 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 deductive Change Order or contract Amendment, unless approved otherwise by Owner.

§ 6.3 Changes in the Work

§ 6.3.1 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 Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work that affect critical-path work activities.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 6.3.2 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 Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee) for changes in the Work shall be reduced to a fixed amount in a subcontract change order. Adjustments to subcontracts awarded with the Owner's prior written 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.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 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 6.1.3 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.

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ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain that approval in writing prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 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.

§ 7.2.2 [not used]

§ 7.2.2.1

(Paragraphs deleted)

[not used]

§ 7.2.3 [not used]

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining 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 7.2.1 through 7.2.3.

§ 7.2.5 [not used]

§ 7.3 Trade Work and Subcontract Costs

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

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

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 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.

§ 7.4.3 A small tool charge equal to 0 % of all Construction-Manager labor [§ 7.2.1] costs.

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

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers or the Construction Manager 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.

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§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers or the Construction Manager that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. "Fair Market Value" shall be indicated 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.

§ 7.5.2.1 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.

§ 7.5.2.2 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.

§ 7.5.3 [not used]

§ 7.5.4 [not used]

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds (including the statutory Public Works Bond) required by the Contract Documents that can be directly attributed to this Contract. The cost of bonds and insurance shall not exceed the rates or amounts listed in the attached Exhibit 3.0, unless otherwise approved in writing by Owner.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

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

§ 7.6.3 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.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, 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, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate 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 A201–2017 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 [not used]

§ 7.6.7 [not used]

§ 7.6.8 [not used]

§ 7.6.9 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.

§ 7.6.10 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, with the Owner's prior approval.

§ 7.6.11 [not used]

§ 7.7 Other Costs and Emergencies

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

§ 7.7.2 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 Article 10 of AIA Document A201–2017.

§ 7.7.3 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 the negligence of, or failure to fulfill a specific responsibility by, 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.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 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 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

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§ 7.8.2 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 in writing, 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 Article 9. If the Owner fails to authorize the transaction in writing, 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 Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 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 7.2, or as may be provided in Article 14;
- .2 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;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, 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;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Labor, material, and equipment costs and any other costs incurred which are backcharged to subcontractors or material suppliers.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 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.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 [not used]

(Paragraph deleted)

§ 9.2 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 Owner’s prior written approval. If a subcontract is awarded on the basis of cost plus a fee, 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 Article 10.

ARTICLE 10 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

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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 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 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.

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

§ 11.1.3 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 amount certified 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 of the amount certified shall, absent extenuating circumstances, be made by the Owner not later than thirty (30) days after the Owner receives the certified Application for Payment.

§ 11.1.4 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 payments 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, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment..

§ 11.1.5 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: (1) the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 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 and for which the Construction Manager has made payment 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.

§ 11.1.7 In accordance with AIA Document A201-2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values;

- .2 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 completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 [not used]; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 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 included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

(Paragraphs deleted)

§ 11.1.8.1 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.

§ 11.1.9 [not used]

§ 11.1.10 [not used]

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

§ 11.1.11.1 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.

§ 11.1.11.2 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.

§ 11.1.12 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 such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) 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.

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§ 11.2 Final Payment

§ 11.2.1 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 Article 12 of AIA Document A201–2017, 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 in accordance with Section 11.2.2.2.

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.

§ 11.2.2 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 that the other conditions of Section 11.2.1 have been met, the Architect will 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 Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

(Paragraphs deleted)

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is 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 Article 15 of AIA Document A201–2017. 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.

§ 11.2.3 [not used]

§ 11.2.4 [not used]

§ 11.3

(Paragraphs deleted)

[not used]

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. 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 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 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.

(Paragraphs deleted)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[X] Litigation in Douglas County, Kansas District Court

(Paragraphs deleted)

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work 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 5.1.

§ 13.1.3 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 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 Article 14 of A201-2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, 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 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 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 13.1.4:

- .1 Take the Cost of the Work and the 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 6.1 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.

§ 13.1.6 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 that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. 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 13, 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.

§ 13.1.6.1 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.

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§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201-2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201-2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201-2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work 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 6.1 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;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201-2017.

§ 13.2.2.2 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 that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. 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 13, 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.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Construction Manager a termination fee equal to

one-quarter of one percent (.0025) of the value of the Work not executed.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201-2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201-2017. Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.1.1 Ownership and Use of Documents

Section 1.5 of A201-2017 shall apply to both the Preconstruction and Construction Phases.

§ 14.1.2 Governing Law

Section 13.1 of A201-2017 shall apply to both the Preconstruction and Construction Phases.

§ 14.2 Assignment

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither party to the Contract shall assign the Contract as a whole without written consent of the other, except that the Owner may assign this Agreement pursuant to § 14.2.2 below. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 14.3 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 A201-2017.

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Refer to Exhibit 3.0	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.

(Table deleted)

(Paragraphs deleted)

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by Kansas law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

(Paragraphs deleted)

§ 14.4

(Paragraphs deleted)

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).

§ 14.5 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.

§ 14.6 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.

§ 14.7 Owner Audits

§ 14.7.1 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.

§ 14.7.2 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.

§ 14.8 Strategic Sourcing The Construction Manager shall comply with the Owner's current 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.

§ 14.9 Required Non-Discrimination Provision: Contractor agrees to comply with all applicable state and federal anti-discrimination laws. Contractor specifically agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or if it is determined that the contractor has violated applicable provisions of ADA, such violation(s) shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the University. The provisions of this paragraph (except the provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the University cumulatively total \$5,000 or less during the fiscal year. In accordance with the Governor's Executive Order 18-04, the University has policies prohibiting sexual harassment, discrimination, and retaliation. The University's applicable policies on sexual harassment, discrimination, and retaliation are available at <http://policy.ku.edu> and provide for confidentiality and anonymous reporting.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 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.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, 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 A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for

(Paragraphs deleted)

Construction, as amended by the Owner

(Paragraphs deleted)

- .5 Other Exhibits:

(Paragraphs deleted)

Document	Title	Date	Pages
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- .7 Other documents, if any, listed below:

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Exhibit 3.0- Proposed Fees, Contingency and General Conditions, Personnel and Hourly Rates,
Equipment Rental Charges, General Conditions Cost Summary, Insurance and Bonds.
Exhibit 3.1 – State of Kansas CMAR Cost Proposal Form

State of Kansas Contractual Provisions Attachment DA-146a

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

The University of Kansas

[Turner Construction Company]

OWNER

CONSTRUCTION MANAGER (Signature)


Jeffrey Dewitt, Chief Financial Officer
(Printed name and title)


Karen Hogan Vice President, General Manager
(Printed name and title)

Date signed:

7/19/23

Date signed:

7/18/2023

Int.



Turner Construction Company
 1220 Washington St.
 Suite 100
 Kansas City, MO 64105
 Phone: 816.283.0555

June 15, 2023

The University of Kansas
 Lawrence, KS 66045

RE: KU 11th & Mississippi Project
Preconstruction and Early Work Proposal

Mark,

We request your approval to issue Turner Construction a contract for anticipated preconstruction expenditures (see Exhibit A for breakdown) and award Mar Lan Construction the General Construction GMP Bid Package for the Phase 01 Renovations to Anderson Family Football Complex. Mar Lan's contract will be formatted as a Guaranteed Maximum Price (GMP), inclusive of contingency, allowances, and alternates. See Exhibit B for breakdown of Mar Lan Construction's cost proposal.

See breakdown of associated costs for this preconstruction & early work agreement below:

Expend estimated costs for Turner's Preconstruction and temporary facilities through 8/31/23:

Preconstruction Staffing (per RFP Submission & Attachment A):	\$ 380,000
<u>Temporary Facilities, Equipment & Contracted Services for Mobilization</u>	<u>\$ 585,000</u>
Total Turner Preconstruction Staff & Mobilization Cost:	\$ 965,000

General Construction for Anderson Family Football Complex Phase 01 Scope of Work:

General Construction Package:	\$ 4,166,001
Turner's Contract Staffing	\$ 10,000
Builder's Risk (Turner did not include)	Provided by Mar Lan
Subguard	Excluded
Corp Insurance (1.2%, CCIP excluded)	\$ 50,122
Turner Fee (2.85%)	\$ 120,445
Total Bid Package #00.01A	\$ 4,346,568


PRECONSTRUCTION & EARLY WORK PROPOSAL TOTAL: \$ 5,311,568

We exclude the following from the work indicated above:

- Preconstruction Staffing Amount is per Turner's State of Kansas – CMAR Cost Proposal Form and the Exhibit A Turner's Preconstruction Staffing Breakdown.
- Permits, tap fees and connection fees
- Turner's Staff beyond August 31, 2023
- Insurances, Bonding and Fees for work not listed above.
- Other soft costs

Your approval and contract execution on or before **June 28, 2023**, is requested to meet the project schedule.

Sincerely,


 Jason Brown
 Project Executive – Turner Construction

Building the Future

KORA #2024-36
 8/10/2023
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OFFICE (785) 749-2647
FAX (785) 749-9507

April 7, 2023

Mr. Mark Reiske, R.A., AUA
University Architect, Director
Facilities Planning and Development
The University of Kansas
1246 West Campus Drive, Room 36
Lawrence, KS 66045

RE: AFFC Renovation Project - 2023 Phase 1

Mark,

The following is our CM at Risk GMP (Guaranteed Maximum Price) cost proposal for the above listed project. The proposal is based on the documents dated March 28, 2023, by HNTB Corporation. See the attached breakdown of costs.

GMP Cost Proposal

- \$4,166,001.00 (Four Million One Hundred Sixty-Six Thousand One Dollars and no/cents) Excludes sales tax
- Contingency included of \$ 182,975.00

Allowances:

- Allowance for air piping for Kizer Equipment relocation \$10,000.00

Alternates:

- Alternate #1-Install Nydree wall plank system without reveals on west wall of Plyo Ramp.
 - Deduct \$10,185.00
- Alternate #2-Change Paragon column wraps in Locker Room to framed walls, drywall and painted finish
 - Deduct \$ 23,485.00

Time:

- Start date is April 10, 2023, with substantial completion date of August 1, 2023
- Permit to Build and notice to proceed must be in place by April 19th, 2023 in order to maintain this schedule.

Exclusions and Clarifications:

- Owner provided items not in our contract that do not follow the schedule will not be grounds for us not achieving our substantial completion.
- No information on the graphics package has been seen at the time nor have we been able to coordinate installation dates with the vendor. We will review and coordinate when this information is made available to us.

Thank you for this opportunity and we look forward to your acceptance of this proposal.

Sincerely,

Kevin Lee Markley
Principal-Project Manager

State of Kansas - CMAR Cost Proposal Form

Department of Administration, OFPM-DCC

Project Title & Number:	A-014692 11th and Mississippi Project		
Agency or School District:	University of Kansas		
Technical Proposal Due Date:	March 28, 2023	Interview Date:	April 3, 2023
Construction Budget:	\$251,250,000	Construction Duration (Months):	33 months
Owner's Rep. Name and Title:	Mark Reiske, University Architect, Director The University of Kansas, Facilities Planning and Development		
Address (street, city, state, zip)	1246 West Campus Road, Room 36 Lawrence, Kansas 66045		
Owner's Rep. E-mail:	dcmmir@ku.edu	Phone:	785-864-3431

Name of Firm submitting this proposal.

Turner Construction Company

Instructions:

- 1 This form has been developed to meet the requirements set forth in the following Kansas Statutes (K.S.A. 72-6760f, 75-37,143, 75-37,14475-37,145, 76-7,131 and 76-7,132)
- 2 The Cost Proposal Form is due on the same date as the technical proposal and should only be sent to the address listed below in item 6. Do not send a copy to the Owner.
- 3 Should the Owner require more detailed information related to the cost proposal from the selected firm, they may request it after the interviews have concluded.
- 4 The Owner shall provide the information in the orange box at the top of the form to the CMAR firms and to the Kansas Department of Administration.
- 5 The CMAR firm shall complete the second page of this form and shall transmit both pages of the form to the Kansas Department of Administration.
- 6 This form shall be submitted in hard copy and sent in a sealed envelope with the words Cost Proposal, the project title, Owner's project number (if applicable) and the due date listed on the outside of the envelope to:

Frank Burnam, Director
 Department of Administration
 OFPM - Design Construction and Compliance
 700 Harrison, Suite 1200
 Topeka, Kansas 66603
 Phone: 785-291-3989
 E-Mail: frank.burnam@ks.gov
- 7 The Owner shall notify the Kansas Department of Administration when the interviews have concluded by calling or e-mailing the contact in item 6. Once notified the interviews are completed, all original cost proposals and the cost summary sheet will be scanned and sent to the Owner's Representative listed above.

State of Kansas - CMAR Cost Proposal Form
Department of Administration, OFPM-DCC

Proposing Firm Name	Turner Construction Company		
Firm Street Address	1220 Washington, Suite 100		
City, State, Zip Code	Kansas City, MO		
Phone No.	816-283-0555	E-mail Address	jbjones@tcco.com

Explanation of General Conditions and Fee Proposals

The fees and expenses will be fixed as guaranteed lump sum amounts within the estimate unless the project scope increases more than 10%. Only changes that result in actual additional time being required for the construction of the project shall be considered as additional General Conditions costs. The daily cost associated with additional General Conditions shall be no more than the average cost per day of the base fee proposal. Fees for changes in the scope of the project beyond the 10% threshold shall be the same fee as proposed in the base fee and shall apply only to the amount above the 10% threshold.

A. Pre-Construction Services \$ 380,000

Written: Three Hundred Eighty Thousand **Dollars**

The intent of the Pre-Construction services phase is to work with the project's owner and designers to help deliver a satisfactory project that meets the owner's objectives. In addition to estimating, the pre-construction team will participate in design decisions, evaluations, studies, value engineering, value analysis, scheduling, constructability reviews, and more. Design costs, permitting, land acquisition, and life-cycle costs may also be evaluated. In delivering pre-construction services, the Construction Manager will also be negotiating for project construction services and an agreed upon guaranteed maximum price (GMP) for the project.

Maintain a tracking log of team decisions	Promote the project and hold Pre-Bid Conferences
Project Estimates and Variance Reports	Risk Reduction
Establish Bidders List & Pre-Qualify	Budget Escalation Control & Value Engineering

B. Supervision & Management \$ 11,265,000

Written: Eleven Million Two Hundred and Sixty-Five Thousand **Dollars**

The Construction Manager is responsible to provide adequate management and supervision of the project at all times and your proposal will be scored accordingly against the average cost of all proposals. A requirement of this proposal is for all costs associated to this responsibility to be included in Management Personnel Cost for this project. All supervisory and management personnel such as Project Managers, Superintendents, Field and Project Engineers, General Foremen, Quality Assurance, Safety, and any other home office and/or jobsite support staff shall be included in your proposal. The owner will not entertain any additional costs for supervisory or management personnel required for the proper execution and oversight of bid packages, whether or not they are awarded to the Construction Manager. Any additional supervisory or management costs shall be included in the bid for that package. In no case will the Construction Manager be allowed to add additional fees or require subcontractors or suppliers to include an additional fee for the Construction Manager in a bid package.

Project Manager	Safety Engineer
General Superintendent	Home Office Support & Executive Staff
Superintendent	Quality Assurance Manager/Engineer
Assist. Superintendent	Administrative Support
Field Engineer	

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C. Temporary Facilities, Equipment and Contracted Services		\$ 1,240,000
Written: One Million Two Hundred Forty Thousand		Dollars
<p>The Construction Manager shall provide necessary support for the safe and efficient construction of the project. This should include provisions for site offices and storage facilities, all communications equipment, computers and printers, copiers, paper and office supplies, postage, project signage. Expenses for cars and pick up trucks should also be included.</p>		
3rd Party Quality Reviews		Temporary Project Signage
Site Office and Storage Facilities		Portable Toilets
Communications Equipment & Phones		Traffic Control Barriers
Computers & Printers		On Site Roads Construction & Maintenance
Copiers, Paper & Office Supplies		Water and Water Distribution System
Postage & Shipping		Pick Up Trucks
First Aid Supplies		Information Technology Software & Hardware
Fire Extinguishers		Management Software Services & Fees
General Trash Disposal & Recycling		
D. Surety & Insurance		\$ 8,743,000
Written: Eight Million Seven Hundred Forty-Three Thousand		Dollars
<p>All surety and insurance costs should be based on the final project GMP amount. This should include the total cost for the Construction Manager's performance and payment bonds, liability insurance cost including wrap up and captive programs, and all other special insurance requirements noted in this RFP. Costs associated with statutory taxes, employee fringe benefits, and insurance such as workers' compensation and unemployment insurance costs are to be included in the cost for those General Conditions items.</p>		
CM Performance & Payment Bonds		Wrap Up Insurance Programs
Liability Insurance Premiums		Errors and Omissions Insurance
Captive Insurance Programs		Other Special Insurance Required by RFP
E. Base Fee		2.85 %
<p>The proposed base fee shall include all related executive expenses (Project Executive/Principle in Charge), legal expenses for contract and subcontract administration, accounting services, scheduling services including plotting costs, organization, bidding, and awarding of bid packages, budgeting and estimating services, jobsite safety oversight and programs including costs of incentives, Value Engineering services, shop drawing preparation and administration, the maintenance and final production of as-built drawings and building data, collection and presentation of operations and maintenance manuals including all necessary owner training on systems, maintenance of all required code and regulatory documentation, all information technology software and hardware costs associated with the management and accounting of the project construction, all primary office clerical & secretarial work, miscellaneous cost for office copies and printing, and all forms, documents, and reports.</p>		
Project Executive/Management		Estimating & Value Engineering
Accounting Services		Shop Drawing Administration & Approval
Scheduling Services		Maintenance and Final As-Built Drawings
Legal Services		Development of Operations & Maint. Manuals
Purchasing, Bid Packages Organization		Building Code Compliance & Administration
Bid Package Bidding & Administration		Systems Training