

AGREEMENT

THIS AGREEMENT is made this 17th day of July, 2018, by and between the City of Lawrence, Kansas, a municipal corporation, and Lawrence Humane Society, Inc., a 501(c)(3) nonprofit organization.

RECITALS

- A.** The City of Lawrence ("City") and the Lawrence Humane Society, Inc., ("Grantee"), have a long history of partnership regarding the provision of services pertaining to the City's enforcement of Chapter 3 of the Code of the City of Lawrence – Animal Control Code.
- B.** At its January 3rd, 2017, meeting, the Governing Body of the City of Lawrence approved Resolution No. 7186, (attached hereto as **Exhibit A**) declaring the City's intent to issue general obligation bonds to support a proposal from the Grantee, to use said bond proceeds to help fund the construction of an expansion of the Lawrence Humane Society facility ("the Project") located at 1901 East 17th Street and 1805 East 19th Street, Lawrence, Douglas County, Kansas, as legally described on **Exhibit B** ("the Property").
- C.** The Grantee has requested a grant pursuant to Resolution No. 7186 for use in construction of the Project.
- D.** The Grantee will not request a \$2.5 million loan as anticipated in Resolution No. 7186.
- E.** At its July 17, 2018, public meeting, the Governing Body adopted Ordinance No. 9516 (attached hereto as **Exhibit C**), approving the grant request and authorizing the City Manager to enter into this Agreement with Grantee, whereby Grantee will receive a grant from the City in the amount of \$2,500,000.00 to reimburse Grantee for a portion of the costs of the Project.
- F.** This Agreement memorializes the terms of such grant and grants to Grantee the sum of \$2,500,000.00, all as authorized by Ordinance No. 9516, for reimbursement of a portion of the costs of the Project, subject to Grantee's execution of this Agreement and compliance with its terms.

TERMS

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. Grant of Funds. In consideration of the Grantee's construction of the Project and in accordance with the request for grant funds as approved by the Governing Body, the City hereby grants to Grantee the sum of **TWO MILLION, FIVE HUNDRED THOUSAND DOLLARS** (\$2,500,000.00) to reimburse Grantee for a portion of the costs of the Project.

SECTION 2. Grantee's Covenants. As consideration for receipt of the grant, Grantee agrees and covenants as follows:

- (a) Grantee has and will comply with all applicable federal, state, and local laws.
- (b) On April 25, 2018, the Board of the Lawrence Humane Society, Inc. adopted a Resolution (attached hereto as **Exhibit D**), authorizing construction of the Project and authorizing the execution and delivery of the construction contract.
- (c) The final construction plans for the Project are attached hereto as **Exhibit E**. The construction contract for the Project (the "Construction Contract") is attached hereto as **Exhibit F**. Grantee will promptly provide to the City copies of any change orders approved pursuant to the construction contract.
- (d) The current budget for the Project, including all furnishings, fixtures and equipment necessary to use the Project for its intended purposes, is attached hereto as **Exhibit G**. To the extent that the cost of any change orders approved by Grantee exceed contingency amounts set forth in the budget, Grantee shall promptly provide an updated budget to the City showing the sources of revenues to fund such additional costs.
- (e) Grantee has provided to the City a copy of its unaudited financial statements for the fiscal year ending December 31, 2017 and will provide the City with a copy of its 2017 Financial Audit, no later than August 31, 2018.
- (f) Grantee will provide the City with a copy of its IRS Form 990 for 2017, no later than August 31, 2018. During the term of this Agreement, Grantee will maintain its status as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.
- (g) A statement of the sources of all funds necessary to pay the total costs of the Project, together with a true and accurate copy of the Grantee's Statement of Cash on hand as of March 31, 2018 and a certification regarding the Grantee's total expenditures of funds on the Project as of March 31, 2018, is attached hereto as **Exhibit H**.

- (h) A Commitment Letter from the Lender for any portion of the Project to be financed by the Grantee is attached hereto as **Exhibit I**.
- (i) City shall have the right to review and approve any and all documents (including amendments thereto) evidencing financing or refinancing of the Project. The City's approval rights shall only relate to a review in order to determine that the financing documents are consistent with the terms of this Agreement. Grantee will provide copies of such proposed financing documents to the City, and the City shall have 10 days to review and approve such documents or communicate in writing any concerns with the proposed financing documents. City and Grantee shall in good faith negotiate any necessary changes to the proposed financing documents to ensure consistency with the terms of this Agreement.
- (j) Grantee shall use its best efforts to, promptly after execution of this Agreement, enter into an agreement with the City for the provision of animal control housing services to the City (the "Service Agreement"), with such services to be provided at least at the level of service provided by the Grantee to the City within the past 10 years, on terms at least as favorable to both parties as the terms for such service within the past 10 years.

SECTION 3. Disbursement of Funds.

- (a) Within 7 business days after the effective date of this Agreement, the City shall pay to the Grantee the sum of \$500,000.
- (b) For each monthly payment request received by the Grantee from the contractor pursuant to the Construction Contract on or after August 1, 2018 (each a "Monthly Contractor Payment Request"), the Grantee shall, within 30 days of receipt of such Monthly Contractor Payment Request, submit to the City Manager's Office a request for disbursement of funds in substantially the form attached hereto as **Exhibit J** (the "Disbursement Request"), with a request that the City pay to the Grantee an amount equal to the lesser of (i) 33.33% of each such Monthly Contractor Payment Request or (ii) \$350,000.00.
- (c) Notwithstanding the payments specified in paragraphs (a) and (b) above, the total amount paid to the Grantee shall not exceed \$2,250,000 until the Grantee has received an occupancy permit for the Project. Upon the Grantee's receipt of an occupancy permit for the Project and the City's receipt of a Disbursement Request for the undisbursed balance of the \$2,500,000 Grant to be paid pursuant to this Agreement, the City shall pay the undisbursed balance of the Grant to the Grantee.

- (d) Within three business days of the City's receipt of each Disbursement Request, City staff shall review the Disbursement Request and communicate any concerns to the Grantee or let Grantee know that the payment of the requested funds will be recommended to the City Commission for payment at the next regularly scheduled City Commission meeting. Within 30 days of the City's receipt of each Disbursement Request, the City shall pay to the Grantee the amount of the Grant requested pursuant to such Disbursement Request.
- (e) In accordance with the Kansas Cash-Basis Law of 1933, codified as amended at K.S.A. 10-1101 *et seq.*, the City retains the right to unilaterally adjust the amount of any disbursement to the Grantee pursuant to this Agreement.

SECTION 4. City's Rights in the Project.

- (a) For a period of 20 years following the date of the City's initial disbursement of any proceeds of the Grant provided pursuant to Section 2 of this Agreement, the City shall have an option to purchase the Project under the following terms:
 - i. The City's purchase option may be exercised at any time one or more of the following actions have occurred:
 - 1. An event of default under any of Grantee's financing obligations shall have occurred and is continuing for longer than the cure period provided in such financing documents.
 - 2. An event of default has occurred with respect to this Agreement, any agreements related to the Project, or the Service Agreement.
 - 3. An event of default by the Grantee under the Construction Contract.
 - ii. If exercised, the City's purchase price shall be equal to (1) the fair market value of the Property, including all related furnishings, fixtures and equipment necessary to operate the Project for the City's animal control purposes, less (2) an amount necessary to compensate the City for the value of the Grant provided pursuant to this Agreement, which amount shall be computed for each year of the purchase option as an amount equal the amount of the Grant paid to the Grantee (up to \$2,500,000) less 5% per year for each year of the 20 year purchase option.
 - iii. The fair market value of the Project shall be determined as set forth below in accordance with the Uniform Standards of Professional Appraisal Practice. To determine the fair market value, each party shall designate an appraiser, who shall be a member of the Appraisal

Institute (or any successor thereto or other comparable entity) and shall have been actively engaged in the appraisal of commercial real estate in the vicinity of the Project for a period of not less than five years immediately preceding his or her appointment. If the two appraisers agree as to the fair market value of the Project, then that valuation will be the purchase price. If the two appraisers cannot agree as to the fair market value of the Project, then the parties may: **(i)** negotiate a purchase price that is a compromise of the two appraised values and that shall be deemed the fair market value of the Project; or **(ii)** agree to hire a third appraiser, after which time the lowest and highest appraisals will be rejected and the middle appraisal shall be the fair market value. Each party shall pay for its own appraiser and shall share equally the cost of any third appraiser.

- (b)** Any loan documents entered into by Grantee with respect to the Project shall provide, and the lender shall consent, that lender's rights in and to the Project are subordinate to the City's purchase option as set forth in paragraph (a) of this Section 3.

SECTION 5. Ongoing Reporting Requirements. During the term of this Agreement, the Grantee shall provide the following reports to the City:

- (a)** During construction of the Project:
 - i. notice of any default by the Grantee or the contractor under the terms of the Construction Contract, with notice provided promptly after Grantee or the contractor are given such notice pursuant to the Construction Contract;
 - ii. Monthly, no later than 30 days following the end of each calendar month:
 - 1. monthly construction progress reports related to the Project;
 - 2. monthly unaudited financial statements of the Grantee;
 - 3. monthly reports describing the amount of pledges received by the Grantee related to the Project, along with projections related to the timing of receipt of the proceeds of such pledges; and
- (b)** In addition to the reporting requirements set forth in paragraph (a), the Grantee shall provide the following annual reports:
 - i. Annual audited financial statements of the Grantee shall be provided no later than each August 31 following the end of each fiscal year;
 - ii. The Grantee's IRS Form 990 with proof of filing shall be provided no later than each August 31 following the end of each fiscal year;

SECTION 6. Term. This Agreement will terminate 20 years from the date the City pays the final disbursement of the Grant or upon the joint agreement of the parties, whichever occurs earlier. The parties agree that the Indemnity provision, as set forth in Section 8, shall survive any early termination of this Agreement upon the joint agreement of the parties.

SECTION 7. Compliance with Equal Opportunity Laws, Regulations, and Rules

- (a) Grantee agrees that it will comply with all provisions of the Kansas Acts Against Discrimination of 1953 ("KAAD"), codified as amended at K.S.A. 44-1001 *et seq.*, and the Kansas Age Discrimination in Employment Act of 1983 ("KADEA"), codified as amended at K.S.A. 44-1111 *et seq.* and shall not discriminate against any person, in the course of performing under this Agreement, because of that person's race, religion, sex, disability, national origin, ancestry, sexual orientation, familial status, or age.
- (b) In all solicitations or advertisements for employees, Grantee shall include the phrase "equal opportunity employer," or a similar phrase approved by the Kansas Human Rights Commission ("KHRC").
- (c) In any subcontract, grantee agrees to include the language of this Section applicable to any subcontractor hereunder.
- (d) Grantee also agrees to comply with the American with Disabilities Act of 1990 ("ADA"), codified as amended at 42 U.S.C. § 12101 *et seq.*, as well as all other federal, state, and local laws, ordinances, rules, and regulations applicable to this project and to furnish any and all certification that may be required by federal, state, or local governmental agencies in connection therewith.
- (e) If Grantee is found guilty or liable for any violation of the KAAD or the KADEA by way of a final decision or order of the KHRC, then Grantee shall be deemed to have breached the present Agreement and the City may take whatever legal action is allowable by law and pursuant to this Agreement.

SECTION 8. Indemnification. Grantee agrees to defend, indemnify, and otherwise hold harmless the City, its commissioners, officers, employees, and agents from any and all claims, actions, damages, costs, liabilities, settlements, judgments, expenses, or lawsuits, including attorneys' fees, arising pursuant to Grantee's actions under this Agreement or with respect to the Project.

SECTION 9. Entire Agreement.

- (a) This Agreement represents the entire and integrated agreement between the City and Grantee and supersedes all prior negotiations, representations, or agreements between the parties, whether written or oral. This Agreement may be amended only by a written instrument signed by both the City and the Grantee.
- (b) No oral orders, objections, claims, or notices by any party to the other shall affect or modify any of the terms or obligations set forth in this Agreement; and none of its provisions shall be deemed waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver, modification, or amendment made in writing and signed by both parties.

SECTION 10. Assignment. This Agreement is non-assignable by the Grantee or by the City.

SECTION 11. Authorizations; Recording in Real Estate Records. Each person executing this Agreement in behalf of the City and Grantee hereby represents and warrants that he or she has the authority to bind his or her respective party hereto and that all acts requisite to confer authorization to enter into this Agreement have been taken and completed. The Parties agree to execute and deliver an original of this Agreement and any amendments or supplements hereto (or a memorandum thereof), in proper form for recording in the real estate records of Douglas County, Kansas. This Agreement (or a memorandum thereof) shall be promptly recorded by the City at the City's cost after execution, and proof of recording shall be provided to the Grantee.

SECTION 12. Independent Contractor. In no event, while performing under this Agreement, shall Grantee, its officers or principal, its employees, its agents, its subcontractors, or its vendors be deemed to be acting as an employee or as employees of the City; rather, Grantee, its officers or principal, its employees, its agents, its subcontractors, and its vendors shall be deemed to be an independent contractor or independent contractors. Nothing expressed herein or implied herein shall be construed as creating between Grantee and the City the relationships of employer and employee, principal and agent, a partnership, or a joint venture.

SECTION 13. Force Majeure. Neither party shall be deemed to be at default under this Agreement to the extent that any delay in performance results from any cause beyond its reasonable control and without its intentional act or negligence.

SECTION 14. Captions. The Captions of this Agreement are for convenience only and are not meant by the parties to define, limit, or enlarge the scope of this Agreement or its terms.

SECTION 15. Recitals. The recitals set forth at the beginning of this Agreement are adopted and incorporated herein by reference as if set forth in full and shall be effective as if repeated *verbatim*.

SECTION 16. Governing Law. This Agreement, the rights and obligations of the parties, and any claim or dispute arising hereunder shall be construed in accordance with the laws of the State of Kansas.

SECTION 17. Severability. In the event that any provision of this Agreement shall be held invalid and unenforceable, the remaining portions of this contract shall remain valid and binding upon the parties.

SECTION 18. Electronic Transactions. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date noted above.

CITY:
**City of Lawrence, Kansas, a
municipal corporation**

THOMAS M. MARKUS
City Manager

ACKNOWLEDGMENT

STATE OF KANSAS)
)
COUNTY OF DOUGLAS) ss:

BE IT REMEMBERED, that on this ____ day of _____, 2018, before me the undersigned, a notary public in and for the County and State aforesaid, came Thomas M. Markus, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

Notary Public

My Appointment Expires:

GRANTEE:
Lawrence Humane Society, Inc, a
501(c)3 not-for-profit corporation



Khatija Meghji
Executive Director

ACKNOWLEDGMENT

STATE OF KANSAS)
)
COUNTY OF DOUGLAS) ss:

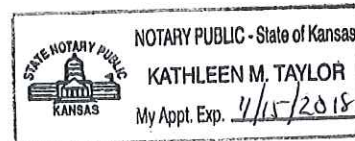
BE IT REMEMBERED, that on this 9th day of July, 2018, before me the undersigned, a notary public in and for the County and State aforesaid, came Khatija Meghji, as Executive Director of the Lawrence Humane Society, Inc. a not-for-profit corporation, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.



Notary Public

My Appointment Expires: 11/15/2018



Schedule of Exhibits

- A. Resolution No. 7186**
- B. Legal Description of the Property**
- C. Ordinance No. 9516**
- D. Humane Society Resolution regarding the Project**
- E. Final Construction Plans**
- F. Construction Contract**
- G. Project Budget**
- H. Project Sources and Uses; Grantee's Statement of Cash on Hand as of March 31, 2018; Grantee's Total Project Expenditures as of March 31, 2018**
- I. Commitment Letter**
- J. Form of Disbursement Request**

EXHIBIT A

RESOLUTION NO. 7186

RESOLUTION NO. 7186

A RESOLUTION OF THE CITY OF LAWRENCE, KANSAS, DECLARING THE CITY'S INTENT TO ISSUE ONE OR MORE SERIES OF ITS GENERAL OBLIGATION OR SPECIAL OBLIGATION BONDS IN AN AGGREGATE AMOUNT OF NOT TO EXCEED \$5,000,000 TO FINANCE A PORTION OF THE COSTS OF ACQUIRING, CONSTRUCTING AND EQUIPPING A FACILITY TO BE LOCATED IN THE CITY AND OCCUPIED BY THE LAWRENCE HUMANE SOCIETY, INC., AND AUTHORIZING OTHER ACTIONS RELATED THERETO.

WHEREAS, the governing body of the City of Lawrence, Kansas (the "City") has considered the needs of the City for an orderly plan of animal control in order to provide for the public safety and welfare of its citizens; and

WHEREAS, the City has entered into discussions with the Lawrence Humane Society, Inc., a 501(c)(3) nonprofit organization (the "Humane Society"), regarding financing a portion of the acquisition, construction and equipping of a facility to be located in the City and owned and occupied by the Humane Society (the "Project") in order to better provide the City with animal control and services related thereto; and

WHEREAS, the Humane Society has undertaken fundraising efforts to finance the Project; and

WHEREAS, the governing body of the City hereby finds and determines that it is advisable and in the interest of the public health, safety and welfare of the City to encourage and support animal control activities in the City; and

WHEREAS, provided certain conditions stated herein are satisfied, the City intends to partner with the Humane Society in financing the Project by (a) making a grant to the Humane Society in the approximate amount of \$2,500,000 (the "Grant"), and (b) making a loan to be repaid by the Humane Society in the approximate amount of \$2,500,000 (the "Loan"), both for use in connection with the Project; and

WHEREAS, Article 12, § 5 of the Constitution of the State of Kansas empowers cities to determine their local affairs and government and provides that such power and authority granted thereby to cities shall be liberally construed for the purpose of giving to cities the largest measure of self-government; and

WHEREAS, there is no enactment of the Kansas legislature which prohibits a city from issuing bonds to provide funds for the Grant and the Loan; and

WHEREAS, the governing body of the City desires to issue the Bonds (as defined herein) to provide funds for the Grant and the Loan to be used in connection with the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS:

Section 1. Public Safety. The governing body of the City hereby finds and determines that the Project will promote the general welfare and safety of citizens in the City and its environs.

Section 2. Intent to Issue Bonds. Subject to the conditions stated in **Section 3** hereof, the governing body of the City hereby declares the City's intent to finance a portion of the Project by means of the Grant and the Loan out of proceeds of one or more series of general obligation or special obligation bonds to be issued by the City in the aggregate principal amount of not to exceed \$5,000,000 (collectively, the "Bonds").

The City intends to finance the Grant by the issuance of the City's general obligation bonds, which, if issued, shall be payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City.

The City intends to finance the Loan by the issuance of the City's special obligation bonds, which, if issued, shall be payable solely from amounts derived by the City under a separate lease agreement relating to the Project by and between the City and the Humane Society. If issued, such special obligation bonds shall not constitute a general obligation of the City, the State or of any other political subdivision thereof within the meaning of any State constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the City, the State or of any other political subdivision thereof and shall not be payable in any manner by taxation. If issued, such special obligation bonds shall not, directly, indirectly or contingently, obligate the City, the State or any other political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment.

Section 3. Conditions Precedent to Issuance of Bonds. Provided nothing herein shall obligate the City to issue the Bonds, the City will consider issuing the Bonds only upon the Humane Society depositing an amount of \$2,500,000 into an account dedicated to funding the Project held with a bank to be agreed upon by the City and the Humane Society.

Section 4. No Reliance on Resolution. Kansas law provides that the City may only issue the Bonds by the governing body passing an ordinance and compliance with other state law requirements. The City has not yet adopted an ordinance for the Bonds. This Resolution only evidences the intent of the current governing body to issue the Bonds for the Project. The Humane Society should not construe the adoption of this Resolution as a promise or guarantee that the Bonds will be issued.

Section 5. Termination of Resolution. This Resolution shall terminate three years from the date of the adoption of this Resolution unless the Bonds have been issued for the Project. The City, upon the request of the Humane Society, may extend this time period.

Section 6 Further Authority. The officials of the City, the City's attorney and other consultants are authorized to proceed with such planning and document preparation as necessary in order to comply with the intent of this Resolution, subject to final approval of such documents by the governing body.

Section 7. Effective Date. This Resolution shall be effective from and after adoption by the governing body.

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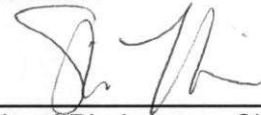
ADOPTED by the governing body of the City of Lawrence, Kansas, on January 3, 2017
and **APPROVED AND SIGNED** by the Mayor.

(SEAL)




Mike Amyx, Mayor

ATTEST:



Sherri Riedemann, City Clerk

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EXHIBIT B

LEGAL DESCRIPTION OF THE PROPERTY

**LOT ONE (1), LAWRENCE HUMANE SOCIETY ADDITION, A SUBDIVISION IN
THE CITY OF LAWRENCE, DOUGLAS COUNTY, KANSAS.**

EXHIBIT C

ORDINANCE NO. 9516

EXHIBIT D

HUMANE SOCIETY RESOLUTION REGARDING THE PROJECT



RESOLUTION

WHEREAS, the mission of the Lawrence Humane Society, Inc. (“LHS”) is to nurture the human-animal bond by providing shelter, care, and advocacy for homeless and abused animals, as well as resources for the pets and people in the LHS community; and

WHEREAS, the current facility utilized by LHS in furtherance of its mission is in need of substantial repairs and, due to its design and age, presents numerous challenges to the health and welfare of the animals in the care of LHS; and

WHEREAS, to enhance the ability of LHS to pursue its mission, and to provide a comfortable and safe environment to the animals in their care, the LHS Board of Directors (“Board”) has determined it to be in the best interests of the LHS mission that LHS construct a new shelter; and

WHEREAS, the Lawrence Humane Society requested funding in the amount of \$2.5 million, which was approved under City Resolution 7186 adopted on the 3rd of January, 2017, for construction of an expansion of the Lawrence Humane Society facility located at 1901 East 17th Street and 1805 East 19th Street, Lawrence, Douglas County, Kansas.

NOW, THEREFORE, BE IT RESOLVED, that LHS officers are hereby authorized to proceed with the construction of a new shelter in Lawrence, Kansas, in accordance with the presentation to the Board at this meeting, which authorization shall include the authority to execute and deliver any and all documents and instruments, and obtain necessary governmental permits and approvals, in furtherance of the new shelter.

Adopted this 25th day of April, 2018.

Signature: 
Name: John P. Olsen
Title: LHS Board Chair



Secretary: I hereby certify that the LHS Board of Directors duly adopted the foregoing resolution at a legal meeting on the 25 day of April, 2018.


Signature: 
Name: Al Horning
Title: LHS Board Secretary

EXHIBIT E
FINAL CONSTRUCTION PLANS

[on file with the City Development Services Building Safety Division]

EXHIBIT F
CONSTRUCTION CONTRACT

 **AIA** Document A133™ – 2009

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

AGREEMENT made as of the Seventh day of November in the year Two Thousand Seventeen
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

Lawrence Humane Society
1805 E. 19th Street
Lawrence, Kansas 66046

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

Mar Lan Construction, LLC
1008 New Hampshire Street, Suite 200
Lawrence, Kansas 66044

for the following Project:
(Name and address or location)

Lawrence Humane Society
1805 E. 19th Street
Lawrence, Kansas 66046

The Architect:
(Name, legal status and address)

Sabatini Architects Inc.
730 New Hampshire Street, Suite 233
Lawrence, Kansas 66044

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

Kate Meghji
1805 E. 19th Street
Lawrence, Kansas 66046

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

ADDITIONS AND DELETIONS:

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

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

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

init.

Gale Lantis
Mar Lan Construction
1008 New Hampshire Street, Suite 200
Lawrence, Kansas 66044
P. (785) 749-2647

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

Daniel M. Sabatini
Sabatini Architects Inc.

The Owner and Construction Manager agree as follows.

Int.

TABLE OF ARTICLES

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- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

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

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's best efforts, skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests; and to furnish the Construction Manager's services and perform the Work with the skill and care of a Construction Manager and general contractors with experience in projects similar to the Project. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

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

Init.

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

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in 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.

§ 2.1 Preconstruction Phase

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

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

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

§ 2.1.6 Subcontractors and Suppliers

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

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

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

2.1.8.1 Project Pre-Construction Meetings

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

2.1.8.2 Review of Design Documents

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

2.1.8.3 Cost/Benefit Analysis

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

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

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

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

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

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

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

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

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

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

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

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

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

§ 2.3 Construction Phase

§ 2.3.1 General

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

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

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§ 2.3.2 Administration

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

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

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

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

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

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

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

§ 2.4 Professional Services

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

§ 2.5 Hazardous Materials

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

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ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

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

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

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

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

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

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

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

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section

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4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties, and responsibilities as described in AIA Document B133™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows: \$12,500

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

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

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

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid 31 (thirty) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

1 % plus Prime Rate as published in the Wall Street Journal.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

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

Refer to Appendix A-Proposed Fees

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

To be negotiated.

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

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To be negotiated.

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

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

Item	Units and Limitations	Price per Unit (\$0.00)
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5.1.6 General Conditions. The project costs identified in Exhibit 5.1.6 as "General Conditions" will be billed each month during construction as a separate element of cost at rates established in Exhibit 5.1.6. Upon execution of the Guaranteed Maximum Priced Amendment, the Construction Manager and Owner will establish a guaranteed maximum amount to be charged for general conditions costs against the Guaranteed Maximum Price.

§ 5.2 Guaranteed Maximum Price

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

5.2.1.1 The Guaranteed maximum Price for this project shall be the total Cost of Work, including 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 work of those separately-contracted subcontractors or vendors, to compensate the Construction Manager for the services necessary to coordinate and supervise their work as if they were directly contracted to the CM.

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

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

§ 5.3 Changes in the Work

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

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

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

and Owner. Adjustments to subcontract shall be based on the cost of the scope change plus a fee as set forth in the General Conditions.

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

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

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

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

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

§ 6.2 Labor Costs

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

§ 6.2.2 [Not used]

§ 6.2.3 [Not used]

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

§ 6.2.5 [Not used]

§ 6.3 Trade Work and Subcontract Costs

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

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

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

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

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

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of

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

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

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

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

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

6.5.2.2 Items which are considered to be customarily owned by construction workers or by a Construction manager and which are not legitimate project rental charges or costs are generally defined to include, but are not 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 cancelling headphones), boots, clothing and similar items typically owned by each tradesman, or by each construction company for the use of their workers.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 [Not used]

§ 6.5.5 [Not used]

§ 6.5.6 [Not used]

§ 6.6 Miscellaneous Costs

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

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

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

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

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

§ 6.6.6 [Not used]

§ 6.6.7 [Not used]

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

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

§ 6.7 Other Costs and Emergencies

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

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

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

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

§ 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Labor, material, and equipment costs and any other costs incurred which are backcharged to subcontractors or material suppliers.

§ 6.9 Discounts, Rebates and Refunds

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

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

§ 6.10 Related Party Transactions

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

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

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

init.

No change.

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the following month, provided that the Architect delivers the approved Application for Payment to the Owner within ten (10) days of Architect's receipt of Application. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

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

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

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly 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. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

Init.

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

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

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

§ 7.2 Final Payment

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

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

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, and completion of all Work.

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

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

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

Init.

ARTICLE 8 INSURANCE AND BONDS

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

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

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

ARTICLE 9 DISPUTE RESOLUTION

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

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be

Litigation in a court of competent jurisdiction
(Paragraphs deleted)

§ 9.3 Initial Decision Maker

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

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

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

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

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

- .1 Take the Cost of the Work and Cost of General Conditions incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that

- Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

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

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

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

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

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

§ 10.3 Suspension

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

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.2 Ownership and Use of Documents

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

§ 11.3 Governing Law

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

§ 11.4 Assignment

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

without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Owner Audits:

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

11.5.2 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.

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

- .4 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

Exhibit 2.0 CM Project Personnel & Hourly Rates Schedule
Exhibit 5.1.4 CM-Owned Equipment Rental Charges
Exhibit 5.1.6 General Conditions Cost Summary
Exhibit 6.6.1 Bonds and Insurance Costs
Appendix A Proposed Fees
Appendix B Cost Allocation Matrix

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


OWNER (Signature)

Kate Meghji, Executive Director
(Printed name and title)


CONSTRUCTION MANAGER (Signature)

GALE LANTIS, GM
(Printed name and title)

Init.

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

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

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PAGE 1

AGREEMENT made as of the Seventh day of November in the year Two Thousand Seventeen

...

Lawrence Humane Society
1805 E. 19th Street
Lawrence, Kansas 66046

...

Mar Lan Construction, LLC
1008 New Hampshire Street, Suite 200
Lawrence, Kansas 66044

...

Lawrence Humane Society
1805 E. 19th Street
Lawrence, Kansas 66046

...

Sabatini Architects Inc.
730 New Hampshire Street, Suite 233
Lawrence, Kansas 66044

...

Kate Meghji
1805 E. 19th Street
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PAGE 2

Gale Lantis
Mar Lan Construction
1008 New Hampshire Street, Suite 200
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...

Daniel M. Sabatini

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User Notes:

(1801614678)

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's best efforts, skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests-~~interests~~; and to furnish the Construction Manager's services and perform the Work with the skill and care of a Construction Manager and general contractors with experience in projects similar to the Project. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

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

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

...

2.1.8.1 Project Pre-Construction Meetings

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

2.1.8.2 Review of Design Documents

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

2.1.8.3 Cost/Benefit Analysis

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

...

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

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

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

...

§ 2.3.2.5 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~~Architect within 5 days after the meeting.

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The Owner shall retain an Architect to provide services, ~~duties~~duties, and responsibilities as described in AIA Document B133™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

...

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows: \$12,500

...

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

...

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid 31 (thirty) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

1 % plus Prime Rate as published in the Wall Street Journal.

...

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

...

Refer to Appendix A-Proposed Fees

...

To be negotiated.

PAGE 10

To be negotiated.

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

...

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

...

5.2.1.1 The Guaranteed maximum Price for this project shall be the total Cost of Work, including 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 work of those separately-contracted subcontractors or vendors, to compensate the Construction Manager for the services necessary to coordinate and supervise their work as if they were directly contracted to the CM.

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

...

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

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§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.) [Not used]

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

...

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

§ 6.3 Trade Work and Subcontract Costs

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

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

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

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

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

6.5.2.2 Items which are considered to be customarily owned by construction workers or by a Construction manager and which are not legitimate project rental charges or costs are generally defined to include, but are not 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 cancelling headphones), boots, clothing and similar items typically owned by each tradesman, or by each construction company for the use of their workers.

...

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

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

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

...

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

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

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

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

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No change.

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than ~~the day of the month.~~ last day of the following month, provided that the Architect delivers the approved Application for Payment to the Owner within ten (10) days of Architect's receipt of Application. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ~~(—thirty (30)~~ days after the Architect receives the Application for Payment.

...

- .3 Add the Construction Manager's Fee, less retainage of five percent (5%). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5%) from that portion of the Work that the Construction Manager self-performs;

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

...

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

...

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

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

...

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

...

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

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

Litigation in a court of competent jurisdiction

— Other: (Specify)

...

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

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

§ 11.5 Other provisions: Owner Audits:

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

11.5.2 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.

...

Exhibit 2.0 CM Project Personnel & Hourly Rates Schedule
Exhibit 5.1.4 CM-Owned Equipment Rental Charges
Exhibit 5.1.6 General Conditions Cost Summary
Exhibit 6.6.1 Bonds and Insurance Costs
Appendix A Proposed Fees
Appendix B Cost Allocation Matrix

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Kate Meghji, Executive Director



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Daniel M. Sabatini, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:50:15 on 12/04/2017 under Order No. 2450620164 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

President

(Title)

12/4/2017

(Dated)

AIA[®] Document A133[™] – 2009 SP Exhibit A

Guaranteed Maximum Price Amendment

for the following PROJECT:

(Name and address or location)

Lawrence Humane Society
1805 E. 19th Street
Lawrence, Kansas 66046

THE OWNER:

(Name, legal status and address)

Lawrence Humane Society
1805 E. 19th Street
Lawrence, Kansas 66046

THE CONSTRUCTION MANAGER:

(Name, legal status and address)

Mar Lan Construction LLC
1008 New Hampshire Street, Suite 200
Lawrence, Kansas 66044

ARTICLE A.1

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed Six Million Seventy Five Thousand Seven Hundred Eighty-Six Dollars (\$ 6,075,786.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide below or reference an attachment.)

Refer to Exhibit A – LHS GMP Proposal Amendment 5/17/2018

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

Alternate 5 – Frit Glass

ADDITIONS AND DELETIONS:

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

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

AIA Document A201[™]-2007 SP, General Conditions of the Contract for Construction, for use on a Sustainable Project, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Alternate 14 – Medical Gasses
 Alternate 10 – Applied Moisture Barrier on Slab

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)
Reception desk	\$6,324.00
Interior Signage	\$2,467.00
City of Lawrence Water Fees	\$20,000
Light Fixture Allowance	\$6,324.00
Access Control	\$6,800.00
CCTV	\$8,400.00
Monument Sign	\$10,000.00

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

Refer to Exhibit A – LHS GMP Proposal Amendment 5/17/2018

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
NA			

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)

Refer to Exhibit B-LHS Specifications 100% CD 2018-0330 and the following Addendums:

1	Addendum	04/09/2018
2	Addendum	04/13/2018
3	Addendum	04/17/2018
4	Addendum	04/17/2018
5	Addendum	05/03/2018
Sheet A120	City Parapet Sheet A120	05/08/2018

Section	Title	Date	Pages
---------	-------	------	-------

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

Refer to Exhibit C-20180330 LHS Original Contract Documents and the following list of addendums.

Number	Title	Date
1	Addendum	04/09/2018
2	Addendum	04/13/2018
3	Addendum	04/17/2018
4	Addendum	04/17/2018
5	Addendum	05/03/2018
Sheet A120	City Parapet Sheet A120	05/08/2018

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following Sustainability Plan:
(Identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information.)

Title
NA

Date

Pages

Other identifying information:

NA

§ A.1.1.10 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

NA

ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

395 calendar days after issuance of the City of Lawrence building permit.


OWNER (Signature)

Kate Meghji, Executive Director
(Printed name and title)


CONSTRUCTION MANAGER (Signature)

Gale Lantis, General Manager
(Printed name and title)

Init.

EXHIBIT G
PROJECT BUDGET

**Lawrence Humane Society
Project Budget**

7/3/2018

Building Area (Square Feet)

21,310

Description **Cost Totals**

Income

Projected Funding \$ 7,500,000

Expense

Construction

MarLan GMP 2.2 (includes contractor's contingency \$92,596) \$ 6,096,000

Furnishings, Furniture & Equipment

Caging and Kennel Estimate \$ 353,351

Equipment Estimate \$ 66,800

Office & Public Furnishing / Equipment Budget \$ 50,000

Furnishings, Furniture & Equipment Sub-Total \$ 470,151

Abatement Estimated

\$ 12,000

Fees

Arch/Struct/MEP/Civil/Acoustic/Commissioning \$ 605,968

FF&E Services (caging and kennels) \$ 32,145

FF&E Services (Office and Concourse) Estimated \$ 5,000

Soil Testing - Geotechnical \$ 4,800

Construction Testing - Estimate \$ 23,120

Attorney Fees Estimated (Tax - Legislative Action) \$ 50,000

Fees Sub-Total \$ 721,033

Other

Owner Construction Contingency at 3.3% \$ 200,816

Total Expenses for the project

\$7,500,000

Overage

\$0

EXHIBIT H

**PROJECT SOURCES AND USES;
GRANTEE'S STATEMENT OF CASH ON HAND AS OF MARCH 31, 2018;
GRANTEE'S TOTAL PROJECT EXPENDITURES AS OF MARCH 31, 2018**

Lawrence Humane Society
Sources and Uses, Cash and Expense

As of 5/31/2018

Sources (000's)		Uses (000's)	
US Bank Loan (approx.)	\$1,900	Construction of Facility (includes contractor's contingency \$94,696)	\$6,096
Pledges Already Collected	\$3,183	FF&E	\$470
City of Lawrence	\$2,500	Arch/Struct/MEP/Ciivil/Acoustic/Commisioning Fees	\$606
		Other Fees	\$127
		Construction Contingency	\$201
Total Sources	\$7,583	Total Uses	\$7,500

Cash Received & Expended (000's)		Total Revenues (000's)	
Humane Society Cash - USB	\$163	City of Lawrence	\$2,500
Humane Society Cash - CNB	\$44	Donations Received as of 5/31/18	\$3,183
Humane Society Cash - DCCF	\$2,452	Outstanding pledges as of 5/31/18	\$1,506
		Fundraising Goal to Complete	\$311
Funds Expended for Building	\$524		
Total Funds Received	\$3,183	Total Uses	\$7,500

Lawrence Humane Society, Inc Transactions by Account As of March 31, 2018

Type	Date	Num	Adj	Name	Memo	Class	Clr	Split	Debit	Credit	Balance
1950 - WIP											
General Journal	12/31/2015	audit-5	*		Design Learned			9000 · Ask My ...	22,866.00		22,866.00
General Journal	05/31/2016	START	*			Capital C...		1001 · LHS Ce...	60,537.35		83,403.35
Bill	06/03/2016	13371		Sabatini Architects		Capital C...		2000 · Account...	6,478.94		89,882.29
Bill	07/18/2016	13395		Sabatini Architects		Capital C...		2000 · Account...	23,852.44		113,734.73
Bill	08/04/2016	13411		Sabatini Architects	Schematic Design	Capital C...		2000 · Account...	3,984.00		117,718.75
Bill	09/07/2016	13433		Sabatini Architects		Capital C...		2000 · Account...	7,227.00		124,945.75
Bill	10/06/2016	13450		Sabatini Architects		Administr...		2000 · Account...	2,228.50		127,174.25
General Journal	10/31/2016	JE	*		To reclass January - May Jeffery Byrne costs	Administr...		7005 · Capital ...		37,500.00	89,674.25
Bill	11/07/2016	13465		Sabatini Architects		Capital C...		2000 · Account...	2,433.02		92,107.27
Bill	10/17/2017	13663		Sabatini Architects		Administr...		2000 · Account...	9,643.50		101,750.77
Bill	10/17/2017	13662		Sabatini Architects		Administr...		2000 · Account...	126,660.50		228,411.27
Bill	10/25/2017	1417		Grob Engineering Se...	survey	Administr...		2000 · Account...	4,320.00		232,731.27
Bill	10/26/2017	00529...		Professional Service ...	Geotechnical services	Administr...		2000 · Account...	4,800.00		237,531.27
Bill	11/06/2017	13668		Sabatini Architects	Design Development Services	Administr...		2000 · Account...	53,681.70		291,212.97
Bill	11/06/2017	13669		Sabatini Architects	Furnishings, etc	Administr...		2000 · Account...	2,893.05		294,106.02
Bill	01/05/2018	13713		Sabatini Architects	Design Development Services	Administr...		2000 · Account...	35,787.80		329,893.82
Bill	01/05/2018	13714		Sabatini Architects	Furnishing, Furniture and Equipment	Administr...		2000 · Account...	1,928.70		331,822.52
Bill	02/06/2018	13717		Sabatini Architects	Construction Document Services	Administr...		2000 · Account...	67,102.13		398,924.65
Bill	02/06/2018	13718		Sabatini Architects	Furnishings, furniture, equipment	Administr...		2000 · Account...	3,616.31		402,540.96
Bill	03/05/2018	13731		Sabatini Architects	Construction document services	Administr...		2000 · Account...	55,918.44		458,459.40
Bill	03/05/2018	13732		Sabatini Architects	Furnishings	Administr...		2000 · Account...	3,015.20		461,474.60
Check	03/30/2018	100745		City of Lawrence	bond expense	Capital C...		1007 · US Bank...	1,000.00		462,474.60
Total 1950 · WIP									499,974.60	37,500.00	462,474.60
TOTAL									499,974.60	37,500.00	462,474.60

EXHIBIT I
COMMITMENT LETTER

**LAWRENCE HUMANE SOCIETY
PLEDGE CREDIT FACILITY
SUMMARY OF TERMS AND CONDITIONS
(FOR DISCUSSION PURPOSES ONLY)**

March 26th, 2018

The proposed terms and conditions summarized in this term sheet (the "Term Sheet") are provided for discussion purposes only and do not constitute an offer, agreement, or commitment to lend. This Term Sheet is intended as an outline only and does not purport to summarize all the terms, conditions, covenants, representations, warranties or other provisions which would be contained in definitive legal documentation of the financing transaction contemplated herein. The actual terms and conditions upon which the Lender would extend credit to the Borrower are subject to further due diligence, formal credit approval, satisfactory review of documentation, and such other terms and conditions as may be determined by the Lender and its counsel.

BORROWER: Lawrence Humane Society, Incorporated ("LHS")

LENDER: U.S. Bank National Association ("U.S. Bank" or the "Lender").

TYPE OF CREDIT FACILITY: Non-revolving line during construction, followed by a term note (the "Facility")

FACILITY AMOUNT: Up to \$2,500,000

PURPOSE: To fund Eligible Project Pledge receivables that are for the purpose of construction of the Lawrence Humane Society's new facility.

COLLATERAL: All business assets via UCC blanket lien filing

Negative pledge on real estate

First lien security position in Eligible Project Pledges receivables and proceeds thereof.

First lien position of a US Bank account established by the Lawrence Humane Society for the receipt of said Project Pledges.

TERM: Interest-only draw period to end May 31st, 2019, at which time, principal balance will have a fixed rate of interest and begin amortizing

Up to Five (5) Years from the date of Closing Date (the "Maturity Date").

REPAYMENT: During draw period: monthly interest

During term portion: Monthly interest with principal to be paid down as proceeds of Eligible Project Pledges are collected and at maturity.

Facility will have a minimum principal pay down due at the end of December each year, starting in 2019, that will substantially correlate with the pledge receivables schedules, however, all pledges collected in the US Bank account will be applied to the facility as a principal pay



down.

INTEREST RATE: During the draw period: One Month LIBOR Reset Monthly plus 1.40%, which would be 3.3375% as of 03/26/2018

After draw period: Fixed rate, based upon an indicative rate of 4.48% per annum as of 03/26/2018, such rate to be adjusted as of the date the fixed interest rate goes into effect as to maintain the same margin over U.S. Bank's cost of funds as that which is included in the above indicative rate.

COMPUTATION BASIS: Computation of interest shall be calculated on an actual / 360-day basis and actual days elapsed.

COMMITMENT FEE: Waived.

UPFRONT FEE: Waived.

REPRESENTATIONS AND WARRANTIES: The usual representations and warranties in connection with each loan shall be included in the credit agreement, including, without limitation, due authorization and organization, validity and enforceability of transaction documents, accuracy of all disclosures and financial information; no usury restrictions, no margin stock, no proposed legal changes, continued accuracy of representations, no investment company, title to assets, insurance, third party reimbursement, incorporation of representations and warranties from transaction documents, absence of material adverse change, absence of material litigation, absence of default or unmatured default, representations regarding environmental issues, and compliance with all material requirements of law and contracts.

GENERAL COVENANTS (AFFIRMATIVE/NEGATIVE): The Loan Agreement shall contain standard covenants for facilities of these types including, but not limited to, the following: performance of obligations under the Transaction Documents; maintenance of existence; further assurances; books and records; reporting requirements; compliance with laws; insurance; restrictions on additional debt; restrictions on investments, acquisitions, loans and advances; restrictions on sale and transfer of assets; restrictions on merger and consolidations; restrictions of burdensome contracts with affiliates; restrictions on voluntary swap terminations and subordination of swap termination fees; restrictions on liens; negative pledge on assets; restrictions on amendments to Transaction Documents; incorporation of covenants from Transaction Documents; ERISA/Pension Plan compliance; most favored nations; use of proceeds; inspection and field audit and notice requirements.

FINANCIAL COVENANTS: Eligible Pledges Coverage Ratio: LHS shall maintain an Eligible



Pledges Coverage Ratio of not less than 1.00 to 1.00 at all times.
Eligible Pledges Coverage Ratio shall mean the ratio of (a) Eligible Pledges outstanding divided by (b) the outstanding principal balance on the Facility.

FINANCIAL REPORTING:

Audited financial statements to be received annually within 180 days of each fiscal year end.
Quarterly financial statements within 45 days of the end of each fiscal quarter.
Borrowing base certificate to be submitted within 45 days of each fiscal quarter and to accompany each request for an advance on the Facility, setting forth the Eligible Pledges outstanding, the outstanding balance under the Facility, availability on the Facility and the amount of the advance requested.
Annual operating and capital budgets within 60 days of fiscal year end.
Additional reports such as updates on capital projects, capital campaigns, new pledges received, pledges collected, pledges outstanding, attendance, admissions and membership levels all satisfactory to the Bank.
Copy of final construction budget
Copy of final construction contract
Copies of all change order requests during construction
Any other requests related to the construction process per Bank's request

CONDITIONS PRECEDENT TO CLOSING:

The Loan Agreement shall include conditions precedent customary for transactions of this nature, including, without limitation, the following:

- I. all requisite approvals and incumbency certificates of officers of the Borrower executing any of the Transaction Documents;
- II. delivery of executed or certified copies, as applicable, of all Transaction Documents;
- III. delivery of organizational documents (articles, bylaws, good standing certificates, etc.) of the Borrower;
- IV. satisfactory due diligence, including receipt and satisfactory review of other information the Bank should reasonably request;
- V. payment of all closing fees and expenses.

COSTS AND EXPENSES:

All costs and expenses incurred in the due diligence, preparation, administration, syndication, and enforcement of all documents executed in connection with this transaction, including all legal expenses, shall be borne by the Borrower.

ADDITIONAL TERMS:

The terms and conditions contained in this proposal are not intended to be comprehensive. The definitive transaction documents may include additional terms and conditions required by the Lender, subject to mutual agreement of the parties, which are not included herein.

CREDIT APPROVAL:

Any commitment to enter into the Facility (including the terms and

conditions proposed herein) or to extend credit is subject to all of the Lender's internal approvals and due diligence procedures. In obtaining credit approval, the Lender reserves the right to modify and/or supplement any of the terms and conditions stated herein. To this end, this term sheet is an expression of interest only, and it is not a contract, commitment nor intent to be bound. The Lender does not intend that this term sheet create any legal rights or obligations, implicit or explicit, in favor of or against the other party. Also, no oral discussions and/or written agreements shall be in place of or supersede written agreements executed by the Borrower and accepted by the Lender.

CONFIDENTIALITY:

This term sheet contains confidential and proprietary structuring and pricing information. Except for disclosure on a confidential basis to your accountants, attorneys and other professional advisors retained by you in connection with the proposed Facilities or as may be required by law; the contents of this term sheet may not be disclosed in whole or in part to any other person or entity without our prior written consent.

NOTE:

This proposal is not a commitment. It is offered as indicative terms on which the Bank is willing to seek credit approval to provide the Facility. The Bank's participation in this transaction is subject to the foregoing terms, completion of appropriate diligence, satisfactory documentation and approval of the Bank's credit approvers.

As more information is obtained, additional substantive conditions may be required and terms may be changed or be supplemented. In addition, upon completion of our analysis and due diligence and if we obtain credit approval of this proposal, loan documentation must be created which will include terms and conditions customary to the Bank, as well as warranties and covenants specific to this transaction.

To that end, this term sheet is an expression of interest only, and it is not a contract, commitment nor intent to be bound. The Bank does not intend that this term sheet or discussions relative to the terms of this term sheet create any legal rights or obligations, implicit or explicit, in favor of or against the other party. Also, no oral discussions and/or written agreements shall be in place of or supersede written loan agreements executed by your business and accepted by the Bank.

Upon your acceptance of the terms and conditions contained within this term sheet, we will seek credit approval to provide the Facility for this transaction.

Very truly yours,
U.S. Bank National Association



Seth Seely
Commercial Banking Officer



Brad Burnside
Lawrence Market President

EXHIBIT J

Form of Grant Disbursement Request

TO: City of Lawrence, Kansas
Attention: City Manager

1. Grantee requests payment of a portion of the grant provided pursuant to that certain Agreement between dated July 17, 2018, by and between the City of Lawrence, Kansas, a municipal corporation, and Lawrence Humane Society, Inc., a 501(c)(3) nonprofit organization (the "Agreement").

2. *[Use for Monthly Contractor Payment Requests pursuant to Section 3(b)]* Attached hereto is a copy of the Monthly Contractor Payment Request received by Grantee from the contractor pursuant to the Construction Contract. Based on such Monthly Contractor Payment Request, the Grantee hereby requests that the City disburse \$_____ *[insert amount equal to 33.33% of Monthly Contractor Payment Request, but not to exceed \$350,000]* to the Grantee.

[Use for Final Disbursement Request] The Grantee hereby certifies that the occupancy permit for the Project has been received and the Grantee hereby requests that the City disburse \$_____ *[insert amount equal to remaining undisbursed Grant amount]* to the Grantee.

3. There has not been filed with or served upon the Grantee any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.

4. The Grantee is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes an Event of Default under the Agreement.

5. All of the Grantee's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this ____ day of _____, 20____.

**Lawrence Humane Society, Inc, a
501(c)3 not-for-profit corporation**

{NAME}
{Title}

Approved for Payment this ____ day of _____, 20____:

CITY OF LAWRENCE, KANSAS

By: _____
Title: _____